

立法會
Legislative Council

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the Administration)

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**Subcommittee to Follow Up Issues Relating to
the Unified Screening Mechanism for Non-refoulement Claims**

**Minutes of meeting
held on Thursday, 18 October 2018, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Members present : Dr Hon Elizabeth QUAT, BBS, JP (Chairman)
Hon YUNG Hoi-yan (Deputy Chairman)
Hon James TO Kun-sun
Hon CHAN Hak-kan, BBS, JP
Hon Paul TSE Wai-chun, JP
Hon YIU Si-wing, BBS
Hon Dennis KWOK Wing-hang
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon CHIANG Lai-wan, SBS, JP
Hon Alvin YEUNG
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon SHIU Ka-fai
Hon CHAN Chun-ying, JP

Members attending : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Vincent CHENG Wing-shun, MH

Members absent : Hon Holden CHOW Ho-ding
Hon LAU Kwok-fan, MH

**Public Officers
attending** : Item I

Mr Billy WOO Tak-ying
Principal Assistant Secretary for Security (Review)

Mr William FUNG Pak-ho
Assistant Director of Immigration (Enforcement)

Mr FUNG Ngai-wa
Assistant Director of Immigration
(Removal Assessment and Litigation)

Ms PANG Kit-ling
Assistant Director (Family and Child Welfare)
Social Welfare Department

Mr Cyrus CHEUNG Ho-chi
Assistant Secretary for Security (Review) 1

Mr Henry NG Hung-kwun
Assistant Secretary for Security (Review) 2

Mr Isaac SO Chi-keung
Principal Immigration Officer
(Removal Assessment and Litigation)
Immigration Department

**Attendance
by invitation** : Item I

Individual

Mr LEUNG Kwok-hung

Individual

Mr Billy CHAN Shiu-yeung
Member of Sha Tin District Council

Liberal Party Youth Committee

Mr CHAN Kin-yip
Vice Chairperson

Individual

Ms Karen MCCLELLAN

Individual

Miss Christine FONG Kwok-shan

Justice Centre Hong Kong

Miss Annie LI Man
Research and Policy Officer

Individual

Mr Michael DANIEL

Individual

Mr Suleiman Mohammed BASHIRU

DAB

Mr 黎智成

Socialist Action

Mr LAM Tsz-lung
Committee member

Socialist Refugee Action

Miss HALIMAH
Member

Youth against Racism

Mr CHEUNG Chak-ting
Spokepereson

Individual

Mr Mohamed FUSSEINI

Individual

Dr CHAN Lih-shing

The Hong Kong Society for Asylum-seekers and Refugees

Mr Henry FU Shi-hin
Voluntary campaign supervisor

Individual

Ms Fitri AMBARWATI

Individual

Mr SAI Htong-kham

Individual

Dr Isabella NG Fung-sheung

Branches of Hope

Mr Tony READ

南昌東之友

Mr 陳龍傑

Socialist Immigrant Action

Mr Griffith William JONES
Member

Individual

Mr Chenyi Roy NJUABE

Individual

Mr Riben LI Kai-lap

Individual

Miss Crystal YEUNG

Individual

Mr Thomas FRANZ

Health In Action

Miss LIU Kin-yan
Community Health Nurse (Public Health Liaison)

Davis Polk & Wardwell

Mr Jonathan CHANG
Counsel

反黑金、反港獨關注組

Mr 黃引祥

Individual

Mr POON Shing

Individual

Ms KWONG Kwai-sim

Individual

Ms 夏泳迦

Individual

Mr 李詠民

Individual

Ms 張彤蔚

DAB Ethnic Minorities Committee

Ms Neena PUSHKARNA
Member

香港群策匯思

Mr CHAN Chz-ho

Individual

Ms Kelley LOPER

Individual

Mr Jeffrey ANDREW

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

Staff in attendance : Ms Gloria TSANG
Council Secretary (2)1

Ms Kiwi NG
Legislative Assistant (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

I. Unified screening mechanism for non-refoulement claims

The Subcommittee deliberated (index of proceedings attached at **Annex**).

2. The Subcommittee received oral representations from 37 deputations/individuals attending the meeting. The major views and concerns expressed by the deputations/individuals are summarized as follows:

- (a) some deputations/individuals were concerned about the crimes committed by non-refoulement claimants which had greatly affected the daily life and threatened the safety of

local residents. They considered that a detention centre to accommodate claimants was necessary;

- (b) some deputations/individuals took the view that the existing unified screening mechanism ("USM") for handling non-refoulement claims was inefficient. Considering that the high expenditure for provision of in-kind assistance to claimants was not prudent use of public resources, they urged the Administration to expedite the handling of claims, appeal cases and subsequent removal procedures;
- (c) some other deputations/individuals, however, were of the view that the basic rights of claimants, including the right to work, the rights to receive basic medical service and education, were not protected. They considered that the support and assistance for claimants were insufficient and inhuman. Some deputations/individuals pointed out that claimants were forced to break the laws, e.g. overstay in Hong Kong, before being able to lodge a claim;
- (d) with the low substantiated rate, some deputations/individuals cast doubt about the effectiveness of USM and considered that USM was not transparent; and
- (e) some deputations/individuals expressed opposition to the Administration's proposal to tighten the timeframe for submission of claim forms and lodging of appeals given that the number of pending claims had been significantly reduced in recent years.

3. In response to the views and concerns of the deputations/individuals attending the meeting, the Administration made the following points:

- (a) the setting up of detention centres was a complicated issue with diverse views from the society. The Administration would continue studying the issue, including exploring into any lawful, practicable and effective option, and would keep the Legislative Council updated when ready;
- (b) the comprehensive review of the strategy of handling non-refoulement claims was launched in 2016 as a result of the increasing number of claimants since the commencement

of USM in 2014. The measures to reduce potential claimants in Hong Kong, including collaboration with the Mainland to combat illegal immigration and the implementation of the online pre-arrival registration requirement, had shown positive results;

- (c) it disagreed to the view that the efficiency for handling of claims was low. It was noteworthy that the Immigration Department ("ImmD") had created new posts to expedite the screening procedures for pending claims and the membership of Torture Claims Appeal Board ("TCAB") had been expanded to speed up the handling of appeals. In addition, the Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants was launched in September 2017 such that the daily number of claims for which screening procedures could be commenced was increased to 23 cases from the original ceiling of 13 cases per day;
- (d) removal procedures of rejected claimants would only be commenced after all the screening and appeal procedures were completed. Although claimants would not be expatriated immediately upon their conviction of crime unless their non-refoulement claim was rejected on final determination, it was highlighted that their claims were given priority to be handled, such that they could be removed as soon as possible;
- (e) stressing that the handling of claims were required to meet the high standards of fairness required by the court, the saying that claimants would be forced to break the laws before being able to lodge a claim was mistaken;
- (f) publicly-funded legal assistance provided to claimants was free and without upper limit. Claimants were also provided with reasonable opportunities to establish their claims. Apart from claim forms, at least one screening interview would be arranged for claimants where they could provide further information relevant to their claims. Stressing that the requirement for substantiation of a non-refoulement claim was based on legal requirement, ImmD and TCAB would adopt an objective approach and make reference to information of the claimant's country of origin and other

related considerations when assessing the claims. Written notice detailing the final decisions with reasons would be provided to claimants afterwards. Hence, the Administration disagreed to the view that USM was not transparent, adding that it had also briefed Members regarding the latest development of USM on several occasions;

- (g) it would refer substantiated claimants to the Office of the United Nations High Commissioner for Refugees for arrangement of resettlement where appropriate. Regular review of the cases would be conducted and claimants might be removed to their country of origin when circumstances so allowed;
- (h) claimants were not allowed and had no right to work in Hong Kong under the law. However, the Director of Immigration might exercise discretion and give permission for substantiated claimants to work, and applications from over 30 substantiated claimants had been approved for employment. The issue of medical service raised by some deputations/individuals would be referred to the Food and Health Bureau and the Hospital Authority for follow-up as appropriate; and
- (i) the comprehensive review exercise was still ongoing and the proposed legislative amendments, including the tightening of the timeframe for submission of claim forms and lodging of appeals, were preliminary suggestions. The Administration stressed that it had maintained communication with the two legal professional bodies and exchanged views with other relevant stakeholders on the review.

4. The Administration was requested to provide, prior to the next meeting, statistics on the cases pending appeal and judicial review, and the estimated expenditure in this regard.

II. Any other business

5. The Chairman advised that the next meeting would be tentatively scheduled for 27 November 2018 at 4:30 pm. Members would be informed of the meeting arrangement in due course.

6. There being no other business, the meeting ended at 5:27 pm.

Council Business Division 2
Legislative Council Secretariat
15 November 2018

**Proceedings of meeting of the Subcommittee to Follow Up Issues Relating to
the Unified Screening Mechanism for Non-refoulement Claims
held on Thursday, 18 October 2018, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
<i>Agenda item I - Unified screening mechanism for non-refoulement claims</i>			
000000 - 001230	Chairman	Opening remarks	
001231 - 001536	Chairman Mr Billy CHAN Shiu-yeung, Member of Sha Tin District Council	Presentation of views	
001537 - 001809	Chairman Mr CHAN Kin-yip, Liberal Party Youth Committee	Presentation of views	
001810 - 002112	Chairman Miss Christine FONG Kwok-shan	Presentation of views	
002113 - 002424	Chairman Miss Annie LI Man, Justice Centre Hong Kong	Presentation of views [LC Paper No. CB(2)38/18-19(01)]	
002425 - 002454	Chairman Mr Michael DANIEL	Presentation of views	
002455 - 002800	Chairman Mr Suleiman Mohammed BASHIRU	Presentation of views [LC Paper No. CB(2)38/18-19(02)]	
002801 - 003107	Chairman Mr 黎智成, DAB	Presentation of views [LC Paper No. CB(2)121/18-19(01)]	
003108 - 003419	Chairman Mr LAM Tsz-lung, Socialist Action	Presentation of views [LC Paper No. CB(2)38/18-19(03)]	
003420 - 003804	Chairman Miss HALIMAH, Socialist Refugee Action	Presentation of views [LC Paper No. CB(2)38/18-19(04)]	
003805 - 004111	Chairman Mr CHEUNG Chak-ting, Youth against Racism	Presentation of views [LC Paper No. CB(2)38/18-19(05)]	

Time marker	Speaker	Subject(s) / Discussion	Action Required
004112 - 004232	Chairman Mr Mohamed FUSSEINI	Presentation of views	
004233 - 004542	Chairman Dr CHAN Lih-shing	Presentation of views	
004543 - 004842	Chairman Mr Henry FU Shi-hin, The Hong Kong Society for Asylum-seekers and Refugees	Presentation of views [LC Paper No. CB(2)97/18-19(01)]	
004843 - 005153	Chairman Ms Fitri AMBARWATI	Presentation of views	
005154 - 005340	Chairman Mr SAI Htong-kham	Presentation of views	
005341 - 005659	Chairman Dr Isabella NG Fung-sheung	Presentation of views [LC Paper No. CB(2)97/18-19(02)]	
005700 - 010040	Chairman Ms Karen MCCLELLAN	Presentation of views	
010041 - 010322	Chairman Mr Tony READ, Branches of Hope	Presentation of views [LC Paper No. CB(2)38/18-19(06)]	
010323 - 010624	Chairman Mr 陳龍傑, 南昌東之友	Presentation of views	
010625 - 010920	Chairman Mr Griffith William JONES, Socialist Immigrant Action	Presentation of views [LC Paper No. CB(2)38/18-19(04)]	
010921 - 011235	Chairman Mr Chenyi Roy NJUABE	Presentation of views [LC Paper No. CB(2)38/18-19(07)]	
011236 - 011543	Chairman Mr Riben LI Kai-lap	Presentation of views	
011544 - 011601	Chairman Miss Crystal YEUNG	Presentation of views	
011602 - 011905	Chairman Mr Thomas FRANZ	Presentation of views [LC Paper No. CB(2)38/18-19(08)]	

Time marker	Speaker	Subject(s) / Discussion	Action Required
011906 - 012159	Chairman Miss LIU Kin-yan, Health In Action	Presentation of views [LC Paper No. CB(2)38/18-19(09)]	
012200 - 012510	Chairman Mr Jonathan CHANG, Davis Polk & Wardwell	Presentation of views [LC Paper No. CB(2)38/18-19(10)]	
012511 - 012820	Chairman Mr 黃引祥, 反黑金、反港獨 關注組	Presentation of views	
012821 - 013127	Chairman Mr POON Shing	Presentation of views [LC Paper No. CB(2)66/18-19(01)]	
013128 - 013439	Chairman Ms KWONG Kwai-sim	Presentation of views	
013440 - 013749	Chairman Ms 夏泳迦	Presentation of views	
013750 - 014056	Chairman Mr 李詠民	Presentation of views	
014057 - 014254	Chairman Ms 張彤蔚	Presentation of views	
014255 - 014555	Chairman Ms Neena PUSHKARNA, DAB Ethnic Minorities Committee	Presentation of views	
014556 - 014838	Chairman Mr CHAN Chz-ho, 香港群 策匯思	Presentation of views	
014839 - 015153	Chairman Ms Kelley LOPER	Presentation of views	
015154 - 015326	Chairman Mr Jeffrey ANDREW	Presentation of views	
015327 - 015641	Chairman Mr LEUNG Kwok-hung	Presentation of views	
015642 - 021300	Chairman Admin	Administration's response to issues raised by deputations and individuals attending the meeting.	

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021301 - 022050	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG considered that the asylum seeking policy in Hong Kong was lagging behind, discriminatory, unfair and inhuman. He criticized the low number of employment permission given to substantiated claimants and queried the rationale of tightening the timeframe for submission of claim forms and lodging of appeals. In addition, he expressed concern about the amount of humanitarian assistance provided to claimants, their rights to receive basic medical service as well as the issue of family dispersion.</p> <p>The Administration advised that the proposed tightening of timeframe for submission of claim forms was set after drawing reference to overseas practice. In order to ensure the high standards of fairness required by the court were met, it drew members' attention to the fact that claimants could request for an extension under exceptional and uncontrollable circumstances. As regards the employment permission, the Administration explained that substantiated claimants were required to lodge an application via the Immigration Department ("ImmD") before a permission was given. ImmD had approved applications involving 34 claimants as at end of September 2018.</p>	
022051 - 022559	Chairman Dr Priscilla LEUNG	<p>Dr Priscilla LEUNG took the view that the unified screening mechanism ("USM") for non-refoulement claims should not be abused. She considered it unacceptable that non-refoulement claimants could stay in Hong Kong for over seven years or even a decade waiting for a final decision to be made by the Administration. Moreover, she was of the view that Hong Kong was too generous to provide claimants with legal assistance without any upper limit.</p> <p>Dr LEUNG said that she did not discriminate against non-ethnic Chinese ("NEC") persons but she had received complaints from local NEC persons expressing concern about the crimes committed by claimants. She urged the Administration to increase its resources to resolve and handle such problems with effective measures without further delay.</p>	

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022600 - 023114	Chairman Mr Dennis KWOK Mr Chenyi Roy NJUABE	At Mr Dennis KWOK's invitation, Mr Chenyi Roy NJUABE shared with the Subcommittee the difficult situation faced by claimants in Hong Kong. He highlighted the crime issues and said that majority of claimants did not commit crimes in Hong Kong. He hoped the Administration would consider providing integration support to claimants so that they could better contribute to the society.	
023115 - 023639	Chairman Dr Junius HO Admin	<p>Dr Junius HO stressed that he had not requested for withdrawal from The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Noting that some claimants were staying in Hong Kong for a decade, he asked whether the manpower support for handling claims was insufficient. He also considered that the Administration was extremely slow in the study of setting up detention centres.</p> <p>The Administration reiterated that the setting up of detention centres was a complicated issue, highlighting that legislative amendments were also required when accommodating Vietnamese Boat People in detention centres previously.</p> <p>As regards the manpower support, the Administration advised that ImmD had created new posts and the membership of the Torture Claims Appeal Board ("TCAB") had been expanded to expedite the screening of claims and handling of appeals. The number of pending claims and pending appeals were respectively dropped to 1 700 and about 6 000.</p>	
023640 - 024306	Chairman Mr CHU Hoi-dick Admin	<p>Given that the number of pending claims had been reduced in recent years, Mr CHU Hoi-dick did not see the need for tightening the timeframe for submission of claim forms and lodging of appeals.</p> <p>Referring to Mr Chenyi Roy NJUABE's earlier views, Mr CHU asked whether the Administration would consider providing better support and humanitarian assistance to non-refoulement claimants.</p> <p>The Administration explained that the decrease in the number of pending claims was attributed</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		to the drop in the number of new claimants and the implementation of administrative measures to expedite the screening of claims. Nevertheless, it was believed that amendment to the Immigration Ordinance (Cap. 115) would in the long run prevent various means to delay or obstruct the screening process and avoid further disputes. The Administration further advised that the timeframe for submission of claim forms was proposed after drawing reference to overseas practice, and assured members that it would keep listening to views from different parties when drafting the amendment bill.	
024307 - 024320	Chairman	Extension of meeting by 10 minutes	
024321 - 024856	Chairman Mr CHU Hoi-dick	<p>The Chairman said that while assistance should be provided to bona fide claimants subject to torture in their home countries, the existing mechanism for non-refoulement claims and resources were being abused by some bogus claimants. The large number of claimants living in the community was also posing a threat to security in Hong Kong. She therefore called on the Administration to speed up the handling of pending claims. Only when the number of pending claims was reduced, better support and humanitarian assistance could be provided to those subject to torture in their home countries.</p> <p>The Chairman was of the view that claimants' right to receive basic medical service should be protected and suggested that assistance to substantiated claimants could be further discussed in coming meetings.</p> <p>The Chairman and Mr CHU Hoi-dick's discussion over the issue of unsubstantiated claimants.</p>	
024857 - 025354	Chairman Dr Junius HO Admin	<p>Dr Junius HO asked whether the Administration had liaised with the Judiciary regarding the manpower requirement to handle the cases pending appeal and judicial review.</p> <p>Dr HO reiterated his earlier view on the setting up of detention centres.</p> <p>The Administration advised that it had appointed over 70 new members to TCAB since</p>	

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		<p>July 2016 to handle the pending appeals. It was also understood that the Judiciary had plan to increase its manpower support so as to expedite the handling of the some 2 000 cases pending judicial review.</p> <p>The Chairman requested the Administration to provide statistics regarding the cases pending appeal and judicial review, and the estimated expenditure in this regard.</p>	Admin
025355 - 030017	Chairman Dr Fernando CHEUNG Admin	<p>Given the low substantiated percentage of non-refoulement claims when compared with other countries, Dr Fernando CHEUNG doubted about the effectiveness and fairness of USM. He also took a strong view that that no amendment to Cap. 115 was necessary. He instead urged the Administration to review the level of humanitarian assistance to non-refoulement claimants without further delay and strictly monitor the International Social Service Hong Kong Branch in providing such assistance to the claimants.</p> <p>Stressing that the screening procedures had met the high standards of fairness required by the court, the Administration advised that the effectiveness of USM should not be assessed only based on the percentage of substantiated claims.</p> <p>In response to Dr CHEUNG's further enquiries, the Administration advised that the issue of publication of TCAB's decisions was being studied. The Administration stressed that the provision of legal assistance during the course of appeal and judicial review was determined independently.</p>	
030018 - 030058	Chairman	Date of next meeting	