

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 Tuesday, 27 November 2018, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Dr Hon Elizabeth QUAT, BBS, JP (Chairman)
Hon YUNG Hoi-yan (Deputy Chairman)
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
Hon Alvin YEUNG
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon CHAN Chun-ying, JP
Hon LAU Kwok-fan, MH
- Members absent** : Hon James TO Kun-sun
Dr Hon CHIANG Lai-wan, SBS, JP
- Public Officers attending** : Item I
Mr Billy WOO Tak-ying
Principal Assistant Secretary for Security (Review)
Mr Cyrus CHEUNG Ho-chi
Assistant Secretary for Security (Review) 1

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

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

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

Miss Lulu YEUNG
Clerical Assistant (2) 1

I. Proposals to amend the Immigration Ordinance in relation to non-refoulement claims

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

2. The Administration was requested to provide the following information:

- (a) the expenditure on judicial review cases relating to non-refoulement claims;
- (b) a summary of numbers of torture/non-refoulement claims by various stages of screening procedures and the relevant expenditure over the years;
- (c) the current situation and resettlement plan for the 117 substantiated claimants currently staying at Hong Kong;
- (d) the manpower and resource support to speed up the handling of pending judicial review cases;
- (e) circumstances under which non-refoulement claimants would be detained and statistics on the detention of claimants (e.g. longest, shortest and average detention period), if available; and

- (f) number of street sleepers who were non-refoulement claimants, if available.

II. Any other business

3. The Chairman advised that the 12-month work period of the Subcommittee would expire in early March 2019. Members agreed in principle that the Subcommittee would hold its last meeting tentatively scheduled for 15 January 2019 at 2:30 pm to discuss the publicly-funded legal assistance scheme and the provision of humanitarian assistance to non-refoulement claimants. Members would be informed of the meeting arrangement in due course.

4. There being no other business, the meeting ended at 6:26 pm.

Council Business Division 2
Legislative Council Secretariat
24 January 2019

**Proceedings of meeting of the Subcommittee to Follow Up Issues Relating to
the Unified Screening Mechanism for Non-refoulement Claims
held on Tuesday, 27 November 2018, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
<i>Agenda item I - Proposals to amend the Immigration Ordinance in relation to non-refoulement claims</i>			
000000 - 000550	Chairman	Opening remarks	
000551 - 001647	Chairman Admin	Briefing by the Administration (LC Paper Nos. CB(2)307/18-19(01) and CB(2)336/18-19(01))	
001648 - 002300	Chairman Mr CHAN Hak-kan Admin	<p>Mr CHAN Hak-kan expressed support for the proposals to amend the Immigration Ordinance (Cap. 115) ("IO") and asked about:</p> <ul style="list-style-type: none"> (a) the Administration's action against crime committed by non-refoulement claimants in Hong Kong; (b) the estimated time taken for repatriation of rejected claimants; and (c) resource implications of having 1 600 claimants being imprisoned, remanded, or involved in ongoing prosecution or investigation process. <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) the Police had always been concerned about crime committed by claimants and had stepped up patrol in relevant districts. A dedicated team was also set up under the Organized Crime and Triad Bureau to combat such crime; (b) removal procedures included verification of a claimant's identity and issuance of re-entry document by his home country, as well as arrangement of air passage for his return. It normally took one to six months for the whole process. To enhance removal efficiency, the Immigration Department ("ImmD") had begun discussion with governments of major source countries so as to ensure that rejected claimants were removed as soon as possible; and 	

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		(c) manpower resources would be allocated to the Correctional Services Department ("CSD") in accordance with the established mechanism.	
002301 - 002815	Chairman Dr Junius HO Admin	<p>Dr Junius HO expressed support for the proposals to amend IO.</p> <p>Dr HO elaborated his suggestion of providing financial incentive/repatriation fund to encourage non-refoulement claimants voluntarily leaving Hong Kong early.</p> <p>The Administration advised that it was willing to study and explore the viability of any lawful, practicable and effective options to expedite the handling of claims and removal procedures.</p>	
002816 - 003432	Chairman Mr YIU Si-wing Admin	<p>Mr YIU Si-wing's questions regarding:</p> <p>(a) the rationale for considering raising the penalty for failure to ensure that passengers had valid travel documents by airline companies;</p> <p>(b) whether, apart from pre-arrival registration ("PAR") arrangement for Indian nationals, the Administration had studied other measures to prevent potential claimants from entering Hong Kong; and</p> <p>(c) the Administration's action if a claimant's home country rejected issuing the re-entry document to him.</p> <p>The Administration responded that:</p> <p>(a) owners of aircraft were required under the existing law to ensure that passengers had valid travel documents, and there were about 200 to 300 convicted cases of passengers not possessing valid travel documents every year. The Administration was reviewing whether the penalty level should be raised.</p> <p>(b) PAR had been operating smoothly thus far. The success rate of registration was over 90%. The number of Indian visitors overstaying in Hong Kong and</p>	

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		<p>non-refoulement claims lodged by Indian nationals had respectively decreased by about 80%. The Administration would continue to explore the extension of such requirement to other countries as and when necessary; and</p> <p>(c) rejection to issue a re-entry document to a claimant by his home country was rare. In addition, the Administration had communicated with governments of major source countries, airline companies and relevant government departments to enhance removal efficiency.</p>	
003433 - 004423	Chairman Dr Fernando CHEUNG Admin	<p>Given the significantly reduced number of pending claims, Dr Fernando CHEUNG did not see the need for the proposed legislative amendments, including the proposed amendments to the Firearms and Ammunition Ordinance (Cap. 238) ("FAO"), the stipulation of languages used in screening interviews and the tightening of the statutory timeframe for submission of claim forms.</p> <p>Dr CHEUNG took the view that not all non-refoulement claimants in Hong Kong were bogus claimants and they should not be discriminated against.</p> <p>The Administration responded that:</p> <p>(a) the existing arrangements that ImmD staff in the Castle Peak Bay Immigration Centre had to apply in each and every case for exemption for possessing firearms and ammunition under FAO by the Commissioner of Police and the reliance on CSD's provision of tailor-made training on using anti-riot equipment were undesirable. To ensure ImmD staff could perform their duties effectively, as well as strengthening ImmD internal training and manpower deployment flexibility, amendments were thus proposed to FAO and the Weapons Ordinance (Cap. 217);</p> <p>(b) the current arrangement of provision of translation and interpretation service would</p>	

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		<p>continue. The proposed stipulation that interviews did not need to be conducted in the claimant's most proficient language if he was reasonably supposed to be able to communicate in another language was made after drawing reference to overseas practice, such as Germany; and</p> <p>(c) a claimant would be allowed to submit a written application for extending the time to return the claim form under exceptional and uncontrollable circumstances.</p>	
004424 - 004947	Chairman Mr Dennis KWOK Admin	<p>Mr Dennis KWOK considered that the provision of financial incentive to encourage claimants leaving Hong Kong early was not viable.</p> <p>In response to Mr Dennis KWOK's enquiry regarding the number of pending claims, the Administration said that ImmD had since 2016 adopted various measures to speed up the handling of non-refoulement claims. Notably, the launch of the Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants in parallel with the Duty Lawyer Service had broken through the bottleneck of the pending claims.</p> <p>Mr Dennis KWOK's concern whether the proposed tightening of the statutory timeframe for submission of claim forms and lodging of appeals would compromise the standards of fairness in handling appeals and judicial review ("JR") cases.</p> <p>The Administration assured members that the existing screening process of non-refoulement claims and the proposed legislative amendments met the high standards of fairness required by the court.</p>	
004948 - 005537	Chairman Admin	<p>In response to the Chairman's enquiry regarding the removal situation, the Administration advised that repatriation would normally be commenced after all the screening and appeal procedures were completed. It took about three to four weeks, the fastest, to complete the removal procedure for a rejected claimant. In some cases, the removal procedure took three to six months or even longer. The Administration</p>	

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		supplemented that most of the existing 1 600 claimants pending removal were staying at Hong Kong on recognizance.	
005538 - 010216	Chairman Dr Junius HO Admin	<p>In response to Dr Junius HO's enquiry regarding the provision of in-kind humanitarian assistance to claimants, the Administration advised that such assistance to a claimant was about \$3,000 to \$4,000 per month.</p> <p>To facilitate further discussion on whether the level of rent subsidy to claimants was sufficient, Dr HO requested the Administration to provide information on the number of street sleepers who were claimants, if available.</p> <p>Considering that a majority of non-refoulement claimants was bogus claimants and the huge expenditure of \$4.8 billion for the implementation of unified screening mechanism ("USM") in the past five years, he reiterated his earlier view of providing financial incentive to encourage claimants voluntarily leaving Hong Kong early.</p> <p>The Administration reiterated that it would study the viability of any lawful, practicable and effective options to expedite the handling of claims.</p>	Admin
010217 - 010853	Chairman Dr Fernando CHEUNG	<p>Dr Fernando CHEUNG considered that the existing in-kind assistance provided to non-refoulement claimants was insufficient.</p> <p>The Chairman considered that while assistance should be provided to substantiated claimants, the existing mechanism for non-refoulement claims and resources were being abused by some bogus claimants.</p> <p>Discussion on the suggestion of meeting non-refoulement claimants to receive first-hand information on their claim situation.</p>	
010854 - 011439	Chairman Admin	<p>The Chairman welcomed the proposed amendments to FAO and the Weapons Ordinance.</p> <p>The Chairman requested the Administration to provide information on the expenditure on JR cases relating to non-refoulement claims.</p>	Admin

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		<p>The Administration advised that, as far as ImmD was aware of, from January to October 2018, the court had received over 2 000 applications for leave to JR in relation to non-refoulement claims. While the court had handled about 1 000 such applications so far, leave was granted to less than 2% of the applications.</p>	
011440 - 011950	<p>Chairman Dr Junius HO Admin</p>	<p>Given the low substantiated rate of non-refoulement claims, Dr Junius HO reiterated his suggestion of providing financial incentive to encourage bogus claimants leaving early.</p> <p>Dr HO shared the view that assistance should be provided to substantiated claimants.</p>	
011951 - 012506	<p>Chairman Dr Fernando CHEUNG</p>	<p>Given the extremely low substantiated rate, Dr Fernando CHEUNG cast doubt about the effectiveness of USM. Dr CHEUNG reiterated his suggestion of meeting with non-refoulement claimants.</p>	
012507 - 013013	<p>Chairman Admin</p>	<p>The Chairman's responses to views expressed by Dr Junius HO and Dr Fernando CHEUNG.</p> <p>In response to the Chairman's enquiry on slide 11 of the powerpoint presentation materials (LC Paper No. CB(2)336/18-19(01)), the Administration clarified that "other relevant factors" when deciding if the detention period was reasonable in the handling of Vietnamese boat people were not crime-related factors.</p>	
013014 - 013636	<p>Chairman Dr Junius HO Admin</p>	<p>In response to Dr Junius HO's enquiry regarding the 121 substantiated claimants, the Administration advised that four of them had been arranged by the United Nations High Commissioner for Refugees for resettlement in a third country. Although substantiated claimants were allowed to apply for discretion to work in Hong Kong while they were pending resettlement, it was noteworthy that they would not be eligible for permanent residence even if they had resided in Hong Kong for a continuous period of over seven years. The Administration further advised that ImmD would regularly review those substantiated claims and claimants might be removed to their home countries when their risks ceased.</p>	

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		<p>The Administration was requested to provide information on the current situation and resettlement plan for the remaining 117 substantiated claimants.</p>	Admin
013637 - 014337	<p>Chairman Dr Fernando CHEUNG Admin</p>	<p>Given the low proportion of substantiated claimants being granted discretion to work in Hong Kong, Dr Fernando CHEUNG took a strong view that the requirement of a confirmed offer of employment before lodging an application should be abolished.</p> <p>The Administration stressed that while claimants were not allowed and had no right to work in Hong Kong according to the law and the court's ruling, substantiated claimants might seek approval from ImmD to work in Hong Kong pending resettlement to a third country. Nevertheless, it took note of Dr CHEUNG's view.</p>	
014338 - 015023	<p>Chairman Admin</p>	<p>In response to the Chairman's enquiry regarding the pending appeals, the Administration said that the Torture Claims Appeal Board ("TCAB") was expected to determine around 4 000 claims annually and thus the backlog was expected to be cleared within two to three years. The Administration would continue to appoint suitable members to TCAB as necessary, enhance its manpower and ancillary facilities for expediting the handling of appeals.</p> <p>The Administration further said that the provision of publicly-funded legal assistance during the course of appeal was determined by the merit assessment of each case. Around 10% of appeals were provided with legal assistance at the appeal stage and the relevant legal fee per case was about \$7,000.</p>	
015024 - 015515	<p>Chairman Dr Junius HO Admin</p>	<p>Dr Junius HO requested the Administration to provide a summary of numbers of torture/non-refoulement claims by various stages of screening procedures and the relevant expenditure over the years.</p> <p>Referring to its earlier remarks, the Administration added that from 2015 to October 2018, the court had received over 3 000</p>	Admin

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		<p>applications for leave to JR in relation to non-refoulement claims. While the court had handled about 1 000 such applications so far, leave was granted to less than 2% of the applications.</p> <p>The Administration was requested to provide information regarding the manpower and resource support to speed up the handling of pending JRs.</p>	Admin
015516 - 015523	Chairman	Extension of meeting by 15 minutes	
015524 - 015907	Chairman Dr Fernando CHEUNG Admin	Dr Fernando CHEUNG's enquiry and the Administration's response regarding the detention policy in respect of non-refoulement claimants. The Administration was requested to provide information and statistics regarding the detention of claimants, if available.	Admin
015908 - 020027	Chairman	Date of next meeting	