

**立法會**  
**Legislative Council**

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(These minutes have been seen by  
the Administration)

Ref : CB2/HS/4/16

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

**Minutes of meeting  
held on Tuesday, 15 January 2019, at 2:30 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 James TO Kun-sun  
Hon CHAN Hak-kan, BBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon YIU Si-wing, BBS  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon CHIANG Lai-wan, SBS, JP  
Hon Alvin YEUNG  
Hon CHU Hoi-dick  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai  
Hon CHAN Chun-ying, JP
- Members absent** : Hon Dennis KWOK Wing-hang  
Dr Hon Junius HO Kwan-yiu, JP  
Hon LAU Kwok-fan, MH
- Public Officers attending** : Item I  
Mr Billy WOO Tak-ying  
Principal Assistant Secretary for Security (Review)  
Ms CHAN Suk-Yee  
Assistant Secretary for Security (Review) 2

Mr Isaac SO Chi-keung  
Acting Assistant Director of Immigration  
(Removal Assessment and Litigation) /  
Principal Immigration Officer  
(Removal Assessment and Litigation)

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

**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

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**I. Publicly-funded legal assistance and humanitarian assistance to non-refoulement claimants**

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

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

- (a) the number of non-refoulement claims substantiated at the appeal stage with the presence of legal representation; and
- (b) the number of non-refoulement claimants who had been staying in Hong Kong for over 10 years.

**II. Way forward of the Subcommittee**

3. Members agreed that the Subcommittee should wrap up its work. Members further agreed that the Subcommittee's report would be circulated for members' consideration before submission to the House Committee.

**III. Any other business**

4. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 2  
Legislative Council Secretariat  
12 March 2019

**Proceedings of meeting of the Subcommittee to Follow Up Issues Relating to  
the Unified Screening Mechanism for Non-refoulement Claims  
held on Tuesday, 15 January 2019, at 2:30 pm  
in Conference Room 3 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s) / Discussion</b>	<b>Action Required</b>
000000 - 000454	Chairman	Opening remarks	
<i>Agenda item I - Publicly-funded legal assistance and humanitarian assistance to non-refoulement claimants</i>			
000455 - 001056	Chairman Admin	Briefing by the Administration (LC Paper No. CB(2)581/18-19(01)).	
001057 - 001647	Chairman Mr Alvin YEUNG Admin	<p>Mr Alvin YEUNG declared that he had been on the roster of duty lawyers eligible for handling non-refoulement claims.</p> <p>Referring to the speech delivered by the Chief Justice of the Court of Final Appeal ("the Chief Justice") on 14 January 2019 concerning the impact of increasing number of applications for judicial review ("JR") in relation to non-refoulement claims on the Judiciary, Mr YEUNG asked about the progress and details of the Administration's discussion with the Judiciary and Department of Justice ("DoJ") on the matter.</p> <p>The Administration advised that it had been maintaining communication with the Judiciary and DoJ on relevant matters and would keep the Legislative Council updated when necessary.</p> <p>In response to Mr YEUNG's further enquiry regarding the exceptional approval for substantiated claimants to work in Hong Kong, the Administration advised that around 170 applications for taking up employment were received up to 2018. Among them, almost 100 applications were approved, 46 applications not proceeded and 10 applications rejected. 36 substantiated claimants were working in different sectors in Hong Kong, such as voluntary organizations, hotels and the recycle industry.</p>	

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001648 - 002351	Chairman Mr SHIU Ka-fai Admin	<p>Mr SHIU Ka-fai commended the work of the Security Bureau ("SB") and the Immigration Department ("ImmD") to expedite the handling of non-refoulement claims.</p> <p>Mr SHIU's enquiry and the Administration's response regarding the difference between the operation of the Legal Assistance Scheme for Non-Refoulement Claims ("LAS") operated by the Duty Lawyer Service ("DLS") and the Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants ("Pilot Scheme"). The Administration added that a review of the operation of the Pilot Scheme would be carried out.</p> <p>Mr SHIU considered that the Pilot Scheme was highly effective.</p>	
002352 - 003343	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG expressed concern about the speech delivered by the Chief Justice in relation to handling of non-refoulement claims by the court. He was gravely concerned about the proposed legislative amendment to allow ImmD to remove non-refoulement claimants from Hong Kong even if they had applied for relevant JR or legal aid (unless leave to JR had been granted by the court).</p> <p>Dr CHEUNG hoped that the proposed legislative amendment should uphold the fairness and impartiality of the screening procedures as well as the independency of the Judiciary.</p> <p>Dr CHEUNG asked whether the Administration would review the provision of publicly-funded legal assistance ("PFLA") such that all claimants would be provided with legal representation during the appeal stage, instead of depending on the decision of their lawyers. The Administration advised that the arrangement had been adopted by DLS since it was engaged to operate LAS. The merits of appeal was assessed by the same lawyer responsible for the previous screening process by ImmD. In addition, appeal was handled by the Torture Claims Appeal Board ("TCAB"), which was an independent statutory body. The high standards of fairness as required by the court in handling non-refoulement claims would be met. Nevertheless, the Administration took note of Dr CHEUNG's view and would relay to DLS.</p>	

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003344 - 003910	Chairman Mr CHU Hoi-dick Admin	<p>In response to Mr CHU Hoi-dick's enquiry regarding the successful rate of appeal cases, the Administration advised that about 10% of appeal for claims were provided with PFLA, and that less than 1% of the appeals were substantiated by TCAB, irrespective of the presence of legal representation. The Administration undertook to provide the number of cases substantiated at the appeal stage with the presence of legal representation.</p> <p>Mr CHU shared Dr Fernando CHEUNG's concern regarding the proposed legislative amendment to allow ImmD to remove non-refoulement claimants from Hong Kong notwithstanding that they had applied for JR or legal aid.</p> <p>Mr CHU raised further concern about achieving a higher rate of legal representation during the appeal stage. The Administration noted Mr CHU's view and stressed that TCAB would review all documents submitted by non-refoulement claimants when handling appeals. The Administration would explore ways to further improve the appeal procedures if necessary.</p>	<b>Admin</b>
003911 - 004621	Chairman Dr CHIANG Lai-wan Admin	<p>Concurring to the speech by the Chief Justice about the increased workload of the Judiciary arising from the proliferation of cases involving non-refoulement claims, Dr CHIANG Lai-wan urged the Administration to expedite the removal procedures of rejected claimants.</p> <p>Given the security threat posed by non-refoulement claimants to local residents, Dr CHIANG considered it necessary and supported the Administration's proposal to amend the Immigration Ordinance (Cap. 115). She also took a strong view that a detention centre to accommodate claimants was indispensable.</p> <p>The Administration noted Dr CHIANG's view and stressed that it would continue exploring any lawful, practicable and effective option to deal with issues arising from non-refoulement claims.</p> <p>In response to Dr CHIANG's enquiry regarding the removal of claimants convicted of crime, the Administration advised that although claimants would not be repatriated immediately upon their conviction of crime according to the court's ruling,</p>	

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		<p>their claims were given priority to be handled, such that they could be removed as soon as possible after completing their sentence terms.</p>	
004622 - 005507	Chairman Mr Paul TSE Admin	<p>Mr Paul TSE declared that he was a member of the Advisory Committee on Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants and some of the lawyers working in his law firm were participating in the Pilot Scheme.</p> <p>Mr TSE considered that the Pilot Scheme was highly effective and acknowledged the effort make by SB and ImmD.</p> <p>In response to Mr TSE's enquiry regarding whether the Pilot Scheme would become permanent and replace DLS, the Administration reiterated that a review of the Pilot Scheme would be carried out shortly. In the long run, the Administration would review the provision of PFLA to claimants, with a view to catering for the changing number of claims flexibly with the proper use of public fund.</p> <p>Mr TSE's view regarding the provision of PFLA to non-refoulement claimants during the appeal stage, which should not be more favourable than that provided to Hong Kong residents. Mr TSE expressed further view regarding the legal assistance to Hong Kong residents encountering difficulties outside Hong Kong.</p>	
005508 - 005957	Chairman Admin	<p>In response to the Chairman's enquiry regarding PFLA, the Administration advised that a majority of overseas jurisdictions had imposed statutory limit on PFLA to non-refoulement claimants. Whether a similar cap should be imposed would be studied during the review of PFLA. The Administration highlighted that lawyers participating in the Pilot Scheme were currently remunerated a standard legal fee plus a standard legal executive allowance, which were set based on the legal assistance provided by DLS. The Chairman urged the Administration to review the Pilot Scheme as early as possible.</p> <p>In response to the Chairman's further enquiry, the Administration advised that there were currently around 3 000 applications to the Court of First Instance for leave to JR in relation to non-refoulement claims in 2018. Over half of the</p>	

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		<p>claimants who were rejected at the appeal stage were expected to apply for leave to JR. The Administration advised that the Judiciary would liaise with DoJ, with a view to facilitating a more efficient handling of the huge number of JR cases.</p>	
005958 - 010543	<p>Chairman Mr SHIU Ka-fai Admin</p>	<p>In response to Mr SHIU Ka-fai's enquiry regarding the exceptional approval for substantiated claimants to work in Hong Kong, the Administration explained that while substantiated claimants were pending resettlement arrangement by the Office of the United Nations High Commissioner for Refugees, their duration of stay in Hong Kong varied. Hence, ImmD would approve on an exceptional basis application from substantiated claimants to take up employment having regard to the merits of individual cases. Given that the number of such application was not high, the Administration considered that the impact to the local job market was insignificant.</p> <p>Mr SHIU took the view that the Administration should disseminate clearly the fact that non-refoulement claimants were not given constitutional right or any other legal right to work in Hong Kong to the source countries of claimants.</p> <p>Mr SHIU's further enquiry and the Administration's response regarding the in-kind assistance provided to non-refoulement claimants.</p>	
010544 - 011623	<p>Chairman Dr Fernando CHEUNG Admin</p>	<p>Dr Fernando CHEUNG expressed grave concern about the follow-up action in respect of the Chief Justice's remark about the handling of JR in relation to non-refoulement claims. He called on the Administration to provide relevant information as soon as possible.</p> <p>Dr CHEUNG considered that the provision of legal representation at the appeal stage, which was subject to merits assessment and decision of the lawyer concerned, was not ideal.</p> <p>Dr CHEUNG's enquiries regarding the remuneration of participating lawyers under the Pilot Scheme and review of the level of humanitarian assistance provided to claimants.</p> <p>The Administration responded that:</p>	



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		<p>(a) it was aware of the concerns about the remuneration of standard legal fee to participating lawyers under the Pilot Scheme in respect of handling complicated claims. Having regard to relevant practices in the United Kingdom, complicated claims could be referred back to DLS when necessary; and</p> <p>(b) it noted Dr CHEUNG's view about the level of humanitarian assistance and would make adjustment as and when necessary. Currently, the International Social Service Hong Kong Branch (ISS-HK) would assess claimants' eligibility based on their individual needs, e.g. extra food allowance would be given when infant formula were needed.</p> <p>Dr CHEUNG suggested the Administration to make reference to the Comprehensive Social Security Assistance Scheme and adjust the level of humanitarian assistance to claimants accordingly.</p>	
011624 - 012128	Chairman Admin	<p>In response to the Chairman's enquiry regarding the exceptional approval for substantiated claimants to work in Hong Kong, the Administration advised that as at end December 2018, there were 151 substantiated claimants staying in Hong Kong with 84 adults, and 36 of them were taking up employment arising from 86 approved applications so far. While it normally took around four weeks to process claimants' employment application, the Administration would consider examining whether the application process could be streamlined and shortened.</p>	
012129 - 015703	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's enquiries and concerns regarding:</p> <p>(a) whether the requirement of a confirmed offer of employment before lodging an application for taking up employment could be abolished;</p> <p>(b) the improvement in the disbursement of financial assistance for non-refoulement claimants who were school-age children;</p> <p>(c) the number of non-refoulement claimants who had been staying in Hong Kong for over 10 years;</p>	

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		<p>(d) the process to speed up the screening of non-refoulement claims if such requests were made by the claimants themselves;</p> <p>(e) the arrangements to safeguard family integrity of claimants during the screening process and removal procedures; and</p> <p>(f) the provision of adequate and timely medical assistance for claimants, including mental and chronic illnesses.</p> <p>The Administration responded that:</p> <p>(a) it noted Dr CHEUNG's view on streamlining the process of vetting applications for taking up employment from substantiated claimants;</p> <p>(b) the Education Bureau would consult ImmD and process claimants' applications for school placement taking into account the circumstances of individual cases. ISS-HK would offer extra financial assistance if necessary;</p> <p>(c) as far as ImmD was aware, not many claimants had been staying in Hong Kong for over 10 years;</p> <p>(d) to speed up the screening of individual claims, written request with justifications could be forwarded to ImmD;</p> <p>(e) claimants were allowed to signify their preference for screening their claims on family or individual basis, provided that the claims from different family members were submitted simultaneously; and</p> <p>(f) it noted Dr CHEUNG's concern about the medical assistance for claimants.</p> <p>The Chairman requested the Administration to provide the number of non-refoulement claimants who had been staying in Hong Kong for over 10 years.</p>	<p><b>Admin</b></p>

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<i>Agenda item II - Way forward of the Subcommittee</i>			
015704 - 015908	Chairman	Conclusion of work by the Subcommittee.  Closing remarks.	

Council Business Division 2  
Legislative Council Secretariat  
12 March 2019