

For discussion on  
27 March 2018

**Legislative Council Subcommittee to Follow up Issues Relating to  
the Unified Screening Mechanism for Non-refoulement Claims**

**An update on the comprehensive review of the strategy of  
handling non-refoulement claims**

**Purpose**

This paper updates the Subcommittee on the latest situation of the comprehensive review of the strategy of handling non-refoulement claims (“the comprehensive review”).

**Background**

2. The Government commenced operating the unified screening mechanism (“USM”) in March 2014 to screen non-refoulement claims on all applicable grounds<sup>1</sup>. Since then, the number of non-ethnic Chinese illegal immigrants (“NECIIs”) and the number of non-refoulement claimants surged.

- (a) The number of NECIIs increased from an average of about 840 per year in the previous three years to 1 984 in 2014 (2.4 times) and 3 819 in 2015 (4.5 times).
- (b) The number of non-refoulement claims increased from an average of 1 032 claims per year in the previous three years to 4 634 in 2014 (4.5 times) and 5 053 in 2015 (almost 5 times).

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<sup>1</sup> A claim by someone subject to be removed from Hong Kong to another country that if removed to that country, he will be subjected to torture, or his absolute and non-derogable rights under the Hong Kong Bill of Rights (“HKBOR”) will be violated (including being arbitrarily deprived of his life as referred to in Article 2 and cruel, inhuman or degrading treatment or punishment (“CIDTP”) as referred to in Article 3 of the HKBOR), or be persecuted, etc.

3. At the same time, the number of claims pending the commencement of screening procedures by the Immigration Department (“ImmD”) was on the rise. As at the end of 2015, there were 10 922 claims pending determination by ImmD<sup>2</sup>.

4. Against this background, the Government commenced the comprehensive review in early 2016, focusing on the following four areas

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- (a) preventing potential claimants from entering Hong Kong;
- (b) expediting the commencement of screening procedures for pending claims, shortening the screening time per claim, and expediting the handling of appeals;
- (c) expediting repatriation of the claimants whose claims have been rejected; and
- (d) studying detention policies and stepping up law enforcement.

5. Since the commencement of the comprehensive review, various measures being or already implemented in the above areas have yielded certain results.

### **Measures implemented and the latest situation**

#### **A. Preventing potential claimants from entering Hong Kong**

6. The top source countries of non-refoulement claimants include Pakistan, India, Vietnam and Bangladesh (accounting for 71% of all claimants)<sup>3</sup>. Most of the claimants from Pakistan, Vietnam and Bangladesh<sup>4</sup> smuggled into Hong Kong by sea or by land via the Mainland. As regards claimants from India, 80% of them first arrived in Hong Kong as visitors visa-free and made a non-refoulement claim after overstaying or having been refused permission to land.

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<sup>2</sup> Close to 70% of the pending claims were claims lodged after the commencement of USM.

<sup>3</sup> From the commencement of USM in March 2014 to the end of 2015.

<sup>4</sup> Visitors from these countries usually require a visa to visit Hong Kong.

*Collaboration with the Mainland to combat illegal immigration*

7. In February 2016, the Hong Kong Special Administrative Region (“HKSAR”) Government and the Mainland launched a dedicated joint operation to combat illegal immigration. So far, seven joint operations against smuggling syndicates have been conducted<sup>5</sup>. Separately, Mainland authorities stepped up patrol with additional patrol vessels in prime waters such as Shekou, Deep Bay and O Tau areas. Upon detecting suspicious vessels, Mainland authorities would notify our marine police for joint action at sea and in the air to intercept illegal immigrants before they enter Hong Kong waters.

8. In December 2017, the governments of both sides convened the fifth “joint working group meeting on combating the smuggling of illegal immigrants across the Hong Kong-Guangdong boundary” in Shenzhen, and agreed to continue to strengthen collaborations on investigation, intelligence exchange and law enforcement, to keep up their vigorous efforts against the smuggling of illegal immigrants across the boundary and to tackle the problem on all fronts. Given that smuggling syndicates will adjust their tactics from time to time (including varying their routes and operation modes), both sides have agreed to continue the dedicated joint anti-smuggling operations until mid-2019.

*Stepping up patrol and examination at boundary control points*

9. The Hong Kong Police Force (“Police”), ImmD and the Customs and Excise Department (“C&ED”) have been taking enforcement actions on the land and sea boundaries all along to combat all illegal immigration activities. On land, to tackle illegal immigrants who smuggled in by hiding under large goods vehicles, container lorries and container trailers, Police, ImmD and C&ED have been conducting joint operations to step up examination of cross-boundary vehicles at vehicular boundary control points (“BCPs”). We have also installed the Enhanced Under Vehicle

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<sup>5</sup> In the joint operations, the Police and ImmD, together with Mainland law enforcement agencies, successfully smashed a number of cross-boundary crime syndicates, resulting in the arrest of over 120 core members of smuggling syndicates in both places. At the same time, the border control departments and the exit and entry offices of relevant provinces took sustained enforcement action against illegal immigration activities in various Mainland provinces, leading to the interception of over 67 000 NECIIs. They also foiled 53 organised smuggling syndicates and 293 cases of attempted illegal entry into Hong Kong, involving over 3 400 persons.

Surveillance System at all existing vehicular BCPs<sup>6</sup> to examine all south-bound lorries.

10. At sea, apart from the joint operation with Mainland authorities as mentioned above, the Finance Committee of the Legislative Council (“LegCo”) approved a funding of about HK\$190 million on 1 December 2017 for the implementation of the Marine Situational Awareness System. The new system will allow the sharing of real-time images, footage and other important information among police on vessels and at command centres on land, thereby helping to detect the smuggling of illegal immigrants by sea and other maritime crimes effectively.

#### *Heavier penalties on syndicates*

11. The Immigration (Unauthorized Entrants) (Amendment) Order 2016 commenced in May 2016 imposes heavier penalties on syndicates smuggling illegal immigrants from Pakistan, India, Bangladesh, Nepal, Sri Lanka, etc. Since the Order came into effect, the Court has heard several such cases. Law enforcement agencies also successfully applied for heavier penalties under the Organised and Serious Crimes Ordinance in some cases. Among all the cases tried so far, the heaviest penalty imposed by the Court was imprisonment for five years and three months, reflecting the seriousness of the crime.

#### *Online pre-arrival registration*

12. Considering that India is a major source country of non-refoulement claimants and that 80% of claimants from India arrived in Hong Kong as visa-free visitors, ImmD has implemented the pre-arrival registration (“PAR”) requirement for Indian nationals since January 2017, under which Indian nationals must first successfully apply for PAR online before visiting Hong Kong visa-free.

#### *Latest situation*

13. The number of NECIIs has dropped significantly since the latter half of 2016:

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<sup>6</sup> BCPs at Shenzhen Bay, Lok Ma Chau, Man Kam To and Sha Tau Kok.

- (a) In 2017, there were 893 NECIIs (monthly average 74), representing a 60% decrease over 2016 (monthly average 185), and a 77% decrease over 2015 (monthly average 318); and
- (b) In the first two months of 2018, there were 96 NECIIs (monthly average 48), a further 35% decrease over 2017.

14. Since introduction, PAR for Indian nationals has been operating smoothly in general. As at the end of February 2018, about 310 000 visitors have successfully registered, representing a success rate of over 90%. Meanwhile, the number of Indian visitors overstaying in Hong Kong has decreased by 80% since the implementation of PAR.

15. The number of non-refoulement claims has dropped correspondingly:

- (a) In 2017, ImmD received 1 843 non-refoulement claims (monthly average 154), representing a 52% decrease over 2016 (annual total 3 838, monthly average 320), and further by a 63% decrease over 2015 (annual total 5 053, monthly average 421); and
- (b) In the first two months of 2018, ImmD received 207 claims (monthly average 104), a further 32% decrease over 2017.

Trends of the numbers of NECIIs and non-refoulement claims are at **Annex A**.

#### B. Expediting the screening of pending claims

*Expediting the commencement of screening procedures for pending claims*

16. With over 10 000 claims pending screening at the time, ImmD created 83 new posts in 2016 to handle such claims. Additional translators and interpreters were also recruited to provide support<sup>7</sup>.

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<sup>7</sup> ImmD employed 22 translators and interpreters on non-civil service contract terms for Hindi, Urdu, Bengali, Punjabi, Indonesian and Vietnamese. Their main duties are to interpret for claimants at briefing sessions and screening interviews and to translate documents submitted by claimants.

However, given the ceiling of publicly-funded legal assistance (“PFLA”), ImmD could only commence screening of 13 pending claims per day (i.e. about 3 200 per year)<sup>8</sup> despite the increase in manpower.

17. To break through the bottleneck, the Government launched the “Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants” (“Pilot Scheme”) in September 2017, under which a supplementary roster of lawyers has been set up to run in parallel with the “Legal Assistance Scheme for Non-refoulement Claimants” provided by the Duty Lawyer Service (“DLS”). Eligible lawyers currently participating in the DLS scheme are welcome to join the said supplementary roster of the Pilot Scheme. The daily number of claims for which the screening procedures can be commenced is thereby increased by almost 80% to 23 cases per day (i.e. annual total of over 5 000 claims) from the DLS ceiling of 13.

*Shortening the screening time per claim*

18. Separately, ImmD has enhanced the efficiency of screening procedures by flexible staff deployment and optimized workflow (including advanced scheduling of screening interviews and handling of claims involving claimants from the same country by dedicated officers). The handling time per claim (from the commencement of screening procedures to determination by ImmD) has been expedited from about 25 weeks on average at the early implementation of USM to the current average of about 10 weeks.

*Expanding the membership of the Torture Claims Appeal Board (TCAB)*

19. Speedier screening by ImmD would be followed by a large number of appeal cases. As such, the Government has been appointing

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<sup>8</sup> In December 2008, the Court of First Instance (CFI) of the High Court ruled in the *FB v Director of Immigration and Secretary for Security* [2009] 2 HKLRD 346 case that the Government must implement a series of measures, including the provision of PFLA to claimants during the screening process, to meet the high standards of fairness required by the Court in the *Prabakar* case. Subsequently, the Government invited DLS to operate a “Public-funded Legal Assistance Scheme for Convention Against Torture Claims” (renamed as “Public-funded Legal Assistance Scheme for Non-Refoulement Claims” after the commencement of USM) on funding by the Government. When ImmD commenced the screening of a claim, the case will be referred by DLS to duty lawyers to follow up. Since August 2015, the DLS Secretariat could refer 13 cases per day to duty lawyers under the scheme.

new members to TCAB since July 2016, expanding its membership from the original size of 28 to the current strength of 102. Also, manpower of the TCAB secretariat and ancillary facilities (such as office accommodation and hearing facilities) have been increased.

*Latest situation*

20. On expediting the screening of claims:
  - (a) In 2017, ImmD determined 4 182 claims, representing a 30% increase over 2016 (3 218 claims); and
  - (b) As at the end of February 2018, 4 958 claims were pending screening by ImmD, representing a 46% decrease over the same period in 2017 (9 265 claims) and a 56% decrease over the peak in March 2016 (11 201 claims).
21. On expediting the handling of appeals, the number of claims determined by TCAB in 2017 increased by 3.8 times over 2016, from a monthly average of 49 to 235. It is expected to further go up in 2018.
22. Profile and related statistics of non-refoulement claimants and expenditures on handling non-refoulement claims and related matters are at **Annex B**.

C. Early removal of the rejected claimants

23. Making a claim does not change the status of a non-refoulement claimant as a person who has illegally entered or stayed in Hong Kong. To exercise effective immigration control, rejected claimants should be removed to their country of origin as soon as possible. As the estimated number of claims to be completed increases, more rejected claimants need to be removed. Removal procedures include verification of a claimant's identity and re-issuance of travel documents by his country of origin, and prompt arrangement of flights.

24. ImmD has begun discussion with governments of major source countries, airline companies and other government departments on enhancing removal efficiency, so as to ensure that the rejected claimants are removed from Hong Kong as soon as possible. ImmD has also been actively identifying various means to further enhance the removal

efficiency, such as conducting large-scale removal operations by chartered flights. On 28 December 2017 and 12 February 2018, ImmD successfully removed 88 illegal Vietnamese immigrants from Hong Kong by chartered flights.

*Latest situation*

25. In 2017, a total of 4 139 non-ethnic Chinese (“NEC”) persons were removed from Hong Kong (including 2 515 whose non-refoulement claims were rejected, withdrawn, or could not be further pursued, or who returned voluntarily), representing an increase of more than 40% over 2016 (2 922 NEC persons).

D. Detention and enforcement

26. Persons detained under the Immigration Ordinance (Cap. 115) may be detained in places stipulated under the Immigration (Places of Detention) Order (Cap. 115B), including the Castle Peak Bay Immigration Centre (“CIC”), ImmD’s detention facilities at BCPs, as well as sites and buildings that are set apart for the purposes of prisons under the Prisons Ordinance (Cap. 234) and specified in the Schedule of the Prisons Order (Cap. 234B). At present, illegal immigrants detained by ImmD (including claimants) are mostly detained at CIC, which has a capacity of about 500. In 2017-18, the Government created 35 posts to strengthen CIC’s management.

27. We are also considering different measures from the legal, public security and resources perspectives, which include making available more detention facilities and providing more effective operational support to detention facilities.

28. Apart from combating the smuggling of illegal immigrants, ImmD has also stepped up enforcement actions against NEC illegal workers and their employers, so as to reduce the economic incentives of NECs to stay in Hong Kong. Last year, the Government strengthened publicity to remind employers that employing persons not legally employable is a criminal offence liable to immediate imprisonment. This initiative will continue in future.

29. In addition, the Police have always been concerned with the situation of crimes committed by NECs and their taking part in triad



activities in Hong Kong. To handle the issues in a focused manner, formulate relevant strategies and coordinate combating operations, the Police set up the “Crime Wing Working Group on NEC Involvement in Organized Crime and Triad Activities”, chaired by the Chief Superintendent of Police of the Organized Crime and Triad Bureau (“OCTB”). The Police’s efforts in combatting crimes at district level have also been enhanced. In 2017, OCTB launched new strategies to tackle the problem of NEC committing crimes with emphasis on four aspects, namely training, intelligence gathering and sharing, multi-agency cooperation and enhanced enforcement action.

### *Latest situation*

30. Last year, ImmD conducted 758 targeted operations (including joint operations with other law enforcement agencies) against NEC illegal workers, representing a 27% increase over 2016. A total of 478 NEC persons<sup>9</sup> and 270 local employers were arrested. Crime statistics involving NEC persons on recognizance (most of whom are claimants) are at **Annex C**.

## **Other Matters**

### Humanitarian Assistance

31. The Social Welfare Department (“SWD”) commissioned the International Social Service Hong Kong Branch (“ISS-HK”) through tendering exercises to provide humanitarian assistance (including temporary accommodation, basic utilities allowance, food, clothing, basic necessities, appropriate transportation allowance and counselling service) to non-refoulement claimants who are deprived of basic needs during their presence in Hong Kong. At the same time, we need to ensure that such humanitarian assistance will not create a magnet effect which may have serious implications on the sustainability of our current scheme and immigration control.

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<sup>9</sup> Including those who breached section 38AA or 41 under the Immigration Ordinance for taking up unapproved employment and NEC persons arrested in enforcement operations for committing other immigration offences (including illegal remains as stipulated in (section 38(1)(b)) or possession of a forged ID card (section 7A under the Registration of Persons Ordinance).

*Latest situation*

32. To improve management, food provision has been provided by means of Electronic Token (“E-token”) starting from 1 March 2017. In addition to overseeing ISS-HK’s delivery of the assistance, SWD has required the food contractor to assign a unique service number on each of the E-tokens that can be used to print and display the name of the E-token’s user, to include the user’s personal photo image and signature on the E-token, in order for the food contractor to check the authenticity of the E-token when it is being used. ISS-HK will investigate into each case of suspected abuse, and will suspend the provision of E-tokens to those having misused them (with the provision of in-kind food assistance instead). Suspected crime cases will be reported to the Police.

**Way Forward**

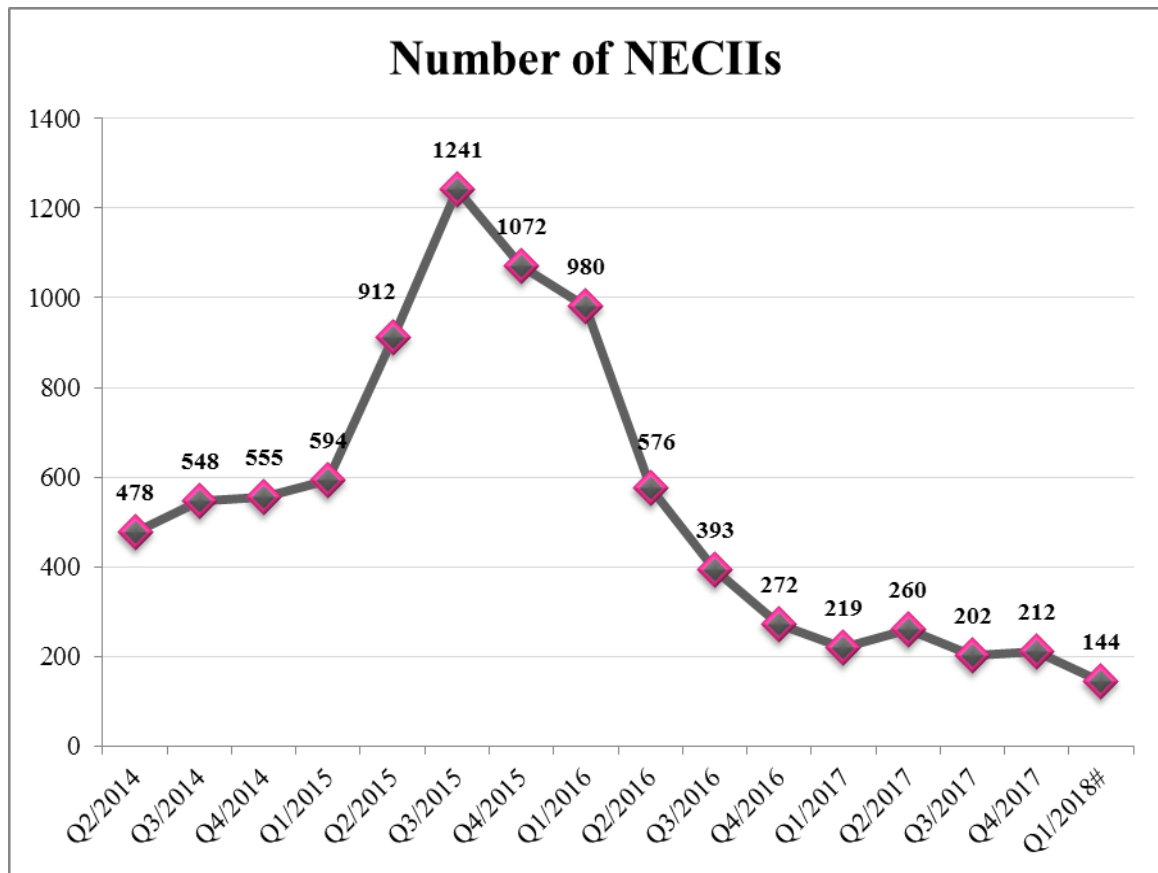
33. Apart from the above on-going measures, the Government will put forward proposals on amendment to the Immigration Ordinance with a view to expediting the screening procedures and providing for related matters, such as specifying the screening procedures, tightening the timeframe, prohibiting delay tactics and strengthening ImmD’s detention power. The Government will report to the LegCo Panel on Security in due course on this. Our target is to introduce the Amendment Bill into the LegCo early next year.

**Security Bureau**  
**March 2018**

**Quarterly statistics of NECIIs**

Year	Quarter	Number of NECIIs	% change since the quarter before	% change since the same period the year before	% change since the peak (Q3/2015)
2014	Q2	478			
	Q3	548	+15%		
	Q4	555	+1%		
2015	Q1	594	+7%		
	Q2	912	+54%	+91%	
	Q3	1 241	+36%	+126%	
	Q4	1 072	-14%	+93%	-14%
2016	Q1	980	-9%	+65%	-21%
	Q2	576	-41%	-37%	-54%
	Q3	393	-32%	-68%	-68%
	Q4	272	-31%	-75%	-78%
2017	Q1	219	-19%	-78%	-82%
	Q2	260	+19%	-55%	-79%
	Q3	202	-22%	-49%	-84%
	Q4	212	+5%	-22%	-83%
2018	Jan-Feb	96	-32%*	-34%*	-88%*

\* Monthly average



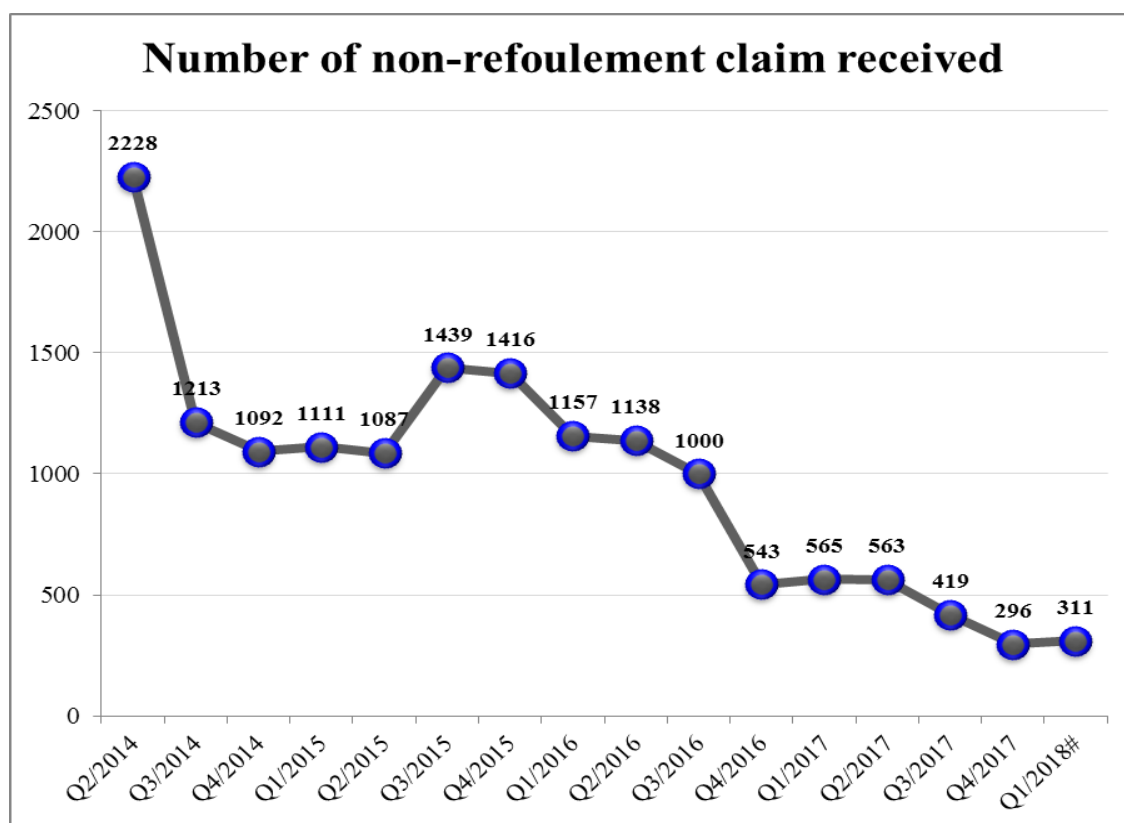
# Projected figure

### Quarterly statistics of non-refoulement claims

Year	Quarter	Number of claims received	% change since the quarter before	% change since the same period the year before	% change since the peak (Q3/2015)^
2014	Q2	2 228			
	Q3	1 213	-46%		
	Q4	1 092	-10%		
2015	Q1	1 111	+2%		
	Q2	1 087	-2%	-51%	
	Q3	1 439	+32%	+19%	
	Q4	1 416	-2%	+30%	-2%
2016	Q1	1 157	-18%	+4%	-20%
	Q2	1 138	-2%	+5%	-21%
	Q3	1 000	-12%	-31%	-31%
	Q4	543	-46%	-62%	-62%
2017	Q1	565	+4%	-51%	-61%
	Q2	563	0%	-51%	-61%
	Q3	419	-26%	-58%	-71%
	Q4	296	-29%	-45%	-79%
2018	Jan-Feb	207	+5%	-45%*	-78%*

^ ImmD received 2 228 claims in Q2/2014 immediately after USM was launched. The claims received possibly included those who had planned to lodge claim before USM. Hence, it may be inappropriate to include the claim figure of that quarter for trend comparison.

\* Monthly average



# Projected figure

**Annex B**

**Summary of non-refoulement claimants' profile**

USM commenced on 3 March 2014. As at end February 2018, 4 958 non-refoulement claims were pending screening by ImmD. Analysis on claimants' profile is as follows:

**(a) Sex**

Male	3 824	77.1%
Female	1 134	22.9%

**(b) Age**

<18	136	2.7%
18 – 30	1 522	30.7%
31 – 40	2 175	43.9%
>40	1 125	22.7%

**(c) Country of origin**

Pakistan	1 060	21.4%
India	1 045	21.1%
Bangladesh	798	16.1%
Indonesia	446	9.0%
Vietnam	333	6.7%
The Philippines	309	6.2%
Nepal	190	3.8%
Sri Lanka	143	2.9%
Nigeria	101	2.0%
Gambia	87	1.8%
Others	446	9.0%
Total	4 958	100%

**(d) Immigration status**

Overstayer	2 517	50.8%
NECII	2 235	45.1%
Others	206	4.1%

**(e) Time lag between entering Hong Kong (including illegal entry) and making a claim**

<3 months	1 925	38.8%
3 – 12 months	1 694	34.2%
13 – 24 months	500	10.1%
>24 months	621	12.5%
Information not available	218	4.4%

\*The average time lag is about 12 months.

**Statistics on torture / non-refoulement claims  
(as at end February 2018)**

Year	Claims received	Claims determined	Claims withdrawn or no further action can be taken	Pending claims (at year end)
End 2009				6 340
<b><i>Enhanced administrative mechanism (which became statutory mechanism since December 2012)</i></b>				
2010 to 2013	4 906 <i>(Note 1)</i>	4 534	3 920	2 792
2014 (Jan to Feb)	19	221	89	2 501
<i>Total torture claims under administrative and statutory mechanisms</i>	4 925	4 755	4 009	2 501
<b><i>Unified screening mechanism (“USM”) (since March 2014)</i></b>				
Claims lodged on other grounds such as CIDTP or persecution <u>before</u> commencement of USM	4 198			6 699  (=2 501 +4 198)
2014 (Mar to Dec)	4 634	826	889	9 618
2015	5 053	2 339	1 410	10 922
2016	3 838	3 218	1 561	9 981
2017	1 843	4 182	1 743	5 899
2018 (Jan to Feb)	207	922	226	4 958
<b>Total non-refoulement claims under USM</b>	<b>15 575</b>	<b>11 487</b> <i>(Note 2)</i>	<b>5 829</b>	<b>4 958</b>

*Note 1:* ImmD received a total of 4 906 torture claims from 2010 to 2013, an average of 102 per month. Since the commencement of USM to end 2015, ImmD received 9 687 torture claims, an average of 440 claims per month. Since the comprehensive review in early 2016, ImmD received an average of 320 claims per month in 2016, and an average of 154 claims per month in 2017, a decrease of 52%. In 2018 (up to end February), ImmD received 207 non-refoulement claims, an average of 104 claims per month.

*Note 2:* Among the 11 487 non-refoulement claims determined by ImmD under USM, 93 (0.8%) were substantiated (including 31 substantiated by TCAB on appeal). As regards the 11 394 remaining claims that were rejected, 6 304 claimants filed an appeal with TCAB, 3 417 left Hong Kong or were pending removal arrangements, and 1 673 remained in Hong Kong for other reasons (e.g. imprisoned, pending prosecution, lodged a judicial review, etc.)

**Expenditures on handling non-refoulement claims and related matters  
(Since 2014-15)**

<b>Year</b>	<b>Screening of Claims and Handling of Appeals / Petitions (\$Million)</b>	<b>Publicly-funded Legal Assistance (\$Million)</b>	<b>Humanitarian Assistance (\$Million)</b>	<b>Total* (\$Million)</b>
2014-15	188	97	254	<b>540</b>
2015-16	208	106	489	<b>803</b>
2016-17	281	122	729	<b>1 132</b>
2017-18 (Revised estimate)	330	143	593	<b>1 066</b>
2018-19 (Draft estimate)	373	271	755	<b>1 399</b>

*\* Individual items may not add up to total due to rounding.*

**Annex C**

**Police statistics on NEC persons on recognizance  
arrested for suspected criminal offences**

<b>Offences</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018 (as at end-Feb)</b>
Shop theft	277	463	428	47
Serious drug offences	159	179	200	46
Miscellaneous thefts	110	161	170	19
Wounding and serious assault	100	117	173	19
Serious immigration offences	85	117	111	12
Forgery and coinage	80	85	63	2
Disorder/fighting in public place	64	37	29	9
Others	238	347	368	53
<b>Total</b>	<b>1 113</b>	<b>1 506</b>	<b>1 542</b>	<b>207</b>