

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

香港添馬添美道 2 號

2 Tim Mei Avenue, Tamar, Hong Kong

本函檔號 Our Ref.:

SBCR 7/3221/15 Pt.8

來函檔號 Your Ref.:

11 January 2019

Clerk to Legislative Council Subcommittee to Follow Up Issues Relating
to the Unified Screening Mechanism for Non-refoulement Claims
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Ms Betty MA)

Dear Ms Ma,

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

Follow-up matters to the meeting of 27 November 2018

In response to the follow-up matters raised at the captioned Subcommittee meeting, the Government provides the supplementary information as below –

Summary of torture/non-refoulement claims and relevant expenditure

Summary of statistics on torture / non-refoulement claims and expenditure on handling non-refoulement claims and related work are set out at **Annex A** and **Annex B** respectively.

Resettlement of the substantiated claimants

The United Nations Convention relating to the Status of Refugees (“the Refugee Convention”) has never been applied to Hong Kong. The HKSAR Government has a long-established policy of not granting asylum to any non-refoulement claimants nor determining the refugee status of anyone. Claimants who lodged a non-refoulement claim to resist removal from Hong Kong will not be treated as “refugees”

or “asylum seekers”. Regardless of the outcome of their non-refoulement claims, their immigration status as illegal immigrants / overstayers will not change and they are not permitted to stay in Hong Kong.

Substantiated claimants would have their removal withheld until their claimed risk ceased to exist, while in parallel their cases would be referred to the United Nations High Commissioner for Refugees (“UNHCR”) as appropriate for consideration of recognition as “refugee” and arrangement of resettlement to a third country. As at end November 2018, the Immigration Department (“ImmD”) had referred 107 substantiated claimants to the UNHCR. According to the latest information provided by UNHCR, 4 persons had been resettled in a third country.

Judicial review cases relating to non-refoulement claims

The Judiciary in general does not have the breakdown of the operation expenses by types of cases or levels of courts, including judicial review (“JR”) cases relating to non-refoulement claims.

Nevertheless, the Judiciary notes that since 2017, there has been a sharp increase in non-refoulement claim cases filed with the Court of First Instance and the Court of Appeal of the High Court, and it is noted that more of such cases are now being filed with the Court of Final Appeal. The Judiciary is closely monitoring the situation and considering how such upsurge of cases should be handled without seriously affecting the processing of other civil cases. In this regard, the Judiciary would assess whether any additional requirements for judicial and other staffing resources are required, and if so, would put forward such proposals to the Government according to the established mechanism of the budgetary arrangements between the Judiciary and the Government.

Detention of non-refoulement claimants

At present, sections 32 and 37ZK of the Immigration Ordinance (Cap. 115) respectively empower ImmD to detain a person pending removal and during screening of his non-refoulement claim. The detention power exercised by ImmD is subject to the common law *Hardial Singh* principles, under which ImmD cannot continue to detain a person if it cannot complete the removal or screening procedures within a reasonable period of time.

The Government has formulated a detention policy on how such power will be exercised. For example, matters to be considered for detention include whether the person concerned has conviction(s) associated with crime(s) of serious or violent nature; whether there is doubt on his / her true identity; and whether he / she has a record of absconding, etc. Detention cases will be under regular review to ensure legality of all detention decisions. For details on the detention policy, please refer to ImmD's website vide:

https://www.immd.gov.hk/eng/useful_information/enforcement.html

As at end November 2018, 381 persons (including 60 non-refoulement claimants pending final determination of their claims) were being detained in the Castle Peak Bay Immigration Centre. ImmD does not maintain statistics on the individual periods of detention.

Number of street sleepers who were non-refoulement claimants

On humanitarian grounds, the Government has commissioned the International Social Service ("ISS") Hong Kong Branch for administering and delivery of humanitarian assistance to non-refoulement claimants who are deprived of basic needs during their presence in Hong Kong, so as to prevent them from becoming destitute. At present, there are about 11 000 claimants receiving such humanitarian assistance, which covers temporary accommodation in terms of rent assistance or shelter service. The Government does not maintain statistics on street sleepers who are non-refoulement claimants. Nevertheless, street sleepers who are found to be non-refoulement claimants and in need of humanitarian assistance will be referred to ISS for assessment and follow-up service via the Social Welfare Department.

For further enquiries, please contact the undersigned at 2810 2099.

Yours sincerely,



(Cyrus Cheung)
for Secretary for Security

**Summary of statistics on torture / non-refoulement claims
(from end 2009 to end November 2018)**

Year	Claims received	Claims determined	Claims withdrawn or no further action can be taken	Pending claims (at year end)
End 2009				6 340
<i>Enhanced administrative mechanism (which became statutory mechanism since December 2012)</i>				
2010	1 809	214	1 186	6 749
2011	1 432	932	802	6 447
2012	1 174	1 575	1 154	4 892
2013	491	1 813	778	2 792
2014 (Jan to Feb)	19	221	89	2 501
<i>Total torture claims under administrative and statutory mechanisms</i>	<i>4 925</i>	<i>4 755</i>	<i>4 009</i>	<i>2 501</i>
<i>Before unified screening mechanism ("USM") (since March 2014)</i>				
Claims lodged on other grounds such as cruel, inhuman, or degrading treatment or punishment, or persecution before commencement of USM	4 198			6 699 (= 2 501 + 4 198)
<i>USM (since March 2014)</i>				
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 Nov)	1 117	5 022	1 074	920
Total non-refoulement claims under USM	16 485	15 587 <i>(Note 2)</i>	6 677	920

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. In 2018 (up to end November), ImmD received 1 117 non-refoulement claims, an average of 102 claims per month.

Note 2: Among the 15 587 non-refoulement claims determined by ImmD under USM, 125 (0.8%) were substantiated (including 48 substantiated by the Torture Claims Appeal Board on appeal).

Expenditure on handling non-refoulement claims and related work

The expenditure on handling torture / non-refoulement claims and related work from FY 2010-11 to FY 2018-19 is set out below:

Financial Year	Screening of Claims and Handling of Appeals / Petitions (\$million)	Publicly-funded Legal Assistance (\$million)	Humanitarian Assistance (\$million)	Total* (\$million)
2010-11	126	10	151	287
2011-12	135	37	143	315
2012-13	144	58	191	393
2013-14	151	76	204	430
2014-15	188	97	254	540
2015-16	208	106	489	803
2016-17	281	122	729	1 132
2017-18	336	152 [#]	587	1 074
2018-19 (draft Estimate)	373	271 [#]	755	1 399

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

Including expenditures incurred by the Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants
