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

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 15 January 2019**

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

Purpose

This paper provides background information and summarizes Members' past discussions on various issues related to provision of publicly-funded legal assistance ("PFLA") and humanitarian assistance to non-refoulement claimants.

Background

The unified screening mechanism for non-refoulement claims

2. In March 2014, the Administration implemented the unified screening mechanism ("USM") for screening non-refoulement claims and handling appeals, with a view to enforcing judgments of the Court of Final Appeal, including relevant legal obligations under the Hong Kong Bill of Rights Ordinance (Cap. 383) and the Immigration Ordinance (Cap. 115), by screening non-refoulement claims on all applicable grounds.¹ Since then, the number of non-ethnic Chinese illegal immigrants and the number of non-refoulement claimants surged. At the same time, the number of claims pending the commencement of screening procedures by the Immigration Department ("ImmD") has been increasing. Against this background, the Administration commenced a comprehensive review of the strategy of handling non-refoulement claims in early 2016.

¹ Applicable grounds include torture, violation of absolute and non-derogable rights under the Hong Kong Bill of Rights (including arbitrary deprivation of life and cruel, inhuman or degrading treatment or punishment), or persecution.

Publicly-funded legal assistance

3. According to a court ruling in 2008, in order to meet the high standards of fairness, non-refoulement claimants had the right to access to legal assistance during the screening procedures. The Duty Lawyer Service ("DLS") was subsequently invited to operate PFLA on funding by the Administration. When ImmD commenced the screening of a claim, the case would be referred by DLS to duty lawyers to follow up. The number of pending claims for which the screening procedures could commence was 13 per day given the ceiling of PFLA (i.e. about 3 200 per year).

4. To break through the bottleneck, the Administration 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 existing scheme provided by DLS. As such, the daily number of claims for which the screening procedures can be commenced is increased to 23 cases per day (i.e. annual total of over 5 000 claims).

Humanitarian assistance

5. The Social Welfare Department has 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. Food provision has been provided by means of electronic token² since March 2017.

Members' deliberations

Publicly-funded legal assistance

6. Members were advised that legal assistance provided to non-refoulement claimants included (a) advising the claimant of his legal right and on the screening procedures throughout the process; (b) assisting the claimant to complete the claim form; and (c) accompanying the claimant to attend the screening interview, if considered necessary. Members noted that an average of 57 hours of PFLA was provided to a claimant in Hong Kong, as compared to

² The food contractor is required to assign a unique service number on each of the electronic token ("E-token") which can be used to print and display the name of the E-token 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.

an average of 13 to 23 hours for a claimant in other countries and that PFLA would be provided to a claimant without upper limit. These members expressed the view that the Administration should consider imposing a cap on PFLA to claimants. The Administration advised that while some countries had imposed statutory limit on PFLA to claimants, it needed to study such overseas experience before drawing up concrete proposals. The Administration added that when claimants lodged an appeal if aggrieved by ImmD's decision, PFLA would only continue to be provided upon passing the merits test. Around 10% of appeals were provided with legal assistance and the relevant expenditure per case was about \$10,000.

7. Members further noted that, in order to increase the screening capacity, the Administration had launched the Pilot Scheme in September 2017 to refer some claims to qualified lawyers directly to provide PFLA to more claimants. Under the Pilot Scheme, lawyers would provide legal assistance (under the same scope as legal assistance provided under DLS) to claimants. Upon completing each case, participating lawyers would be remunerated with a standard legal fee instead of remunerated at time rates. Some members considered that the remuneration to participating lawyers was low and asked whether the Administration would consider reviewing it. According to the Administration, the remuneration of the participating lawyers under the Pilot Scheme was set making reference to that of DLS.

8. Some other members, however, were concerned about the alleged abuse of the Pilot Scheme by some law firms and asked whether the Administration would look into ways to prevent such abuse. The Administration advised that the Pilot Scheme, which had been running for around a year, was in parallel with PFLA. To ensure the prudent use of public fund while maintaining timely and quality PFLA to claimants, a review of the Pilot Scheme, covering issues such as the prevention of abuse, would be carried out soon.

Humanitarian assistance and other support

9. While agreeing that assistance should be provided to substantiated claimants, some members considered that the Administration should critically examine the scope of assistance being provided to non-refoulement claimants. Having regard to the low substantiated rate of non-refoulement claims and the fact that expenditure on handling of non-refoulement claims and provision of legal and humanitarian assistance to claimants was amounted to about \$4.8 billion in the past five years, these members were concerned that USM and finite public resources were being abused by bogus claimants. These members considered that besides treating claimants in a humane manner, the Administration should safeguard the overall interests of Hong Kong as well. They therefore urged the Administration to speed up the handling of pending

claims such that targeted support and humanitarian assistance could be provided to substantiated claimants.

10. Some other members, however, considered that the monthly in-kind assistance for a non-refoulement claimant, which comprised \$1,500 rent allowance, \$1,200 food coupons, \$300 utilities allowance and transportation allowance in the range of \$200 to \$420, was inadequate and inhumane. These members were of the view that the Administration should review the level of in-kind assistance and strictly monitor ISS-HK in distributing such in-kind assistance to claimants and consider allowing claimants to work.

11. The Administration advised that improvements had been made to the provision of in-kind assistance over the years. Members' attention were also drawn to the fact that the Director of Immigration might exercise discretion and give permission for substantiated claimants to work in Hong Kong. The Administration stressed that, besides maintaining the high standards of fairness in handling non-refoulement claims as required by the court, it had to safeguard the overall interests of Hong Kong. As such, a comprehensive review of the strategy of handling non-refoulement claims was commenced in early 2016, with a view to preventing potential claimants from entering Hong Kong, expediting the screening of pending claims and the subsequent removal procedure of rejected claimants.

Relevant papers

12. A list of relevant papers available on the Legislative Council website is in the **Appendix**.

Appendix

Relevant papers on publicly-funded legal assistance and humanitarian assistance to non-refoulement claimants.

Committee	Date of meeting	Paper
Panel on Security	2.2.2016 (Item VI)	Agenda Minutes
Panel on Security	7.6.2016 (Item IV)	Agenda Minutes
Panel on Security	11.11.2016 (Item V)	Agenda Minutes
Panel on Security	6.6.2017 (Item IV)	Agenda Minutes
Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims	27.3.2018	Agenda Minutes
	21.5.2018	Agenda Minutes
Panel on Security	10.7.2018 (Item III)	Agenda Minutes
Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims	18.10.2018	Minutes
Panel on Security	2.11.2018 (Item V)	Agenda Minutes