

For discussion on  
6 June 2017

## **Legislative Council Panel on Security**

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

#### **Purpose**

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

#### **Latest figures**

2. Various measures introduced or being implemented since commencement of the comprehensive review in 2016 have shown initial results. Both the number of non-ethnic Chinese illegal immigrants (“NECIIs”) and the number of non-refoulement claimants have been decreasing.

3. In the first quarter of 2017, 219 NECIIs surrendered or were intercepted, a 78% decrease over the same period last year<sup>1</sup>. As regards non-refoulement claims, 565 claims were made to the Immigration Department (“ImmD”) in the first quarter of 2017, representing a 51% decrease comparing with the same period last year<sup>2</sup>. Relevant trends are at **Annex A**.

4. As at end April 2017, 8 740 claims were pending screening by ImmD, representing a 22% decrease comparing with the same time last year<sup>3</sup>. A summary of claimants’ profile and relevant statistics is at

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<sup>1</sup> In the first quarter of 2016, 980 NECIIs surrendered or were intercepted; or 2 221 for the whole year.

<sup>2</sup> In the first quarter of 2016, 1 157 claims were made; or 3 838 for the whole year.

<sup>3</sup> As at end April 2016, 11 178 claims were pending screening by ImmD.

## **Annex B.**

### **The comprehensive review**

5. The Government briefed the Panel on Security of the Legislative Council (“LegCo”) in February and November 2016<sup>4</sup> that we would conduct the comprehensive review from four dimensions: (a) pre-arrival control; (b) screening procedures; (c) detention; and (d) enforcement and removal. Our current work and plans ahead are set out in the ensuing paragraphs.

#### **Pre-arrival control**

6. The top four source countries of claimants pending screening by ImmD are India, Pakistan, Bangladesh and Vietnam (accounting for almost 70% of all claimants). Most claimants from Pakistan, Bangladesh and Vietnam<sup>5</sup> smuggled into Hong Kong by sea or by land via the Mainland. 80% of those from India initially arrived in Hong Kong as visa-free visitors but later made a non-refoulement claim after overstaying or having been refused permission to land.

7. Pre-arrival control measures aim to intercept at source those persons who intend to lodge non-refoulement claims in Hong Kong by preventing them from successfully smuggling into Hong Kong or entering Hong Kong legally and subsequently overstaying and making non-refoulement claims.

#### *Collaboration with the Mainland to combat illegal immigration*

8. Since early 2016, law enforcement agencies (“LEAs”) including the Police and ImmD have been working with Mainland authorities to step up efforts to combat syndicates which arrange the passage of NECIIs to Hong Kong<sup>6</sup>. As mentioned in paragraph 3 above, since the commencement of the relevant operations, the number of NECIIs has been decreasing.

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<sup>4</sup> See LC Paper Nos. CB(2)648/15-16(05) and CB(2)110/16-17(06).

<sup>5</sup> Visitors from these countries usually need a visa to visit Hong Kong.

<sup>6</sup> Since February 2016, five large-scale joint operations have been conducted in the Mainland and in Hong Kong. During these operations, a total of over 300 persons, including some 90 suspected core members of smuggling syndicates, were arrested on both sides; and Mainland authorities apprehended more than 40 000 NECIIs.

9. However, by experience, smuggling syndicates will adjust their tactics from time to time (including varying their routes and operation modes). At the fourth “Joint task force with Guangdong on combating smuggling of illegal immigrants across the Hong Kong-Guangdong boundary” held in February 2017 in Hong Kong, it was agreed that relevant provinces and regions (Guangdong, Guangxi, Yunnan, Macao and Hong Kong) would continue the dedicated joint anti-smuggling operations until mid-2019 and strengthen collaborations on investigation, intelligence exchange and law enforcement, so as to target and crack down on illicit activities by syndicates.

*Stepping up patrol and examination at boundary control points*

10. To target illegal immigrant who smuggled in by hiding under large goods vehicle, container lorries or container trailers, the Police, ImmD and the Customs and Excise Department have been conducting joint operations to step up examination of cross-boundary vehicles at vehicular boundary control points (“BCPs”) including Lok Ma Chau and Man Kam To.

11. We have installed the Enhanced Under Vehicle Surveillance System (“EUVSS”) at three vehicular BCPs (i.e. Shenzhen Bay, Lok Ma Chau and Man Kam To). The installation and testing of EUVSS at the Sha Tau Kok vehicular BCP will be completed soon and commissioned in June 2017. After that, all south-bound lorries could be examined through EUVSS by LEAs to prevent illegal immigrants from crossing the BCPs underneath such vehicles. The Police have also appealed through various means to cross-boundary lorry drivers to remain vigilant against illegal immigrants.

12. At sea, Mainland authorities have strengthened their efforts to combat the smuggling of illegal immigrants at piers and waters near the Guangdong and Shenzhen coasts. They have also stepped up patrol with additional patrol vessels in important territorial waters such as Shekou, Deep Bay and O Tau areas. Upon detecting suspicious vessels, the Mainland authorities would notify our marine police for joint action at sea and in air to intercept illegal immigrants before they enter Hong Kong waters.

*Heavier penalties on syndicates*

13. The Immigration (Unauthorized Entrants) (Amendment) Order 2016 that was commenced in May 2016 imposes heavier penalties on

syndicates smuggling illegal immigrants from Pakistan, India, Bangladesh, Nepal, Sri Lanka, etc. The first criminal proceedings of “arranging passage to Hong Kong of unauthorized entrants” since the amendment were completed in April 2017. The defendant was convicted and sentenced to imprisonment of five years and three months. “Arranging passage to Hong Kong of unauthorized entrants” is an offence stipulated under Schedule 1 of the Organized and Serious Crimes Ordinance (Cap 455). If there is sufficient evidence to show that the case constitutes organized crime as defined under that Ordinance, the Police will apply to the Court for aggravated sentencing. Together with the implementation of the dedicated joint anti-smuggling operations, smuggling of illegal immigrants have significantly abated for the time being.

#### *Online pre-arrival registration*

14. 80% of the claimants from India arrived in Hong Kong as visa-free visitors but only make a claim after they have overstayed or been refused permission to land. ImmD introduced the pre-arrival registration (“PAR”) requirement for Indian nationals in January 2017, under which Indian nationals must first successfully complete PAR online before they may visit Hong Kong visa-free<sup>7</sup>.

15. PAR has been operating smoothly since commencement. As at end April 2017, about 100 000 visitors have successfully registered, representing a success rate of over 90%. At the same time, the number of Indian visitors who overstayed has decreased<sup>8</sup>. The Government will continue to closely monitor the trend of visitors overstaying and adjust PAR.

#### *Strengthening contact with major source countries of claimants*

16. ImmD has also been strengthening its liaison with major source countries. In the past year or so, ImmD visited and briefed the governments of India, Vietnam, Pakistan and Bangladesh on our stringent legislation against the smuggling of illegal immigrants and unlawful

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<sup>7</sup> Visitors on transit who seek to enter Hong Kong are also required to complete the registration.

<sup>8</sup> From February to April 2017, an average of 13 Indian visitors per month overstayed after entering Hong Kong, a 64% decrease over the fourth quarter of 2016 (36 Indian overstayers per month on average).

employment and the policy objectives of USM. Contacts were also established with their LEAs for intelligence exchange and law enforcement when necessary. We also publicized our law and policy to residents of these countries.

### Screening of claims

17. As at end April 2017, 8 740 claims were pending screening by ImmD. Our short-term goal is to expedite screening of pending claims. In the longer term, we will amend the law to plug existing loopholes through tightening timeframes and clarifying the duties of ImmD / Torture Claims Appeal Board (“TCAB”) and claimants.

### *Expediting screening of pending claims*

18. Increasing screening output requires effort from multiple ends. In addition to ImmD<sup>9</sup>, we also need to increase the number of TCAB Members and interpreters supporting the screening process and provide legal assistance for more claimants at the same time.

19. Additional resources have been allocated to ImmD to increase its manpower to expedite screening. Moreover, ImmD will strive to streamline its administrative procedures to optimize use of available resources. Having done these, ImmD assesses that the number of claims screened can be further increased to 5 000 cases or more per year<sup>10</sup>, subject to an in-tandem increase of the capacity for provision of publicly-funded legal assistance (“PFLA”).

20. On interpretation service, ImmD is recruiting additional full-time interpreters of different languages to support screening of more claims<sup>11</sup>.

21. As regards PFLA, there are currently about 500 barristers and solicitors with relevant training on the Duty Lawyer Service’s (“DLS”) roster to assist claimants. Another some 200 barristers and solicitors

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<sup>9</sup> In 2015-16, ImmD’s establishment to handle the screening of claims and related matters increased from 205 to 288.

<sup>10</sup> ImmD determined 826, 2 339 and 3 218 in 2014, 2015 and 2016 respectively. For the first four months of 2017, ImmD determined 1 375 claims.

<sup>11</sup> ImmD will recruit 22 interpreters / translators 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.

attended a new round of training in this April, so more of them would be ready to join a scheme to provide PFLA to claimants.

22. Notwithstanding the above, under its existing mode of operation, the DLS secretariat has to employ many long-term staff to provide support to lawyers and claimants and to carry out various administrative duties<sup>12</sup>. There is a ceiling on the number of claims that DLS may provide support to and the ceiling cannot be flexibly increased to provide a timely response to drastic changes in the number of claims. Since August 2015, the number of claims referred to qualified lawyers by DLS remained at 13 cases per working day (i.e. about 3 200 claims per year). Discussion between the Government and DLS on further increasing its capacity is still ongoing.

23. The Government will soon implement a new pilot scheme in parallel with DLS' existing scheme. Qualified lawyers will be invited to join a supplementary roster under the pilot scheme, which will assign cases to them directly. Under the pilot scheme, lawyers will provide legal assistance (under the same scope as legal assistance provided under DLS) to claimants<sup>13</sup>. Upon completing each case, participating lawyers will be remunerated a standard legal fee (instead of remuneration at time rates). Also, instead of hiring Court Liaison Officers ("CLOs") and supporting staff to provide support (such as legal executive and clerical support) to lawyers and claimants, the pilot scheme will provide an additional legal executive support allowance to participating lawyers.

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<sup>12</sup> There are 72 posts under DLS' establishment for operating its scheme, including 2 Chief Court Liaison Officers, 3 Assistant Chief Court Liaison Officers, 8 Senior Court Liaison Officers, 41 Court Liaison Officers, 4 Senior Personal Secretaries, 9 Personal Secretaries I/II, 1 Senior Accounting Officer, 1 Accounting Officer and 3 Office Assistants. Their duties include drafting claim forms for claimants, making various requests to ImmD or TCAB (for obtaining documents, applying for extension, etc.), conducting country-of-origin information research, and other administrative duties (such as clerical work, courier service, accounting, filing, etc).

<sup>13</sup> Legal assistance provided to claimants under the pilot scheme is the same as what is provided by DLS under its Legal Assistance Scheme for Non-Refoulement Claimants, i.e., (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; (c) accompanying the claimant to attend the screening interview, if considered necessary by the duty lawyer; (d) assessing merits of appeal for claims rejected by ImmD; (e) preparing notice of appeal for meritorious cases; (f) representing the claimant at the oral hearing on appeal where necessary; (g) assisting the claimant in making a request to re-open a claim or to make a subsequent claim in meritorious cases; and (h) preparing notice of appeal for the claimant against a revocation decision.

24. By implementing the pilot scheme, screening capacity can be increased immediately, and a more flexible mode of operation can be tested, so as to shed more light on how PFLA can be provided to claimants in the most effective manner. Since the pilot scheme will not be employing a large number of CLOs and supporting staff, and administrative work will be reduced substantially by substituting time-based payments with a standard fee, we trust that its caseload can be adjusted more timely and flexibly when necessary. The Government will review the pilot scheme after one year of its commencement, and consider the best long-term arrangement.

#### *Expanding TCAB membership*

25. To prepare for ImmD's plan to further increase screening capacity<sup>14</sup>, the Government has appointed 45 new members to TCAB since July 2016, expanding its membership to 73. Manpower of its secretariat was also increased.

#### *Review of the Immigration Ordinance*

26. The Government has started to review the legislative provisions under the Immigration Ordinance (Cap 115) on the screening procedures and related matters. We will draw reference from the operational experience under USM, and relevant overseas laws and practices. The scope and initial ideas of the review are at **Annex C**. We will update LegCo on the review in due course.

#### Detention, removal and enforcement

##### *Detaining more illegal immigrants*

27. Persons detained under the Immigration Ordinance 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

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<sup>14</sup> In support of ImmD's plan to increase screening capacity to 5 000 per year, we estimate that TCAB will receive 4 500 or more appeals in 2017-18.

500. In 2017-18, the Government will create 35 posts to strengthen CIC's management.

28. We are also considering different measures from the legal, public security and resources perspectives. These measures include using existing or recommissioning vacant prisons or penal institutions to detain illegal immigrants, and providing more effective operational support to detention facilities.

*Timely removal of rejected claimants*

29. Despite making a claim, the status of non-refoulement claimants as persons who entered / remained illegally does not change. To exercise effective immigration control, rejected claimants should be removed to their country of origin as soon as possible. As ImmD and TCAB will expedite the screening of claims and appeals, more illegal immigrants whose claims have been rejected will have to be removed. At present, after a claim has been finally rejected, ImmD will commence procedures to remove the claimant as soon as possible, including, where required, liaising with authorities of his/her country of origin for verifying his/her identity and re-issuing travel documents. ImmD has commenced a review on removal procedures, including discussion with governments of the major source countries such as Vietnam and Pakistan to ensure timely removal of rejected claimants.

*Stepping up enforcement against unlawful employment*

30. Analysis indicates that illegal immigrants or non-refoulement claimants who take up unlawful employment usually participate in recycling industries, the catering sector, and construction sites in certain districts. Accordingly, ImmD has continued to step up targeted inspection and intelligence gathering against such venues as factories, restaurants, food processing industries, premises under renovation, recycling centres, container depots and warehouses in these districts and conduct raids where appropriate (including joint operations with other LEAs as necessary). In the first four months of 2017, ImmD conducted 259 targeted operations against NEC illegal workers, an increase of 114% over the same period of 2016. At the same time, we will continue to enhance publicity to remind employers that employing unemployable persons is a serious offence for which they are liable to immediate imprisonment.

**Advice Sought**

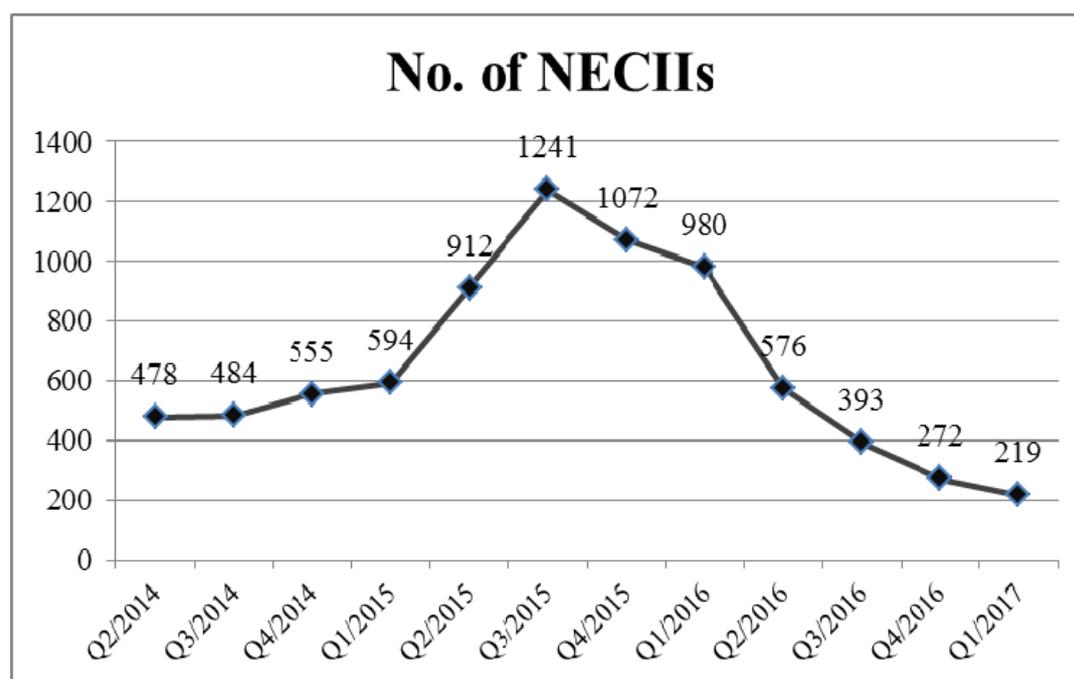
31. Members are invited to note the content of this paper.

**Security Bureau  
June 2017**

**Annex A**

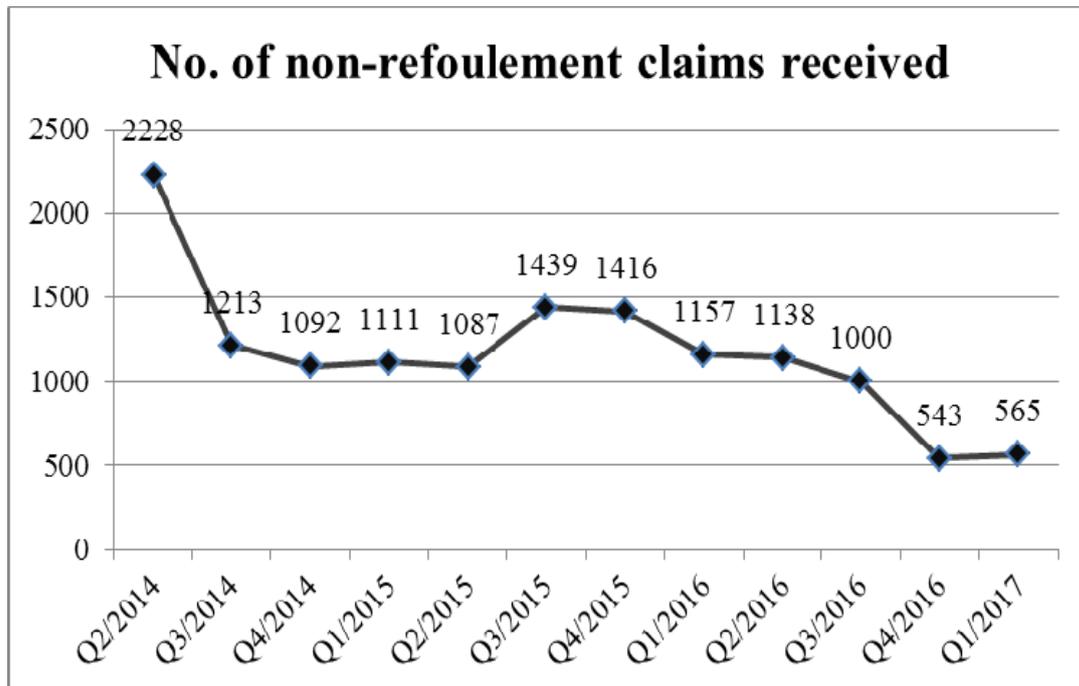
**Quarterly statistics of NECIIs**

Quarter	Number of NECIIs	% change since the quarter before	% change since the same quarter the year before
Q2/2014	478	/	/
Q3/2014	484	+1%	/
Q4/2014	555	+15%	/
Q1/2015	594	+7%	/
Q2/2015	912	+54%	+91%
Q3/2015	1 241	+36%	+156%
Q4/2015	1 072	-14%	+93%
Q1/2016	980	-9%	+65%
Q2/2016	576	-41%	-37%
Q3/2016	393	-32%	-68%
Q4/2016	272	-31%	-75%
Q1/2017	219	-19%	-78%



### Quarterly statistics of non-refoulement claims

Quarter	Number of claims received	% change % change since the quarter before	% change since the same quarter the year before
Q2/2014	2 228	/	/
Q3/2014	1 213	-46%	/
Q4/2014	1 092	-10%	/
Q1/2015	1 111	+2%	/
Q2/2015	1 087	-2%	-51%
Q3/2015	1 439	+32%	+19%
Q4/2015	1 416	-2%	+30%
Q1/2016	1 157	-18%	+4%
Q2/2016	1 138	-2%	+5%
Q3/2016	1 000	-12%	-31%
Q4/2016	543	-46%	-62%
Q1/2017	565	+4%	-51%



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**Annex B**

**Summary of claimants' profile**

USM commenced on 3 March 2014. As at 30 April 2017, 8 740 non-refoulement claims were pending screening by ImmD. Analysis on claimants' profile is as follows.

(a) Sex

Male	6 376	73.0%
Female	2 364	27.0%

(b) Age

<18	432	5.0%
18 – 30	2 957	33.8%
31 – 40	3 531	40.4%
>40	1 820	20.8%

(c) Country of origin

India	1 878	21.5%
Pakistan	1 783	20.4%
Bangladesh	1 155	13.2%
Vietnam	1 113	12.7%
Indonesia	916	10.5%
The Philippines	509	5.8%
Nepal	285	3.3%
Sri Lanka	250	2.9%
Gambia	127	1.4%
Nigeria	119	1.4%
Others	605	6.9%
Total	8 740	100%

(d) Immigration status

NECII	4 153	47.5%
Overstayer	4 102	46.9%
Others	485	5.6%

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

<3 months	3 576	40.9%
3 – 12 months	2 687	30.7%
13 – 24 months	872	10.0%
>24 months	1 037	11.9%
Information not available	568	6.5%

The average time lag is 12 months.

**Statistics on torture / non-refoulement claims  
(as at end April 2017)**

<b>Year</b>	<b>Claims received</b>	<b>Claims determined</b>	<b>Claims withdrawn or no further action can be taken</b>	<b>Pending claims (at year end)</b>
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 (Jan to Apr)	785	1 375	651	8 740
<b>Total non-refoulement claims under USM</b>	<b>14 310</b>	<b>7 758</b> <i>(Note 2)</i>	<b>4 511</b>	<b>8 740</b>

*Note 1:* ImmD received a total of 4 906 torture claims from 2010 to 2013, an average of 102 per month. In the 38 months since commencement of USM to end April 2017, ImmD received 14 310 non-refoulement claims, an average of 377 per month, representing an increase of 270%.

*Note 2:* Among the 7 758 non-refoulement claims determined by ImmD under USM, 69 were substantiated (including 9 substantiated by the Appeal Board on appeal). As regards the 7 689 remaining claims that were rejected, 4 485 claimants filed an appeal with the Appeal Board, 1 563 left Hong Kong or were pending removal arrangements, and 1 641 remained in Hong Kong for other reasons (e.g. imprisoned, pending prosecution, lodged a judicial review, etc.)

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**Scope and initial ideas  
for reviewing the Immigration Ordinance**

<b>Scope of review</b>	<b>Initial ideas</b>
Scope of claims	<p>The Immigration Ordinance only covers claims made on the ground of torture. We will examine whether legislative amendment is required to implement relevant Court decisions since December 2012 and to specify the applicable grounds for non-refoulement protection.</p> <p>We will study overseas legislation and examine whether different treatments for handling or screening of claims should be accorded based on claimants' profiles (e.g. countries transited before arriving in Hong Kong, or whether the claimant originated from a safe country).</p>
Screening and appeal procedures	<p>Based on operational experience under USM, we will consider whether it is necessary to clarify certain procedures or circumstances that the Ordinance does not cover (e.g. claimants employing various tactics to delay the screening process, including not attending screening interview, repeatedly seeking time extension to submit additional supporting documents, submitting voluminous documents that are irrelevant to the claim, etc). We may consider empowering the Director and TCAB to allow them to handle these delay tactics more effectively; to expand existing provisions on claimants' duties; and to set out the consequences of not complying with the law and ImmD / TCAB's directions.</p> <p>We will also consider tightening timeframes of the screening procedures (including submitting claim forms and filing appeals to TCAB).</p>
Publicly-funded legal assistance ("PFLA")	<p>Pursuant to Court decisions, the Government has a duty to provide PFLA to claimants who lack means. However, there is no legal provision for such procedures and requirements. We will study whether it is necessary to add such provisions.</p>

<b>Scope of review</b>	<b>Initial ideas</b>
Detention and enforcement	<p>The Director of Immigration (“the Director”) is empowered under the Ordinance to detain certain persons (including claimants pending final determination of their claim) under various circumstances. As regards the suggestion of “closed camp” made by some members of the public, we will examine whether we need to amend the relevant provisions so that ImmD may detain various persons (including the claimants as mentioned above) in light of actual circumstances.</p> <p>We will also consider whether we need to stipulate heavier penalties against various immigration and related offences (such as taking up unlawful employment or employing persons who are not lawfully employable) to enhance deterrence.</p>

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