

**Motion on “Report of the Subcommittee to Follow Up Issues Relating to  
the Unified Screening Mechanism for Non-refoulement Claims”  
at the Legislative Council Meeting of 22 May 2019**

**Progress Report**

**Purpose**

The motion on “Report of the Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims” moved by Dr Hon Elizabeth QUAT was passed at the Legislative Council (“LegCo”) meeting of 22 May 2019. This paper reports on the relevant follow-up actions by the Government.

**Comprehensive review of the strategy of handling non-refoulement claims and initial results achieved**

2. The Government commenced a comprehensive review of the strategy of handling non-refoulement claims (“the comprehensive review”) in early 2016, focusing on the following major aspects:

- (a) making sustained efforts to combat the smuggling of non-ethnic Chinese illegal immigrants (“NEC IIs”) to Hong Kong and implementing other pre-arrival control measures, with a view to reducing at source the number of illegal immigrants and overstayers who may lodge non-refoulement claims in Hong Kong;
- (b) expediting the screening of the huge backlog of claims and appeals;
- (c) expediting the removal of claimants whose claims and appeals (if any) have been rejected; and
- (d) stepping up enforcement against crimes such as unlawful employment.

3. We have implemented various measures under the strategy above, which have achieved positive results, including:

- (a) the number of NEC IIs (mainly from such countries as Pakistan, Vietnam, etc.) last year dropped significantly by over 80% as compared with the peak (monthly average);
- (b) the number of visitors from India overstaying has dropped significantly by over 80%;

- (c) the number of new non-refoulement claims received dropped significantly by close to 80% as compared with the peak (monthly average) to less than the current 100 claims per month;
- (d) the average time for the Immigration Department (“ImmD”) to handle a claim has reduced significantly by 60% from 25 weeks previously to the current 10 weeks;
- (e) the average number of claims handled by ImmD per month increased by about 134% from 195 in 2015 to 456 last year;
- (f) ImmD basically completed the screening of pending claims in early 2019, which once accumulated to over 11 000 cases at the peak;
- (g) the number of appeals determined by the Torture Claims Appeal Board (“TCAB”) reached almost 4 000 last year, representing an increase of 42% over 2017, almost seven-fold of that in 2016;
- (h) the number of appeals pending TCAB’s determination, which once accumulated to over 6 500 at the peak, dropped to about 4 900 in end June 2019, and is expected to be cleared in the coming one to two years;
- (i) the number of non-refoulement claimants removed from Hong Kong by ImmD last year was over 2 500, representing an increase of almost 50% over 2016; and
- (j) the number of NEC persons on recognizance (mostly claimants) who were arrested for committing crimes has dropped by about 25%.

### **Interception of illegal immigrants**

4. ImmD has been concerned about the situation of illegal entry by NEC persons, and has maintained intelligence exchange with the Hong Kong Police Force (“Police”) and relevant Mainland authorities for joint efforts in combating illegal immigration activities at source.

5. Since commencement of the dedicated joint operation against illegal immigration in February 2016, ImmD has been maintaining close liaison with relevant Mainland law enforcement agencies and carried out joint enforcement operations. So far, nine joint operations have been conducted, successfully cracking down a number of cross-boundary crime syndicates, with the arrest of 440 persons involved, including over 150 core members of smuggling syndicates. Given the sustained and vigorous combat efforts, the monthly

average of NEC IIs intercepted dropped by about 87% to 53 in 2018, as compared with the peak of 414 in the third quarter of 2015.

6. In the first half of 2019, there was a monthly average of 78 NEC IIs arrested in Hong Kong. The Police and ImmD immediately liaised with the Ministry of Public Security and other law enforcement agencies in the Mainland, for exchange of the latest modus operandi of smuggling syndicates, including the smuggling routes and operation modes. Mainland authorities have also been requested to strengthen patrol and interception in the waters along the coast of Guangdong and Shenzhen and at the land boundary, so as to continue vigorously combating all illegal immigration activities and cracking down smuggling syndicates.

7. Besides, the Government introduced a “pre-arrival registration” (“PAR”) online system in January 2017, under which inbound visitors from India (one of the main source countries of claimants) are required to complete registration online successfully before boarding the plane to Hong Kong, or else they are required to apply for an entry visa instead. The system facilitates ImmD’s more in-depth analysis of the immigration risk of such visitors coming to Hong Kong. Since operation of PAR, the number of visitors from India overstaying has dropped significantly by over 80%.

### **Expediting the screening of claims and appeals**

8. By flexible staff deployment and streamlined workflow, ImmD ensures the screening procedures are highly efficient while meeting high standards of fairness. 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 the Unified Screening Mechanism (“USM”) to the current average of about 10 weeks.

9. Through ImmD’s various measures for expediting the handling of claims, coupled with the timely increase in the quota of publicly-funded legal assistance (“PFLA”) with the implementation of the “Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants” (“Pilot Scheme”), ImmD basically completed the screening of backlog claims in January 2019. As at end June this year, there were only 279 pending claims. With the backlog basically cleared, ImmD can now commence the screening procedures immediately upon receipt of new claims.

10. As for appeals, the Government has since July 2016 appointed new members to TCAB, expanding its membership from the original size of 28 to the current strength of 97. Over the past two years, TCAB’s secretariat has also expanded, with the number of posts increased from 12 to 36. Other ancillary facilities have also been increased and enhanced, such as the increase

in the number of hearing facilities from 4 to 15.

11. TCAB determined almost 4 000 appeals last year, representing a 42% increase over 2017 and almost seven-fold of that in 2016. The number of appeals pending determination by TCAB had dropped from over 6 500 at the peak to about 4 900 in end June 2019. The backlog is expected to be cleared in the coming one to two years.

12. On the other hand, we have started to review the Pilot Scheme, which includes examining whether its mode of operation is more flexible while effectively expediting the handling of claims. In the long run, the Government will review the operation of the Duty Lawyer Service and the Pilot Scheme, so as to ensure the continual provision of PFLA to claimants according to the high standards of fairness as required by law on the one hand, and to cater for the changing number of claims flexibly with the proper use of public funds on the other.

13. Regarding the judicial reviews (“JRs”) in relation to non-refoulement claims, we understand that the Judiciary is striving to handle such cases, and has made some proposals on how to handle the surge in the number of relevant applications for leave to JR.

### **Detention and removal**

14. We appreciate that the community is deeply concerned about the security risks which may be posed by some non-refoulement claimants. As reiterated by the Government, we have been actively considering all lawful, practicable and effective means to address the problem of detention. As the proposals involve issues of law, land, infrastructure, manpower, resources, management and security, etc., which are quite complicated, the Government needs to study carefully and thoroughly. Besides, when considering the detention strategy, we are also considering legislative amendments to ensure that ImmD is able to detain claimants lawfully and reasonably at different stages of the screening and removal procedures.

15. At the same time, ImmD has expedited the removal procedures through discussions 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 to their places of origin 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.

16. In 2017 and 2018, ImmD removed 2 520 and 2 527 non-refoulement claimants from Hong Kong respectively, both showing a nearly 50% increase

over 2016. With the backlog appeals being determined by TCAB gradually, more rejected claimants will need to be removed in future. ImmD would internally redeploy its manpower originally responsible for screening claims to focus on the removal of claimants from Hong Kong, so as to ensure that the rejected claimants can be removed as early as possible.

17. On the other hand, since the implementation of USM up to end June this year, the claims of a total of 148 claimants had been substantiated (including 66 which were substantiated by TCAB upon appeal). Among them, no follow-up is required for 17 cases where the claimants have already left Hong Kong or because of other reasons (including 4 resettled in a third country by the United Nations High Commissioner for Refugees (“UNHCR”), and some other claimants who have departed Hong Kong voluntarily). Among the remaining 131 persons, 115 are pending arrangement for resettlement by UNHCR, 5 are pending referral to UNHCR, with another 11 for whom no follow-up action will be taken by UNHCR. We will continue to urge UNHCR to arrange for other waiting claimants to resettle in a third country as soon as possible.

### **Stepping up enforcement**

18. On enforcement, the Government has always been concerned with the situation of NEC persons (including non-refoulement claimants) committing crimes and involving in triad activities in Hong Kong. In this regard, the Police have been deploying manpower to step up patrol according to the crime trends in various districts for prevention and detection of crimes.

19. To address the related issues in a focused manner, formulate strategies and coordinate enforcement operations, the Police have set up the “Crime Wing Working Group on NEC Involvement in Organized Crime and Triad Activities”. At the district level, the Organized Crime and Triad Bureau launched new strategies since 2017 to tackle the problem of NEC persons committing crimes with emphasis placed on four aspects, namely training, intelligence gathering and sharing, multi-agency cooperation and enhanced enforcement actions.

20. The number of NEC persons on recognizance who were arrested for committing crimes in 2018 dropped by about 25% over 2017. The Police will continue to monitor the relevant crime trends and operational needs, formulate effective measures and take timely actions accordingly.

21. On combating unlawful employment, ImmD launched 720 operations targeting NEC illegal workers in 2018, arresting 451 NEC persons unlawfully employed or involved in immigration offences, as well as 242 local employers. At the same time, ImmD continues to strengthen publicity to remind employers

that employment of persons not lawfully employable is a serious criminal offence liable to immediate imprisonment.

### **Way forward**

22. The Government plans to amend the Immigration Ordinance (Cap. 115) to improve the screening procedures and to strengthen ImmD's power in respect of enforcement, removal and detention. We consulted the LegCo Panel on Security on some of the legislative amendment proposals in July last year. We, at the meeting of the LegCo Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims ("the Subcommittee") in November last year and the meeting of the Panel on Security in January this year, also provided further information about the amendment proposals and exchanged views with Members. We are now studying the views received earlier for further analysis. In the meantime, we are also proceeding with relevant drafting work, with a view to submitting the bill for LegCo's scrutiny as soon as possible.

23. The recommendations in the Subcommittee's report are in line with the objectives of the comprehensive review as mentioned in paragraph 2 above. The Government will continue to review the effectiveness of the various measures already implemented under the comprehensive review, and make timely improvement to them or introduce other new measures, so as to respond to the changing trends of illegal immigration and non-refoulement claims.

**Security Bureau**  
**26 July 2019**