

For discussion on  
6 December 2022

## **Legislative Council Panel on Security**

### **Enhancing the Handling of Non-refoulement Claims**

#### **PURPOSE**

This paper briefs Members on the enhanced measures to handle non-refoulement claims in Hong Kong and to expedite the removal of unsubstantiated claimants. Members' views on the legislative proposals for expanding the detention capacity and strengthening the management of immigration detainees (including non-refoulement claimants) are also sought.

#### **BACKGROUND**

2. Over the years, the Government has adopted a multi-pronged strategy in handling non-refoulement claims. In December 2012, the Government implemented a statutory mechanism to determine torture claims, and in March 2014, the Unified Screening Mechanism (“**USM**”) was implemented to screen non-refoulement claims on all applicable grounds<sup>1</sup>. The overall policy objective on handling non-refoulement claims is to ensure that claims and relevant appeals are handled as efficiently as possible whilst meeting the high standards of fairness required by law, and to remove unsubstantiated claimants from Hong Kong as soon as possible.

3. In view of the subsequent upsurge in the influx of non-ethnic Chinese illegal immigrants (“**NECHIs**”) and in the number of overstayers or persons who were refused entry since 2014, which resulted in a sharp increase in the number of non-refoulement claims received and pending screening by the Immigration Department (“**ImmD**”), in 2016, the Government commenced a comprehensive review of the strategy in handling non-refoulement claims, and has implemented a series of measures to tackle the issue, from preventing

<sup>1</sup> A claim made by someone subject or liable to be removed from Hong Kong to another country on the ground that if removed to that country, he or she will be subjected to torture, or his/her absolute and non-derogable rights under the Hong Kong Bill of Rights (“**HKBOR**”) as set out under section 8 of the Hong Kong Bill of Rights Ordinance (Cap. 383) will be violated (including being arbitrarily deprived of his/her life as referred to in Article 2 and subjected to torture or cruel, inhuman or degrading treatment or punishment as referred to in Article 3 of HKBOR), or he or she will be subjected to “persecution” with reference to the non-refoulement principle under Article 33 of the 1951 Convention Relating to the Status of Refugees.

potential claimants from entering Hong Kong in the first place, to expediting the screening of pending claims, processing of appeals lodged by unsubstantiated claimants and their removal from Hong Kong, and stepping up enforcement against unlawful employment. The Immigration Ordinance (Cap. 115) was also amended in 2021 to further enhance the efficiency in screening, prevent delaying tactics by claimants, improve the procedures and functions of the Torture Claims Appeal Board (“TCAB”), and step up the interception at source, enforcement, removal as well as detention of claimants, etc.

4. The above measures have yielded effective outcomes, including shortening the time for screening and handling appeals of non-refoulement claims in general, reducing the number of NECIIs, exerting stronger deterrent effect through strengthened enforcement, removal and detention, etc. More details are set out at **Annex A**.

5. Notwithstanding the outcomes achieved, there remain many challenges ahead in tackling the issue. Among others, as of end-October 2022, there were about 14 900 claimants remaining in Hong Kong for different reasons, amongst whom a large proportion had lodged applications for leave to apply for judicial review (“JR”) after their claims/appeals were rejected, with a view to delaying their removal from Hong Kong. According to the Judiciary, there were about 7 600 JR/appeal cases related to non-refoulement claims pending disposal by the Court as at end-October 2022, and the Court has stepped up its efforts to expedite the handling of such cases (see paragraph 13 below for details). There is also an upward trend of subsequent claim (“SC”) requests<sup>2</sup> made by unsubstantiated claimants after their JR cases are dismissed by the Court, and some of these claimants whose SC requests have been rejected by ImmD would resort to JR again in an attempt to further prolong their illegal stay in Hong Kong. The continued presence of a large number of claimants poses a heavy burden on Hong Kong in terms of the resources devoted to handle the issue and the possible increase in threat or security risk to the community.

## **FURTHER MEASURES TO BE IMPLEMENTED**

6. To tackle the above challenges and to address concerns about the burden on society brought by non-refoulement claimants, the Government will

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<sup>2</sup> Section 37ZO(2) of the Immigration Ordinance stipulates that “A person may make a subsequent claim if the person provides sufficient evidence in writing to satisfy an immigration officer that – (a) there has been a significant change of circumstances since the previous claim was finally determined or withdrawn; and (b) the change, when taken together with the material previously submitted in support of the previous claim would give the subsequent claim a realistic prospect of success.”.

implement further enhanced measures to strengthen the handling of non-refoulement claims and expedite the removal of unsubstantiated claimants from Hong Kong, viz.:

- (a) maintain high efficiency in screening non-refoulement claims;
- (b) expedite the processing of claim-related appeals;
- (c) update the removal policy to expedite repatriation of unsubstantiated claimants from Hong Kong;
- (d) expand detention capacity and step up management of immigration detainees; and
- (e) strengthen enforcement actions against immigration offences and illegal employment.

Details are elaborated in the ensuing paragraphs.

***(a) Maintain high efficiency in screening non-refoulement claims***

7. ImmD has always endeavoured to screen non-refoulement claims efficiently, while ensuring that the high standards of fairness as required by law are met. Through streamlining the screening procedures and deployment of additional manpower, the handling time for each claim has been shortened by 60% from about 25 weeks on average at the early implementation of USM to the current average of about 10 weeks. As a result, the once accumulated backlog of some 11 000 claims pending screening by ImmD was generally cleared in early 2019<sup>3</sup>. During the COVID-19 epidemic, though there was a surge of pending claims and a slight rebound in the number of new claims received, the number of outstanding claims pending screening by ImmD stood at around 200 only as at end-October 2022. With the amendment of the Immigration Ordinance in 2021, ImmD is equipped with more tools to ensure that the screening procedures are conducted more efficiently and to prevent delaying tactics deployed by some claimants. ImmD will continue to maintain high efficiency in the screening procedures and target to commence screening as soon as a new claim is received.

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<sup>3</sup> When USM commenced in March 2014, there were 6 699 non-refoulement claims pending screening at that time. Since then and up to end-October 2022, ImmD received a total of 22 585 claims and determined 21 970 claims, while there were 7 111 claims that were withdrawn or unable to be followed up further and only 203 claims outstanding. Among the claims determined, up to end-October 2022, 269 claims were substantiated, representing a substantiation rate of 1.2%. In other words, nearly 99% of the non-refoulement claims were unsubstantiated and the unsubstantiated claimants should be removed from Hong Kong as soon as practicable.

8. Besides, we have seen an upward trend of SC requests made by unsubstantiated claimants in recent years. Since the implementation of USM until end-October 2022, ImmD cumulatively received 1 783 SC requests, of which 498 cases were received in 2022 alone. In response, ImmD has already taken steps to expedite the processing of the SC requests. As at end-October 2022, there were 91 SC requests pending determination by ImmD. Amongst those 1 692 SC requests processed by ImmD, 297 were allowed to make SC and one of them was substantiated. ImmD will continue to maintain high efficiency in handling SC requests as well.

***(b) Expedite the processing of claim-related appeals***

9. A claimant aggrieved by the decision of ImmD on his/her claim is entitled to lodge an appeal to TCAB/Non-refoulement Claims Petition Office (collectively referred to as “TCAB”). Of the 21 970 claims determined by ImmD under USM up to end-October 2022, about 95% of the unsubstantiated claimants concerned have lodged appeals to TCAB against ImmD’s decision. The number of outstanding appeals pending handling by TCAB had at one point reached the peak of over 6 500. With the expansion of the TCAB membership and the provision of additional manpower resources to support the increased workload, as well as the dedicated efforts of TCAB members, the number of outstanding appeals pending handling by TCAB stood at about 2 800 as at end-October 2022.

10. To further expedite the processing of claim-related appeals by TCAB, the Government will appoint more members to TCAB as necessary and ensure sufficient manpower support is provided to cope with the workload. The target is for TCAB to complete not less than 1 500 appeal cases in 2022 and to complete not less than 3 000 appeal cases each year starting from 2023.

***(c) Update the removal policy to expedite repatriation of unsubstantiated claimants from Hong Kong***

11. Non-refoulement claimants are illegal immigrants, overstayers or persons who were refused entry by ImmD upon arrival in Hong Kong. ImmD is committed to removing unsubstantiated non-refoulement claimants from Hong Kong as soon as practicable in accordance with the prevailing laws and policy so as to maintain effective immigration control and to safeguard public interest. Following the comprehensive review in 2016, ImmD has stepped up efforts in removing unsubstantiated claimants from Hong Kong. In 2017 and 2018, around 2 500 claimants were removed each year, and 1 618

claimants were removed in 2019. In 2020 and 2021, despite the heavy interruption to international travel due to the COVID-19 epidemic, ImmD managed to remove a total of 1 385 claimants from Hong Kong.

12. The removal action of ImmD is affected by various factors, including the cooperativeness of the claimants concerned, the time required to apply for re-entry permits or travel documents for the claimants from the relevant countries, the flight availability and the infectious disease control requirements in place in the midst of the COVID-19 epidemic. In this connection, to expedite the removal of unsubstantiated claimants, ImmD has been maintaining close liaison with governments of major source countries of claimants and airline companies to enhance the overall efficiency in removal operations. In addition, the amended Immigration Ordinance stipulates that once a claim has been rejected by an immigration officer, even when the appeal is pending handling, ImmD may commence liaison with relevant countries for repatriation arrangements in parallel (such as applying for necessary travel documents) to expedite the removal process. With the gradual resumption of international flight connections and phasing out of the epidemic control measures by major source countries of claimants, ImmD removed a total of 880 unsubstantiated claimants from Hong Kong from January to October 2022, and will continue to step up its removal efforts, with a target to remove no less than 1 000 unsubstantiated claimants in 2022 and no less than 1 200 in 2023.

13. Apart from the above, one key reason affecting the expeditious removal of unsubstantiated claimants from Hong Kong is the fact that the majority of claimants have made use of applications to the Court of First Instance (“CFI”) for leave to apply for JR after their claims/appeals have been rejected as the tactic to prolong their illegal stay in Hong Kong. It is also very common for those claimants whose JR leave applications have been rejected by CFI to file appeals/applications to the Court of Appeal (“CA”) and the Court of Final Appeal (“CFA”) against CFI’s refusal to grant leave for their JR applications. According to the Judiciary, from 2017 up to end-October 2022, a total of some 12 600, 3 000 and 1 700 JR leave applications and related appeals were filed to CFI, CA and CFA respectively, and the respective outstanding cases amounted to some 6 700, 430 and 360. Amongst the JR leave applications filed between 2017 and 2021, as at end-January 2022, only about 140 cases (or 3.1% of the cases disposed) were granted leave by CFI, and only about 30 appeals (or 2.5% of the appeals disposed) were allowed by CA. All applications at the CFA level were rejected. Indeed, non-refoulement claim-related JR cases account for over 90% of the JR cases received by the Court, imposing tremendous pressure on judicial resources. We understand that the Judiciary has been implementing

a host of measures to ensure that all claim-related cases are handled as expeditiously as reasonably practicable, and the number of claim-related cases disposed of by CFI and CA annually has been on the rise in recent years.

14. ImmD is empowered under the Immigration Ordinance to remove illegal immigrants or persons who do not have a right to land or remain in Hong Kong. As set out in LC Paper No. CB(2) 379/99-00(06) submitted to the Legislative Council (“**LegCo**”) Panel on Administration of Justice and Legal Services in November 1999, in removal of illegal immigrants, our objective is to ensure that a right balance between protection of civil liberty and immigration control is maintained. Accordingly, it has been ImmD’s administrative practice to observe the following guiding principles:

- (a) the Director of Immigration will suspend a removal if court proceedings have commenced, or if he knows that court proceedings are about to commence;
- (b) the Director of Immigration will notify the Director of Legal Aid if a detainee who has applied for legal aid, but has not been granted it, is about to be removed;
- (c) a removal will be temporarily withheld once legal aid is granted to the detainee; but
- (d) an application for legal aid does not constitute a reason for a scheduled removal to be withheld.

15. In line with the above guiding principles, it has been the practice of ImmD to withhold removal of an unsubstantiated claimant if the claimant has made application to the Court for leave to apply for JR pertaining to his/her non-refoulement claim, until the relevant court proceedings are disposed of (up to the CFA level where applicable). Taking into careful consideration of the tremendous pressure on the judicial system brought by the unsubstantiated claimants as mentioned in paragraph 13 above and the heavy burden brought by the prolonged stay of a large number of such claimants in the society, the Government will update the removal policy (collectively referred to as “**the Updated Removal Policy**” hereinafter), with effect from 7 December 2022, such that for an unsubstantiated claimant with outstanding court proceedings, ImmD may generally proceed with his/her removal from Hong Kong upon:

- (a) in case of an application for leave (including an application for leave for an extension of time) to apply for JR pertaining to the non-refoulement claim made by the claimant, (i) CFI’s dismissal of such

leave application, or (ii) if leave has been granted and JR has been commenced, CFI's dismissal of the corresponding application for JR; or

- (b) in case of an application for leave (including an application for leave for an extension of time) to apply for JR pertaining to the SC request made by the claimant, (i) CFI's dismissal of such leave application, or (ii) if leave has been granted and JR has been commenced, CFI's dismissal of the corresponding application for JR.

Under the Updated Removal Policy, subject to any court order, ImmD's removal operations may generally proceed irrespective of:

- (a) whether the claimant will appeal or has already filed a notice of appeal to the higher court(s) against the above dismissal decision by CFI, unless the higher court(s) has reversed CFI's dismissal decision on the respective JR proceedings before ImmD's execution of removal operations; and
- (b) whether the claimant will initiate or has already initiated other legal proceedings pertaining to his/her removal<sup>4</sup>, unless there are court rulings against the removal operations before the same are executed.

Notwithstanding the above, ImmD will, in line with the established practice, consider all the relevant circumstances of the individual cases in pursuing removal operations.<sup>5</sup>

16. The Updated Removal Policy is applicable to unsubstantiated claimants whose JR proceedings are dismissed by CFI both before and after its implementation. In adopting the Updated Removal Policy, the Government is mindful that the non-refoulement claim of a removee would have been independently considered and determined by ImmD and TCAB respectively in accordance with the applicable law and the high standards of fairness as held by the Court, and the handling of his/her claim by ImmD and/or TCAB would have been independently scrutinised by CFI when considering the relevant JR proceedings. A right balance between the protection of the person's absolute and non-derogable rights under HKBOR

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<sup>4</sup> Including such as JR proceedings and/or injunction applications against the Updated Removal Policy and related removal operations, or against other ImmD's decisions concerning the claimant's removal/deportation/permission to stay in Hong Kong.

<sup>5</sup> For the avoidance of doubt, the guiding principles set out in paragraph 14 of this paper continue to apply to those illegal immigrants or persons who do not have a right to land or remain in Hong Kong not covered by the scenarios under the Updated Removal Policy.

and the effective immigration control and safeguard of public interest has been generally ensured.

***(d) Expand detention capacity and step up management of immigration detainees***

17. Under section 32 of the Immigration Ordinance, a person who is liable or subject to be removed/deported from Hong Kong may be detained pending his/her removal from Hong Kong. A person may also be detained under that section pending the decision as to whether a removal order should be made under section 19(1)(a) or (b) of the Immigration Ordinance in respect of him/her. Further, under section 37ZK of the Immigration Ordinance, a person who has lodged a torture claim may be detained pending final determination of his/her claim.

18. In deciding whether to detain a person pending removal or pending final determination of his/her torture claim, the Government will, in accordance with the relevant statutory provisions, legal principles established by the Court as well as the prevailing detention policy, take into consideration all the relevant circumstances of the case, including whether the person's removal or final determination of the claim is going to take place within a reasonable time, whether the person has previously committed a serious crime and is likely to pose a threat or security risk to the community if not being detained, and whether there is any risk of the person absconding and/or offending/re-offending, etc. to ensure reasonableness and lawfulness of the detention.

19. Currently, immigration detainees including non-refoulement claimants may be detained at the Castle Peak Bay Immigration Centre ("CIC") managed by ImmD, or at the Tai Tam Gap Correctional Institution ("TGCI") managed by the Correctional Services Department ("CSD"), the latter of which is to mainly detain male claimants posing or likely to pose higher threat or security risk to the community. The two detention facilities have a total detention capacity of 660 (i.e. about 470 males, 180 females and other sick bays), although only 408 persons were detained thereat as at end-October 2022 in view of the requirements for epidemic control purposes<sup>6</sup>.

20. The Government has been exploring different options to expand the detention capacity for immigration detainees so as to facilitate the efficient

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<sup>6</sup> Following the advice of the Centre for Health Protection under the Department of Health, certain areas of CIC and TGCI have been reserved for holding newly admitted detainees to undergo a period of segregation and conduct COVID-19 tests, and the number of detainees held at CIC and TGCI has to be reduced to implement the relevant epidemic prevention measures.



removal actions by ImmD and to ensure that persons posing or likely to pose higher threat or security risk to the community are detained as far as practicable. Following the re-commissioning of TGCI in May 2021, the Government has identified the Nei Kwu Correctional Institution (“**NKCI**”) as an additional place of detention for such purpose. NKCI is a drug addiction treatment centre currently in use for placing convicted drug addicts. With the redeployment of NKCI, the overall capacity for immigration detainees will be increased by about one-third to 900.

21. To take the matter forward, it is necessary to amend the Immigration (Places of Detention) Order (Cap. 115B) to include NKCI as a place of detention. Besides, as NKCI is currently in use for placing convicted drug addicts, CSD intends to designate the Lo Wu Correctional Institution (“**LWCI**”) as a drug addiction treatment centre in addition to the existing designation as a prison to enable admission of persons in custody originally at NKCI. Accordingly, there is a need to make a piece of new subsidiary legislation under the Drug Addiction Treatment Centres Ordinance (Cap. 244) to appoint LWCI as an addiction treatment centre. We will also take the opportunity to repeal references to various detention centres/places of detention that have been demolished or are no longer in operation from various pieces of subsidiary legislation under the Immigration Ordinance and the Immigration Service (Designated Places) Order (Cap. 331B), and repeal four pieces of obsolete subsidiary legislation in relation to Vietnamese refugee centres under the Immigration Ordinance. Details of the legislative proposals are elaborated at **Annex B**. Subject to Members’ views on these legislative proposals, our plan is to submit the various subsidiary legislation to LegCo for negative vetting in the first half of 2023.

22. Apart from expanding the detention capacity, ImmD has been exploring ways to step up management of immigration detainees having regard to the change in the profile and composition of detainees, as well as the entire landscape of detention at CIC. Specifically, over the past decade, the detention period of immigration detainees held at CIC has generally become longer, leading to a higher propensity to uncooperative behaviour<sup>7</sup>. Also,

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<sup>7</sup> Comparing the situation as at end-December 2012 and end-October 2022, the proportion of detainees at CIC having been detained for less than a month decreased from 52% to 44%, but the proportion of detainees at CIC having been detained for over 180 days increased from 2.6% to 10.6%. It is observed that detainees with longer detention period usually have a higher propensity to group into a complex and cause trouble or even conduct offensive behavior to exert pressure on ImmD for release on recognizance.

indiscipline/uncooperative cases<sup>8</sup> and detainees with criminal background<sup>9</sup> have become more prevalent. All these have posed substantial and aggravating challenges to ImmD's management of detainees at CIC. To tackle the situation, ImmD already established a 32-member "Emergency Response Team" in June 2020 to provide immediate, effective and mobile support to handle high security risk escorts, large-scale riots and emergencies at CIC. Besides, under the amended Immigration Ordinance which came into effect in August 2021, immigration officers are authorised to use and possess firearms, ammunition and weapons, which helps enhance ImmD's capability in handling emergencies and taking enforcement actions at the detention facilities.

23. Moreover, having reviewed the Immigration (Treatment of Detainees) Order (Cap. 115E) that governs the treatments of detainees at CIC, the Government considers it necessary to make amendments to Cap. 115E to strengthen various treatments of detainees to uphold discipline and order, which include the following proposals<sup>10</sup>:

- (a) during the period from 2013 to October 2022, amongst about 9 600 non-ethnic Chinese ("NEC") persons on recognizance and issued with Form No. 8 (mainly non-refoulement claimants) arrested for criminal offences, over 13% of them were arrested for serious drug offences. Given the existence of dangerous drug problems amongst the said NEC persons on recognizance, who may be detained pending removal or pending final determination of their torture claims, it is proposed to strengthen ImmD's statutory powers to detect drug possession and trafficking amongst detainees at CIC upon admission and during detention by:
  - (i) empowering medical staff or Immigration Officers at CIC to conduct body cavity search on a detainee, through X-ray scan under normal circumstances, to detect any possession or concealment of dangerous drugs; and

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<sup>8</sup> In 2019, 2020 and 2021, there were 67, 69, 87 indiscipline cases occurred at CIC respectively, with 61, 53 and 109 detainees ordered to be separately confined ranging from one to seven days after disciplinary hearing. Since ImmD's takeover of the management of CIC in April 2010 up to end-October 2022, there were a total of 32 immigration officers injured during handling of the indiscipline cases.

<sup>9</sup> From January to October 2022, 62% of the newly admitted detainees at CIC were discharged prisoners, as compared with only 28% in 2015. Around 25% of the discharged prisoners admitted to CIC from January to October 2022 had committed serious crimes such as murder, trafficking in dangerous drugs, robbery, burglary, wounding, blackmailing and rape, etc. let alone some were repeated offenders.

<sup>10</sup> References will be made to Rules 9(1A), 34A, 58, 61 and 63 of the Prison Rules (Cap. 234A).

- (ii) empowering medical staff or Immigration Officers at CIC to require a detainee to undergo urine examination to identify drug addicts, which will in turn assist the detection of drug possession or trafficking; and
- (b) in view of the ongoing indiscipline acts at CIC with an average of some 100 cases a year in the past decade and the increasing complexity in these cases, it is proposed to step up discipline and punishment arrangements at CIC for stronger deterrent effect amongst the detainees, which include setting out a more comprehensive list of indiscipline acts and increasing the maximum period of separate confinement from seven days to 28 days as the punishment for indiscipline acts.

In line with the existing practice, ImmD will, when using the above proposed powers, consider the individual circumstances of detainees and make reasonable and appropriate arrangements. Subject to Members' views on these legislative proposals, our plan is to submit the relevant subsidiary legislation to LegCo for negative vetting in the first half of 2023.

***(e) Strengthen enforcement actions against immigration offences and illegal employment***

24. ImmD spares no effort in combatting illicit activities of immigration offenders by strengthening enforcement actions on multiple fronts. The targeted enforcement actions against NECIIs and non-refoulement claimants are operated at three major stages, namely strengthening their interception at source, conducting large-scale anti-illegal employment operations after their entry and enhancing control over recognizance reportees and absconders after interception.

25. On interception of NECIIs and potential non-refoulement claimants at source, ImmD has been strengthening its enforcement actions in collaboration with local law enforcement agencies and Mainland authorities. Dedicated joint operations against illegal immigration have commenced since 2016 and various anti-NECII operations were mounted to strengthen interception. With sustained and vigorous efforts, the number of NECIIs intercepted monthly dropped by about 86%, from a monthly average of 318 in 2015 to 43 in 2022 (up to October).

26. To further deter NECIIs and potential claimants from illegally entering and staying at Hong Kong, ImmD has mounted territory-wide operations against illegal employment and overstaying in full swing. A total of 23 474 operations on targeted establishments against NEC illegal workers have been conducted since 2021 up to October 2022, as compared with 8 989 such operations conducted in 2020, representing a 42% increase in the monthly average. Besides, following implementation of the amended Immigration Ordinance in August 2021 that expands the scope of persons prohibited from taking unlawful employment (under section 38AA) and increases the penalty for an employer employing illegal workers (under section 17I(1)(b)), ImmD has strengthened enforcement efforts in curbing illegal employment activities relating to non-refoulement claimants. From August 2021 to October 2022, a monthly average of 37 NEC illegal workers, including NECIIs and overstayers, were arrested for illegal employment under section 38AA of the Immigration Ordinance, which was 68% higher than the respective monthly average in the period between May 2020 and July 2021 before the amended Immigration Ordinance came into effect. Also, the increased penalties for employing a person who is not lawfully employable have posed stronger deterrence to employers. As at end-October 2022, nine employers were convicted under section 17I(1)(b) of the Immigration Ordinance, with custodial sentence for one to nine months to reflect gravity of the offence. Going forward, ImmD will carry out not less than 12 000 operations every year on targeted establishments of various industries like catering, cleaning and renovation work in black spots of illegal employment.

27. Furthermore, ImmD has tightened scrutiny over NECIIs and non-refoulement claimants after interception by enhancing the post-recognizance reporting mechanism and conducting specialised operations in locating absconders. Specifically, ImmD has proactively interviewed recognizance reportees to verify their reported information and investigated the re-arrested absconders to collect intelligence. Up to end-October 2022, a total of 17 493 interviews were conducted with non-refoulement claimants who were on recognizance or were re-arrested as absconders. Besides, ImmD has consistently conducted territory-wide field operations to locate absconders not only at their reported dwellings but also through all other possible means. From January 2020 to October 2022, 1 872 field operations were conducted to locate the absconders.

## **ADVICE SOUGHT**

28. Members are invited to note the Government's multi-pronged strategy in enhancing the handling of non-refoulement claims and to offer views on the legislative amendment proposals in relation to expanding the detention capacity and strengthening the management of immigration detainees as set out in paragraphs 21 and 23 above.

**Security Bureau**  
**Immigration Department**  
**Correctional Services Department**  
**Department of Justice**  
**November 2022**

**Progress achieved since implementation of the comprehensive review of  
the Unified Screening Mechanism in 2016 and the Immigration (Amendment) Ordinance 2021**

	<b>Achievements</b>	<b>Latest progress</b>
<b>1. Screening</b>	<ul style="list-style-type: none"><li>● Since 2016, the Immigration Department (“ImmD”) has introduced a number of administrative measures to streamline the workflow, alongside additional manpower and resources, to expedite the screening of claims.</li><li>● The average time for ImmD to handle a claim has reduced by 60% (from about 25 weeks previously to about 10 weeks at present); and the previous backlog of some 11 000 claims pending screening by ImmD was generally cleared in early 2019.</li><li>● The Immigration (Amendment) Ordinance 2021 (“<b>the Amendment Ordinance</b>”) which took effect on 1 August 2021 has further enhanced ImmD’s screening efficiency and prevented possible delaying tactics by claimants. For instance, ImmD can now direct a claimant to communicate in a language that ImmD reasonably considers he/she being able to understand and communicate in during the screening interview; and may make arrangement for him/her to undergo a medical examination in</li></ul>	<ul style="list-style-type: none"><li>● Due to the special work arrangements implemented during the COVID-19 epidemic, the provision of publicly-funded legal assistance (“PFLA”) was interrupted and the commencement of screening procedures was hindered. There were also an increase in the number of new claims received.</li><li>● As at June 2021, the number of new claims pending screening by ImmD rebounded to about 1 500. With the efforts by ImmD and the increase in the PFLA quotas, the number of claims pending screening was brought down to 203 as at end-October 2022.</li></ul>

	Achievements	Latest progress
	<p>case where his/her physical or mental condition is in dispute and the condition is relevant to the consideration of the claim.</p>	
<b>2. Appeal</b>	<ul style="list-style-type: none"> <li>● Since ImmD has expedited the screening process in 2016, the number of appeals against ImmD's decisions lodged to the Torture Claims Appeal Board ("TCAB") has increased significantly.</li> <li>● To cope with the increased caseload, the Government appointed more members to TCAB and enhanced the manpower and other supporting facilities for the TCAB Secretariat. The number of TCAB members increased by phases from some 20 in 2014 and 2015 to the peak of over 100 in 2018. With the dedicated efforts of TCAB, the number of appeals pending processing by TCAB dropped from the peak of over 6 500 in 2018 to about 1 700 in 2020.</li> <li>● The Amendment Ordinance has provided TCAB with powers similar to ImmD in enhancing efficiency and preventing delaying tactics by claimants, such as shortening the notice period for oral hearing to less than 28 days (but not less than seven days in any event).</li> </ul>	<ul style="list-style-type: none"> <li>● Similar to the screening by ImmD, the processing of appeals by TCAB was interrupted intermittently over the past three years during the COVID-19 epidemic, including travel restrictions affecting overseas members' schedules for flying to Hong Kong and occasional adjournment/postponement of oral hearings due to social distancing arrangements.</li> <li>● As at end-October 2022, the number of appeals pending processing by TCAB rebounded to about 2 800. TCAB will continue with its efforts to clear the outstanding cases with the enhanced procedures introduced under the Amendment Ordinance, and the Government will appoint more members to TCAB as necessary.</li> </ul>

	Achievements	Latest progress
<b>3. Illegal immigrants intercepted</b>	<ul style="list-style-type: none"> <li>● ImmD has commenced special operations with other local law enforcement agencies (“LEAs”) and the Mainland authorities since mid-February 2016, taking sustained enforcement actions against illegal immigration activities of non-ethnic Chinese illegal immigrants (“NECIIs”).</li> <li>● With the concerted efforts of all parties, the number of NECIIs intercepted plunged from 3 819 in 2015 to 639 in 2018, representing a drop of 83%.</li> </ul>	<ul style="list-style-type: none"> <li>● ImmD and other LEAs will continue to collaborate closely with the Mainland authorities to combat illegal immigration activities. From January to October 2022, 427 NECIIs were intercepted, i.e. 53% and 44% lower than those intercepted in the corresponding period in 2020 (899 NECIIs intercepted) and 2021 (765 NECIIs intercepted) respectively.</li> </ul>
<b>4. Enforcement</b>	<ul style="list-style-type: none"> <li>● ImmD has stepped up enforcement actions against NEC illegal workers, with a total of 7 888 targeted operations on the targeted establishment conducted in 2017, up from 4 138 operations in 2015.</li> </ul>	<ul style="list-style-type: none"> <li>● ImmD continued with its enforcement actions against illegal employment in the midst of the COVID-19 epidemic. From January to October 2022, a total of 11 273 operations on the targeted establishment were conducted against NEC illegal workers with 366 NEC illegal workers and 189 employers arrested.</li> <li>● Following the implementation of the Amendment Ordinance on 1 August 2021, overstayers taking up illegal employment has been made liable to be prosecuted under section 38AA and subject to the same penalty levels as illegal immigrants taking any employment in order to reduce the economic incentive. This serves as a stronger deterrence to the potential</li> </ul>



	Achievements	Latest progress
		<p>overstayers and claimants. Also, the maximum penalty for an employer employing a person who is not lawfully employable has been significantly increased from a fine of \$350,000 and three years' imprisonment to a fine of \$500,000 and 10 years' imprisonment.</p> <ul style="list-style-type: none"> <li>● Following the above development, the Court had imposed custodial sentences upon conviction of employers of prohibited employees<sup>1</sup>. In some more serious cases, the Court had adopted the 15-month tariff against prohibited employees taking employment to reflect the gravity of the offence.</li> </ul>
<b>5. Detention</b>	<ul style="list-style-type: none"> <li>● Pursuant to sections 32 and 37ZK of the Immigration Ordinance (Cap. 115), persons pending removal or deportation from Hong Kong or pending final determination of their torture claims may be detained. ImmD has all along strictly followed the established detention policy, and in accordance with the relevant legal requirements and legal principles established by the Court, in the detention of claimants.</li> </ul>	<ul style="list-style-type: none"> <li>● Persons pending removal or deportation from Hong Kong or pending final determination of their torture claims may be detained at the Castle Peak Bay Immigration Centre ("CIC"), which has a maximum capacity of 500. Following the re-commissioning of the Tai Tam Gap Correctional Institution ("TGCI") in May 2021 for the detention of male claimants posing or likely posing higher security risk to the community, the overall detention capacity of</li> </ul>

<sup>1</sup> Under section 17I(7) of the Immigration Ordinance (Cap. 115), prohibited employee means a person who is prohibited from taking any employment or establishing or joining in any business under section 38AA.

	Achievements	Latest progress
	<ul style="list-style-type: none"> <li>The Amendment Ordinance stipulates that, in addition to the specific circumstances of individual cases, various factors which may justify a longer detention period should also be taken into account in considering whether a period of detention is reasonable and lawful. The factors include, among others, whether a person poses, or is likely to pose, a threat or security risk to the community.</li> </ul>	<p>claimants has increased by one-third to 660.</p> <ul style="list-style-type: none"> <li>The number of persons detained at the above two detention facilities stood at 408 (including 338 claimants) as at end-October 2022<sup>2</sup>.</li> </ul>
<b>6. Removal</b>	<ul style="list-style-type: none"> <li>ImmD is committed to removing unsubstantiated claimants from Hong Kong as soon as practicable in accordance with the prevailing laws and policy so as to maintain effective immigration control and to safeguard public interest.</li> <li>The number of claimants removed increased from 650 in 2014 to 2 520 in 2017 and 2 527 in 2018. In 2019, 1 618 claimants were removed.</li> </ul>	<ul style="list-style-type: none"> <li>Removal of unsubstantiated claimants is affected by various factors, including the applications for leave to apply for judicial review lodged by a large proportion of claimants in recent years, as well as the limited availability of international flights or other travel restrictions imposed during the COVID-19 epidemic.</li> <li>Despite heavy interruption to international travel during the epidemic, ImmD managed to remove 632, 753 and 880 claimants from Hong Kong in 2020, 2021 and the first 10 months of 2022 respectively.</li> <li>ImmD will continue to expedite the removal</li> </ul>

<sup>2</sup> Following the advice of the Centre for Health Protection under the Department of Health, certain areas of CIC and TGCI have been reserved for holding newly admitted detainees to undergo a period of segregation and conduct COVID-19 tests, and the number of detainees held at CIC and TGCI has to be reduced to implement the relevant epidemic prevention measures.

	Achievements	Latest progress
		<p>procedures, including maintaining close liaison with governments of major source countries and airlines, with a view to enhancing the overall efficiency in the removal of unsubstantiated claimants.</p> <ul style="list-style-type: none"> <li>● With the Amendment Ordinance coming into force, ImmD can commence liaison with relevant authorities (including other governments) for repatriation arrangements (such as applying for necessary travel documents) once a claim has been rejected, hence facilitating earlier removal of unsubstantiated claimants.</li> </ul>

**Legislative proposals to include the Nei Kwu Correctional Institution (“NKCI”) as a place of detention under the Immigration (Places of Detention) Order (Cap. 115B) and other related amendments**

- (a) To redeploy NKCI as a place of detention and to designate the Lo Wu Correctional Institution as a drug addiction treatment centre:
  - (i) to include the Drug Addiction Treatment Centre (Nei Kwu Correctional Institution) Order (Cap. 244G) in Schedule 1 to the Immigration (Places of Detention) Order (Cap. 115B); and
  - (ii) to enact a new “Drug Addiction Treatment Centre (Lo Wu Correctional Institution) Order” under Cap. 244H.
- (b) To repeal the following references to various detention centres/places of detention that have been demolished or are no longer in operation from various pieces of subsidiary legislation under the Immigration Ordinance (Cap. 115) and the Immigration Service (Designated Places) Order (Cap. 331B):
  - (i) “Green Island Reception Centre” from Schedule 1 to Cap. 115B;
  - (ii) “The area inside the Tuen Mun Ferry Terminal that is set aside as a detention room for use by the Immigration Department.” from Schedule 3 to Cap. 115B;
  - (iii) the following items from the Schedule to the Immigration (Vietnamese Migrants) (Detention Centres) Rules (Cap. 115M):
    - “Erskine Detention Centre”;
    - “Green Island Reception Centre”;
    - “Whitehead Detention Centre”;
    - “Harbour Detention Centres, i.e. the vessels known as HYF “Man Tin”, HYF “Man Wah”, HYF “Man Kam”, HYF “Man Tai” and HYF “Man Foon””;
    - “Lo Wu Detention Centre”;
    - “High Island Detention Centre”;
    - “Victoria Prison”; and
    - “Kai Tak Vietnamese Migrant Transit Centre”;

- (iv) the following items from the Schedule to the Immigration (Vietnamese Migrants) (Detention Centres) (Designation) Order (Cap. 115N):
- “Erskine Detention Centre”;
  - “Green Island Reception Centre”;
  - “Whitehead Detention Centre”;
  - “Harbour Detention Centres, i.e. the vessels known as HYF “Man Tin”, HYF “Man Wah”, HYF “Man Kam”, HYF “Man Tai” and HYF “Man Foon””;
  - “Lo Wu Detention Centre”;
  - “High Island Detention Centre”;
  - “Victoria Prison”;
  - “The island of Shek Kwu Chau”; and
  - “Kai Tak Vietnamese Migrant Transit Centre”; and
- (v) the following items from the Schedule to Cap. 331B:
- “The area of the 13th floor of the Immigration Tower, 7 Gloucester Road, occupied by the Immigration Department set aside as a detention room.”; and
  - “The area inside the Tuen Mun Ferry Terminal that is set aside as a detention room for use by the Immigration Department.”.
- (c) To repeal the following four pieces of obsolete subsidiary legislation in relation to Vietnamese refugee centres under Cap. 115:
- (i) the Immigration (Vietnamese Refugee Centres) (Designation) (Consolidation) Order (Cap. 115G);
  - (ii) the Immigration (Vietnamese Refugee Centres) (Open Centre) Rules (Cap. 115H);
  - (iii) the Immigration (Vietnamese Refugee Centres) (Departure Centre) Rules (Cap. 115I); and
  - (iv) the Immigration (Vietnamese Boat People) (Shek Kwu Chau Detention Centre) Rules (Cap. 115P).