

LCQ9: Non-refoulement claims

Following is a question by the Hon Dennis Kwok and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (May 20):

Question:

The Immigration (Amendment) Ordinance 2012, which came into operation in December 2012, provides for a statutory process for making and determining non-refoulement claims. It also provides that a claimant who is aggrieved by the decision may lodge an appeal, which will be handled by a statutory Torture Claims Appeal Board (TCAB). The Government later introduced a unified screening mechanism (USM), which commenced operation in March 2014, to screen claims made by illegal immigrants refusing to be removed to another country on all applicable grounds (such as the risk of subjecting to torture or persecution). Besides, under the Immigration Ordinance (Cap 115), the Director of Immigration (the Director) may, on an application of a claimant who has a substantiated claim, permit the claimant to take employment. In this connection, will the Government inform this Council:

- (1) of the respective numbers of claimants whose claims were substantiated under USM and by TCAB in each year since 2014;
- (2) of the average time taken for handling each of the claims mentioned in (1);
- (3) of the respective numbers of applications for taking employment received, granted and rejected by the Director in each year since 2014; if there were rejected applications, of the reasons for that;
- (4) of the average handling time, and the conditions imposed on the claimants, in respect of each of the granted applications mentioned in (3);
- (5) whether the Director has plans to shorten the time needed for processing applications for taking employment; if so, of the details (including the specific changes to be made and the timetable); if not, the reasons for that;
- (6) of the number of claimants mentioned in (1) referred to the United Nations High Commissioner for Refugees (UNHCR) for resettlement in another country; among such claimants, the number of those subsequently resettled, and set out, in respect of each of the resettled persons, (i) the year in which the person left Hong Kong, and (ii) the time lapse from substantiation of claim to resettlement;
- (7) of the policy on assisting the claimants referred to UNHCR in preparing for their living after resettlement; and
- (8) of the date on which the Government last reviewed the humanitarian assistance programme for non-refoulement claimants, and whether it has plans to conduct a review shortly; if so, of the details and timetable?

Reply:

President,

The Government implemented the Unified Screening Mechanism (USM) in March 2014 to screen non-refoulement claims on all applicable grounds in one go. The United Nations' Convention Relating to the Status of Refugees and its 1967 Protocol have never applied to Hong Kong, and hence illegal immigrants seeking non-refoulement in Hong Kong will not be treated as "asylum seekers" or "refugees". The Hong Kong Special Administrative Region Government maintains a firm policy of not granting asylum and not determining or recognising refugee status of any person. Regardless of the outcome of their torture/non-refoulement claims, claimants are not permitted to remain legally in Hong Kong. If their claims are rejected, the Immigration Department (ImmD) will accordingly remove them to their countries of origin.

The Government's reply to the question raised by Hon Dennis Kwok is as follows:

(1) As at end April 2020, ImmD have determined 17 618 non-refoulement claims under USM, among which 179 claims were substantiated (including 97 claims substantiated by the Torture Claims Appeal Board (TCAB) on appeal). The substantiation rate is about one per cent, i.e. about 99 per cent are unsubstantiated. The breakdown by year is tabulated below:

Year	Substantiated non-refoulement claims (Notel)
2014	1 (0)
2015	17 (3)
2016	30 (2)
2017	38 (19)
2018	41 (26)
2019	38 (33)
2020 (as at end April)	14 (14)
Total	179 (97)

Notel: Figures in () are the numbers of non-refoulement claims substantiated by TCAB

(2) As regards the time for handling each claim, ImmD ensures that the screening procedures are highly efficient and achieve high standards of fairness through flexible staff deployment and optimised workflow. ImmD's handling time for each claim has been shortened from about 25 weeks on average at the early implementation of USM to the current average of about 10 weeks.

(3) to (5) Non-refoulement claimants are illegal immigrants, overstayers or persons who were refused entry upon arrival in Hong Kong. They do not have any legal status to remain in Hong Kong. Regardless of the outcome of their claims, they have no right to work in Hong Kong. In February 2014, the Court of Final Appeal upheld in *GA & Ors v. Director of Immigration* [(2014) 17 HKCFAR 60] that substantiated claimants and mandated refugees recognised by the United Nations High Commissioner for Refugees (UNHCR) have no constitutional or other legal rights to work in Hong Kong. Nevertheless, the Director of Immigration may exercise his discretion exceptionally to consider, on a case-by-case basis, an application for permission to take employment.

The numbers of applications made by the abovementioned persons for taking employment handled by ImmD since 2014 are tabulated below:

Year	Applications received	Applications approved on discretionary basis	Applications rejected	Applications withdrawn or no further action could be taken
2014	21	5	3	10
2015	10	2	2	9
2016	24	14	5	9
2017	36	19	0	10
2018	62	42	0	7
2019	69	84	0	8
2020 (as at end April)	37	38	0	1
Total	259	204	10	54

Note 2: Applications processed in a given year may not be those received in total in the same year. Applications approved, rejected, withdrawn or where no further action could be taken as listed above include those received by ImmD before 2014.

All related applications will be handled by ImmD in accordance with the procedures. The time required to assess and decide on an application depends on the complexity of individual applications and whether applicants have submitted all the required information and supporting documents in a timely manner. Applicants will also be reminded by ImmD that any failure to submit the required information or supporting documents (such as job duties, salaries and working hours, etc.) clearly set out in ImmD's correspondences will lead to longer processing time. There were occasions where applications were eventually rejected as a result of applicants' failure or refusal to provide the required information.

It normally takes about three weeks for ImmD to complete the processing of an application upon receipt of all the required information and documents.

If the employment application is approved, the applicants will be allowed to work for their employers in accordance with the jobs prescribed in the contracts within the specified period of time and in the specified venue.

(6) and (7) If a person's claim is substantiated, ImmD will withhold his removal and regularly review the latest situation of his case. Once his claimed risks cease to exist, ImmD will initiate the removal procedures. While withholding removal, ImmD will in parallel refer the person whose non-refoulement claim has been substantiated under USM on grounds of persecution risk to UNHCR for consideration of recognition as "refugee" under its mandate and arrangement of resettlement to a third country.

As at end April 2020, there were 179 claimants whose claims had been substantiated under USM. Among them, according to ImmD's record, no follow-up is required for 26 cases where the claimants already left Hong Kong or because of other reasons (including four resettled in a third country as arranged by UNHCR, and some other claimants who had departed Hong Kong voluntarily). Of the remaining claimants who have been referred to UNHCR, 130 of them are pending consideration and arrangement of resettlement to a third country. ImmD is arranging referral of cases of another 10 claimants to UNHCR.

It is the work of UNHCR to arrange for persons whose refugee status has been recognised under its mandate to resettle to a third country. The Government does not have the relevant statistics.

(8) Since 2006, the Government has been providing humanitarian assistance to non-refoulement claimants to meet their basic needs. At the same time, the Government has to ensure that such humanitarian assistance does not become an incentive which would create a magnet effect in attracting more illegal immigrants to seek unlawful entry into and remain illegally in Hong Kong, in order to avoid serious implications on the long-term sustainability of our current support systems and immigration control. The expenditure on humanitarian assistance to non-refoulement claimants since 2014-15 is tabulated below:

Year	Humanitarian assistance (\$ million)
2014-15	254
2015-16	489
2016-17	729
2017-18	587
2018-19	531
2019-20 (revised estimate)	464

2020-21 (estimate)	706
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Such humanitarian assistance has always been provided to eligible claimants by a non-governmental organisation (NGO) commissioned by the Social Welfare Department (SWD). There is a cap imposed by the Government on the amount of assistance received by each claimant under each individual item. The NGO concerned will review the circumstances of claimants every month and decide on the exact assistance items and level based on their actual needs. If individual cases involve special needs, the NGO concerned will decide the amount of additional assistance according to claimants' specific needs and based on their justifications and supporting documents provided.

The Government has been monitoring the operation of the assistance programme, as well as making reviews and improvements as appropriate, having regard to service needs and stakeholders' views. Examples include paying the rent deposit and property agent fee for claimants, and improving the disbursement arrangement for transport and utilities allowance since 2014; replacing the in-kind food assistance with food coupons in 2015; and introducing food electronic tokens in March 2017, etc. Through the NGO, SWD will keep monitoring whether the level of assistance meets the needs of service users.

Postal services to Russia suspended

Hongkong Post announced today (May 20) that further to the earlier suspension of surface mail to Russia on April 4, airmail services (including Speedpost service) to Russia will also need to be suspended until further notice in view of flight cancellations by airlines.

Manager of unlicensed guesthouse fined

A woman was fined \$6,000 at the Kowloon City Magistrates' Courts today (May 20) for contravening the Hotel and Guesthouse Accommodation Ordinance.

The courts heard that in October last year, officers of the Office of the Licensing Authority (OLA), the Home Affairs Department, inspected a suspected unlicensed guesthouse on Changsha Street in Mong Kok. During the inspection, the OLA officers posed as lodgers and successfully rented a room in the guesthouse on a daily basis.

According to the OLA's records, the guesthouse did not possess a licence under the Ordinance on the day of inspection. The woman responsible for managing the premises was charged with contravening section 5(1) of the Ordinance.

A department spokesman stressed that operating or managing an unlicensed guesthouse is a criminal offence and can lead to a criminal record. Upon conviction, the offender is liable to a maximum fine of \$200,000 and two years' imprisonment.

The spokesman appealed to anyone with information about suspected unlicensed guesthouses to report it to the OLA through the hotline (Tel: 2881 7498), by email (hadlaeng@had.gov.hk), by fax (2504 5805) using the report form downloaded from the OLA website (www.hadla.gov.hk), or through the mobile application "Hong Kong Licensed Hotels and Guesthouses".

LCQ4: Security measures and arrangements of Police

Following is a question by the Dr Hon Fernando Cheung and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (May 20):

Question:

In recent months, the Police have placed a large number of mills barriers on certain footpaths, and fenced off government buildings with huge water barriers. Some wheelchair users and visually impaired persons have complained to me, alleging that such objects have caused inconvenience to them, including passageways leading to lifts being obstructed, tactile guide paths being broken up, and iron gates of the water-barrier enclosures being too narrow for wheelchairs to pass. In this connection, will the Government inform this Council:

(1) whether the Police have formulated guidelines stipulating that impacts on the use of barrier-free access facilities by persons with disabilities (PWDs) should be avoided when the aforesaid objects are placed on footpaths; if so, of the details; if not, the reasons for that;

(2) whether, while PWDs are participating in public events or travelling, channels are available for them to seek immediate assistance when their access is obstructed by the objects placed by the Police; if so, of the details; if not, whether such channels will be established; and

(3) whether the Police will immediately examine the impacts of their placing

the aforesaid objects on the travelling of PWDs, and remove such objects as early as possible; if so, of the details; if not, the reasons for that?

Reply:

President,

Members of the public may conduct assemblies and processions and express their views, but they must do so in a lawful, peaceful and orderly manner, and should respect other people's rights.

Regarding barrier-free facilities, the Government has formulated policies and objectives to provide a barrier-free environment for persons with disabilities (PWDs), with a view to enabling them to access premises and make use of community facilities and services on an equal basis with others, thereby helping them live independently, fully take part in various activities and integrate into the community. All government departments have Access Co-ordinators and Access Officers who co-ordinate efforts in enhancing the accessibility of barrier-free access and facilities of government premises under their purview. All Government departments, including the Police, follow these policies and objectives. There is no need for the Police to formulate their own policies and objectives.

The Police all along handle all public order events (POEs) in a fair, just and impartial manner in accordance with the laws of Hong Kong. It has been the established policy of the Police to endeavour to strike a balance between facilitating the smooth conduct of lawful and peaceful public meetings and processions on the one hand, while on the other, minimising the impact of such events on members of the public and road users, as well as maintaining public safety and public order.

During the demonstrations over the past months, the Police remained steadfast in discharging their duties, and handled the provocations of demonstrators with tolerance and restraint. However, not only were the Police not being informed of some protests in advance in accordance with the law, people participating in the protests conducted unlawful assemblies in various places, many of which ended up in violence. The escalating and frequent violence of rioters seriously threatens the lives and properties of the public. The Police have a statutory duty to maintain public order and public safety. In situations where public order and public safety are seriously threatened, the Police must take actions decisively to curb violence and restore public peace.

A consolidated reply to the three parts of Hon Cheung's question is provided below.

Since June last year, there have been over 1 400 demonstrations, processions and public meetings in Hong Kong, many of which developed into serious breach of law and violent incidents. Every now and then during that period, rioters advocated besieging, blocking and vandalising the Central Government Offices, the Legislative Council Complex, police stations in

various districts, disciplined services quarters and other buildings. These acts have seriously affected the work and life of people using the above premises, including the emergency services provided to the public by the Police.

Moreover, some rioters threw petrol bombs at police stations and government properties, set fires, attacked police vehicles and police stations, hurled objects and sprayed graffiti at the Police Headquarters, as well as vandalised government facilities, posing serious threat to public safety and public order. After risk assessment and in order to protect these buildings, the Police considered it necessary to enhance the security thereof. Apart from deploying officers to station at these buildings, a number of measures had been implemented to prevent attacks and damage, including setting up water barriers.

When the Police take relevant security measures, they will communicate with the managers and responsible persons of the property management of the premises concerned. This is to ensure the effective implementation of the security measures on the one hand, and minimise the impact on people using these premises and road users, including PWDs, on the other. When security measures are put into effect, the Police will maintain contact with the responsible persons of the property management concerned for reviewing the security measures and arrangements from time to time.

The Police have contacted different stakeholders, including non-governmental organisations offering support to PWDs, and explained to them the reasons for implementing security measures by the Police. Meanwhile, the Police have also explained to them the Government's barrier-free policy. For access to Government venues or use of relevant facilities therein, PWDs may directly seek help from the Access Officer responsible for the accessibility issues of the relevant Government venues if necessary.

I need to point out that the use of water barriers and the implementation of additional security measures in these Government buildings were necessary counter-measures taken in response to the frequent violence and attack incidents that took place in some Government premises which provided services to the public and police stations over the past few months. If members of the public conduct POEs in a peaceful, lawful and orderly manner, and do not commit serious violent acts of vandalism and attacks such as those we saw on television, there would be no need for the Police to implement the above security measures.

I hope the public would address the serious damage and undesirable impacts of the rioters' violence on our society. Since June last year, a large number of shops, and even courts including the Court of Final Appeal, the High Court and Magistrates' Courts have been vandalised. About 740 sets of traffic lights across the city have been intentionally vandalised more than 1 600 times, which include cutting of wires, defacing or even burning down. Besides, as at March 11, 2020, the barrier-free facilities, including escalators and lifts, of the MTR Corporation Limited have been vandalised about 120 times and over 80 times respectively. These violent acts of

vandalism of the rioters have severely affected the daily lives and access of people from all walks of life, including PWDs, causing inconvenience or even danger to all commuters. If Members care about the accessibility of PWDs, they should care about the facilities for PWDs, and should vehemently condemn the violent acts of rioters that destroyed the facilities for PWDs. The public should firmly reject the violence of rioters. Moreover, Members must not acquiesce to or glorify violent acts of the rioters, and not become accomplices in destroying the tranquility of our society.

Thank you, President.

Public hospitals daily update on COVID-19 cases

The following is issued on behalf of the Hospital Authority:

As at noon today (May 20), one COVID-19 confirmed patient (case number: 1 040) was discharged from hospital in the past 24 hours. So far, a total of 1 026 confirmed and suspected patients have been discharged.

At present, there are 659 negative pressure rooms in public hospitals with 1,219 negative pressure beds activated. A total of 26 confirmed patients are currently hospitalised in nine hospitals, among which one patient is in critical condition (case number: 595), one patient is in serious condition (case number: 1 049), and the remaining 24 patients are in stable condition.

The Hospital Authority will maintain close contact with the Centre for Health Protection to monitor the latest developments and to inform the public and healthcare workers on the latest information in a timely manner.