

LCQ11: Provision of publicly funded legal assistance

Following is a question by the Hon Paul Tse and a written reply by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, in the Legislative Council today (January 16):

Question:

Since the establishment of the unified screening mechanism for non-refoulement claims in 2014, the total expenditure on processing non-refoulement claims and the related work has been as high as \$4.9 billion, and the relevant government expenditure in the current financial year alone stands high at \$1.3 billion. In the past four financial years and the current financial year, the total expenditure on the provision of publicly funded legal assistance to non-refoulement claimants by the Government was \$700 million odd. However, only less than 1 per cent of the claims concerned were substantiated. Some members of the public and the media have criticized that while the Government has spent a huge amount of public money year after year to support claimants making claims and lodging appeals, it has provided negligible support to those Hong Kong permanent residents who have been sent to jail wrongfully in the Philippines (including Mr Tang Lung-wai, Mr Cheung Tai-on who had been involved in the same case but passed away in the jail before lodging his appeal, as well as the four Hong Kong people who have recently been sentenced to life imprisonment upon conviction of possession of drugs and have lodged appeals). In this connection, will the Government inform this Council:

(1) of the amount of public expenditure on the provision of publicly funded legal assistance to non-refoulement claimants (including the lodging of appeals) in the past two years;

(2) of the estimated expenditure related to non-refoulement claims in the next financial year;

(3) whether it has provided any legal assistance to the aforesaid Hong Kong people currently imprisoned in the Philippines; if not, whether it has assessed if the fact that the Government has spent a huge amount of public money year after year to provide legal assistance to non-refoulement claimants who are not Hong Kong permanent residents but has never provided legal assistance to those Hong Kong people will give the public an impression of favouritism and that the Government is not helping those who should be helped, thereby causing the public to lose confidence in the Government's commitment to safeguard the rights and interests of those Hong Kong people who are in distress outside Hong Kong (especially in the Philippines); and

(4) whether it will consider changing the policy so that appropriate legal assistance for meeting litigation expenses will be provided to the aforesaid and other Hong Kong people involved in overseas criminal cases which have

passed a test similar to the merits test under the legal aid system in Hong Kong, so as to enable them to receive fair trials?

Reply:

President,

Having consulted relevant bureau and department, we set out below our reply to the various parts of the question raised by the Hon Tse:

(1) In *FB v Director of Immigration and Secretary for Security* ([2009] 2 HKLRD 346), the Court of First Instance of the High Court ruled in December 2008 that the Government must implement a series of measures, including the provision of publicly-funded legal assistance (PFLA) to claimants during the screening process, so as to meet the high standards of fairness. At present, the Legal Assistance Scheme for Non-refoulement Claimants under the Duty Lawyer Service (DLS) and the Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants (Pilot Scheme) under the Security Bureau operate concurrently to provide PFLA to non-refoulement claimants, including (i) advising the claimant of his legal rights and providing procedural guidance throughout the screening process; (ii) assisting the claimant to complete the claim form; (iii) accompanying the claimant to attend the screening interview(s) conducted by the Immigration Department (ImmD), if considered necessary by the lawyer; (iv) assessing merits of appeal for claims rejected by ImmD; (v) preparing notice of appeal to the Torture Claims Appeal Board (TCAB) for meritorious cases; (vi) representing the claimant at the oral hearing on appeal where necessary; (vii) assisting the claimant in making a request to re-open a claim or to make a subsequent claim in meritorious cases; and (viii) preparing an objection notice on revocation for the claimant in meritorious cases.

In 2017-18, the expenditure for the Legal Assistance Scheme for Non-refoulement Claimants operated by DLS was \$129 million. For the Pilot Scheme implemented since September 2017, its expenditure in 2017-18 was \$23 million. In 2018-19, the estimated expenditures for the Legal Assistance Scheme for Non-refoulement Claimants and the Pilot Scheme are \$147 million and \$124 million respectively.

Separately, if claimants are aggrieved by the decisions of ImmD or TCAB, and intend to file a judicial review (JR) to the High Court, they can apply for legal aid under the Legal Aid Ordinance (LAO) (Cap 91). The above expenditures do not include those involved in relevant JR or legal aid.

(2) In 2018-19, the estimated expenditure related to non-refoulement claims is \$1,399 million, which includes expenditures for the screening of claims, handling of appeals as well as the provision of PFLA and humanitarian assistance to claimants. The Government will continue to set aside sufficient resources for the above work related to non-refoulement claims in 2019-20. Details of the expenditure will be reflected in the 2019-20 Estimates.

(3) The Government of the Hong Kong Special Administrative Region (HKSAR) is

committed to providing assistance to Hong Kong residents in distress outside Hong Kong. In general, upon receipt of requests for assistance from Hong Kong residents who are detained or imprisoned overseas, or when the Chinese diplomatic and consular missions (CDCMs) inform the Assistance to Hong Kong Residents Unit (AHU) of ImmD of Hong Kong residents being detained or imprisoned overseas, AHU will, having regard to the nature and circumstances of individual cases as well as the requests of assistance seekers, liaise with the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR, CDCMs and relevant government departments to provide practicable and appropriate assistance. In accordance with a request for assistance from the subject or subject's family, AHU would urge, through CDCM, the relevant local authorities for prompt, impartial and fair hearings in accordance with local laws.

(4) Legal aid services form an integral part of the legal system in Hong Kong. The policy objective of legal aid is to ensure that all those who meet the criteria set out in LAO and have reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong will not be denied access to justice owing to a lack of means. LAO is not applicable to legal proceedings in jurisdictions outside Hong Kong. Extending legal aid services to jurisdictions outside Hong Kong would involve various issues, including the conducting of merits tests on litigation cases in other jurisdictions, whether to assign lawyers from Hong Kong to assist in the cases concerned, as well as how to continue monitoring the trial or appeal proceedings of the cases. Given the possible vast differences in legal systems between jurisdictions, the extension of legal aid services to jurisdictions outside Hong Kong will be extremely difficult in practice. The HKSAR Government has therefore no plan to extend the coverage of the legal aid system to Hong Kong residents subject to criminal prosecution overseas.