

LCQ17: Handling of non-refoulement claims

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

Question:

Under the prevailing policy, where non-refoulement claimants (claimants) who are to be repatriated have lodged applications for judicial review (JR) in relation to the results of their claims, the Immigration Department (ImmD) will temporarily suspend the actions of sending them back to their places of origin. The number of applications for leave for JR in relation to the results of such claims received by the Court of First Instance surged from 1 006 in 2017 to 2 851 in 2018. To reduce abuse of the procedure for handling claims, the authorities indicated in January this year that they were considering amending the Immigration Ordinance (Cap 115). Moreover, the authorities proposed in June this year to amend the High Court Ordinance (Cap 4) to facilitate the handling of cases, including claims-related JR applications, in a more efficient manner. In this connection, will the Government inform this Council:

(1) whether it knows the number of applications for leave for JR received by the Judiciary from claimants since January 1 this year, as well as the relevant estimated figure for the coming year;

(2) whether it knows the respective maximum numbers of relevant (i) applications for leave for JR and (ii) appeal cases that can be heard by the court each year at present; the time needed, as estimated by the Judiciary on the basis of the current numbers and trends of these two types of cases, for all such cases to be heard;

(3) whether it knows the amount of expenditure incurred by the Judiciary in each of the past three years for handling the applications for leave for JR and appeal cases in relation to the results of such claims, as well as the estimated amount of the relevant expenditure in the coming three years (set out in a table);

(4) of the latest progress of the work to amend Cap 4 and Cap 115;

(5) as the Judiciary's earlier proposal to reduce the number of judges hearing appeals concerning applications for leave for JR from three to two is considered to be not very effective, whether the authorities have discussed with the Judiciary the adoption of other new measures to expeditiously clear the backlog of applications for leave for JR and appeal cases; if so, of the details; if not, the reasons for that;

(6) whether it knows if the Judiciary will consider setting up special courts to expedite the hearing of claims-related cases, so as to avoid affecting the pace of other JR cases being heard;

(7) of the number of claimants in each of the past five years who were arrested for taking up illegal employment during the period when the hearings for their applications for leave for JR were pending (set out in a table);

(8) of the respective current numbers of the various types of claimants in Hong Kong (including claimants who have lodged claims, have lodged appeals against the results of their claims, have lodged applications for leave for JR, have lodged appeals against the results of their applications for leave for JR, are being imprisoned and are awaiting repatriation, as well as claimants whose claims have been substantiated and who are awaiting arrangements for departing Hong Kong);

(9) of the estimated public expenditure involving claimants in each of the coming four financial years (set out a breakdown of the expenditure in a table); and

(10) whether ImmD is equipped with adequate facilities for detaining those claimants who pose a threat to life or property; whether the authorities will, by making reference to the past practices adopted by the Government for handling Vietnamese boat people, detain such claimants in closed facilities?

Reply:

President,

The Government has in the past three years implemented various initiatives to handle non-refoulement claims, which yielded positive results. Last year, the number of non-ethnic Chinese illegal immigrants and new non-refoulement claims received significantly dropped by about 80 per cent from the peak. The Immigration Department (ImmD) has also largely completed the screening of pending claims which once accumulated to over 11 000.

As at the end of October 2019, under the Unified Screening Mechanism (USM), around 300 claimants were pending screening of their claim by ImmD and about another 3 700 claimants were pending decision of appeal by the Torture Claims Appeal Board (TCAB).

On the other hand, according to the records of ImmD, around 6 400 unsuccessful claimants whose claims have been rejected under USM have applied to the court for leave for judicial review (JR) or for JR. Under the prevailing policy, to strike an appropriate balance between the protection of civil liberty and the implementation of immigration control, ImmD will temporarily suspend the removal of any persons (including non-refoulement claimants) from Hong Kong if relevant court proceedings have commenced or are about to commence.

Besides, around 2 600 other unsuccessful claimants remained in Hong Kong as they were imprisoned, involved in ongoing criminal investigation process or because of some other reasons, or were waiting for repatriation arrangements. Taken together, there were in total about 13 000 claimants pending results of their claims or appeals under USM and unsuccessful claimants whose claims have been rejected but who were applying for JR or who remained in Hong Kong for some other reasons.

In consultation with the Judiciary, the Government's reply to the various parts of the Hon Elizabeth Quat's question is as follows:

Parts (1) and (2)

According to the Judiciary, the number of leave applications for JR filed in the Court of First Instance of the High Court, including those relating to non-refoulement claim cases, between 2016 and 2018 are set out at Annex. Information in the Annex shows that the number of leave applications for JR relating to non-refoulement claims accounts for about 95 per cent of the total number of leave applications filed in 2018 (i.e. 2 851 out of a total of 3 014 applications). The relevant numbers for 2019 are still under compilation by the Judiciary. As the number of cases filed is beyond the control of the Judiciary and would largely depend on the parties' own decisions to take out legal proceedings, the Judiciary is not in a position to provide an estimate on the number of a particular type of cases.

All cases received by the Judiciary will be handled in accordance with the established rules and procedures, and each case will be handled as expeditiously and efficiently as reasonably practicable. The Judiciary does not set limits on the number of cases to be handled by the courts in a year or any specified period.

Furthermore, the Judiciary is not in a position to estimate the time required by the courts to handle a particular type of cases, as the processing and the eventual disposal of an individual case can be affected by a wide range of factors, including the complexity of the case, the preparedness of the parties, etc, some of which are beyond the control of the courts.

Part (3)

As advised by the Judiciary, they do not have the breakdown or estimates of the operating expenses by types of cases or levels of courts.

Part (4)

According to the Judiciary, they are proposing to introduce amendments to the High Court Ordinance (Cap 4) to facilitate the more efficient handling of cases, including those initiated by way of JR for cases stemming from non-refoulement claims, and to put judicial resources to the best use. These amendments seek to streamline court procedures and increase the flexibility in the deployment of judicial manpower thereby bringing about a positive

impact on the overall case management. The Judiciary earlier consulted the Legislative Council (LegCo) Panel on Administration of Justice and Legal Services at its meeting on June 24, 2019 and other stakeholders, including the Hong Kong Bar Association and the Law Society of Hong Kong, as well as other court users, on the proposed amendments. The Panel and the stakeholders concerned were generally supportive of the proposed amendments. The Judiciary is working with the Department of Justice with a view to taking forward the proposed amendments as soon as practicable in the current legislative session.

As regards the Immigration Ordinance (Cap 115), the Security Bureau will introduce an amendment bill into the LegCo in the first half of the current legislative session, with a view to improving the screening procedures of non-refoulement claims and appeals and plugging the existing loopholes, in order to effectively prevent the number of claims and processing time from building up again; as well as to strengthening ImmD's effectiveness in respect of enforcement, removal and detention.

Parts (5) and (6)

According to the Judiciary, in addition to the proposed legislative amendments to the High Court Ordinance as mentioned in Part (4) of the reply, the Judiciary has been taking other measures to address issues arising from the tight manpower situation to process, among others, non-refoulement claim cases. Specifically, the Judiciary has launched a new round of open recruitment of Judges and Judicial Officers (JJOs) at all levels of court starting from mid-2018 with a view to enhancing the substantive judicial manpower to cope with the operational needs of the courts. In February 2019, the Judiciary created four posts of the Deputy Registrar of the High Court, on top of the existing JJOs, to strengthen the judicial manpower resources in the Masters Office of the High Court. In the meantime, the Judiciary has been engaging temporary judicial resources as far as practicable to cope with its operational needs.

According to the Judiciary, all cases are carefully considered and handled as expeditiously as is reasonably practicable. Whilst the Judiciary has no plan to set up a special court to process JR cases in relation to non-refoulement claims, additional designated deputy High Court judges are engaged to cope with the continued surge of such cases. The Judiciary also plans to increase judicial manpower and court staff to help handle these cases. The Judiciary will submit their proposal to the LegCo for consideration when ready.

Part (7)

ImmD has all along been taking enforcement actions against non-ethnic Chinese (NEC) illegal workers and their employers, so as to reduce the economic incentives for NEC persons to stay in Hong Kong. In the first 10 months of 2019, ImmD conducted 548 targeted operations against NEC illegal workers, arresting a total of 301 NEC illegal workers and persons for other immigration offences (such as illegal remaining or possession of forged

identity cards), and 178 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.

The number of NEC persons on recognisance (mostly non-refoulement claimants) arrested for taking unlawful employment in violation of section 38AA of the Immigration Ordinance in the past five years are tabulated as follows:

Year	Number of Persons Arrested
2015	232
2016	302
2017	381
2018	332
2019 (till October)	184

ImmD does not maintain separate breakdown on non-refoulement claimants involving in illegal work during their application for leave for JR.

Part (8)

As mentioned above, according to the records of ImmD, as at the end of October 2019, there were a total of about 13 000 claimants whose claims or appeals were pending determination under USM and unsuccessful claimants whose claims have been rejected but who were applying for JR or who remained in Hong Kong for some other reasons, breakdown as follows:

Reasons for remaining in Hong Kong	Number of claimants
(I) USM	
Claims pending screening by ImmD	300
Appeals pending decision by TCAB	3 700
Sub-total	4 000
(II) Other reasons	
Pending application for leave for JR or application for JR	6 400
Imprisoned, remanded, involved in prosecution or investigation process, absconded	1 400

Pending removal (including application for travel document and return flight arrangement)	1 200
Sub-total	9 000

Furthermore, as at the end of October 2019, there were 137 claimants whose claims have been substantiated under USM remaining in Hong Kong. The United Nations High Commissioner for Refugees will, having regard to the specific circumstances of each case, arrange for suitable claimants whose claims have been substantiated to resettle in a third country.

Part (9)

In the 2019-20 financial year, the estimated major expenditures on handling non-refoulement claims and related work (excluding the handling of relevant applications for leave for JR or applications for JR by the Judiciary, and the legal aid provided by the Legal Aid Department in relevant cases) are tabulated as follows:

Year	Screening of claims and handling of appeals/petitions (\$Million)	Repatriation of rejected claimants (\$Million) ^	Publicly-funded legal assistance (\$Million)	Humanitarian assistance (\$Million)	Total (\$Million)
2019-20 (Estimate)	353	45	110	755	1,263

^ Only manpower expenditure for work relating to the removal of non-refoulement claimants is included. As other expenditures are incurred by duties which form part of ImmD's overall repatriation work (e.g. arrangement for air tickets and application for documents), we do not maintain a separate breakdown relating to claimants.

ImmD has largely completed the screening of backlog claims and we expect that TCAB will complete the handling of pending appeals by the end of 2020 at the earliest. Therefore, the expenditures on screening non-refoulement claims and handling related appeals/ petitions, as well as on publicly-funded legal assistance are expected to decrease. However, the expenditures on repatriation of rejected claimants may increase. As regards the expenditures on humanitarian assistance, it will depend on the progress of repatriation of rejected claimants. The Government will continue to reserve sufficient resources to handle the above work according to actual needs, yet we are not able to provide any concrete and accurate estimate at this stage on the relevant expenditures in the coming years.

Part (10)

Suggestions of setting up reception centres or closed camps involve various issues concerning the law, land, infrastructure, manpower, resources, management and security, etc. Given the complexity of the issues involved, the suggestions must be carefully and thoroughly examined. The Government will continue to proactively consider all lawful, practicable and effective measures. On the other hand, we will propose legislative amendments to the Immigration Ordinance in the amendment bill mentioned above to elaborate on the factors to be taken into account when considering whether a period of detention is reasonable and lawful. At present, a small fraction of non-refoulement claimants are detained at the Castle Peak Bay Immigration Centre pending their removal from Hong Kong. We will closely monitor the situation and consider the need for increasing detention facilities in due course.