

LCQ2: Stepped-up efforts to handle non-refoulement claims efficiently

Following is a question by the Dr Hon Priscilla Leung and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (January 16):

Question:

It has been reported that in recent years, quite a number of people commonly known as "bogus refugees" lodged torture claims or non-refoulement claims (claims) under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment immediately upon their arrival in Hong Kong. While their claims are being processed by the Immigration Department, they take up illegal employment in Hong Kong, and even engage in criminal activities such as drug trafficking, possession of arms and armed conflicts, which pose a threat to the law and order of Hong Kong. In this connection, will the Government inform this Council:

(1) whether it will step up the law enforcement efforts for combating crimes committed by bogus refugees, including deploying additional police officers to patrol the black spots of crimes committed by them; if so, of the details; if not, the reasons for that;

(2) as the Government has plans to amend the Immigration Ordinance to implement measures to prevent claimants from delaying the screening and repatriation procedure, whether the Government will concurrently make new provisions for removing the incentives for bogus refugees to come to Hong Kong; if so, of the details; if not, the reasons for that; and

(3) whether it will consider converting the defunct Vietnamese boat people detention centres on Tai A Chau and Green Island into transit centres for claimants, as well as immediately repatriating those claimants who have completed their sentence terms for criminal offences to their places of origin; if so, of the details; if not, the reasons for that?

Reply:

President,

The Hong Kong Special Administrative Region (HKSAR) Government has been operating the Unified Screening Mechanism since March 2014 to screen torture claims lodged under the Immigration Ordinance and non-refoulement claims lodged on applicable grounds, including the risk of cruel, inhuman or degrading treatment or punishment as referred to in the Hong Kong Bill of Rights pursuant to the relevant rulings of the Court of Final Appeal (CFA), etc.

The HKSAR Government is very concerned with problems arising from non-refoulement claimants. To solve such problems, the Security Bureau (SB) commenced a comprehensive review in 2016 and has been, via various measures, expediting the screening of claims, combating entry of illegal immigrants and their unlawful stay in Hong Kong, as well as preventing the abuse of the screening mechanism.

Overall speaking, the Immigration Department (ImmD) has achieved very good results in speeding up the screening of claims. As at the end of 2018, only about 540 claims were pending screening by the ImmD, representing a drop of over 90 per cent as compared with the peak. The ImmD anticipates that screening of all pending claims can be completed within the first quarter of this year.

Besides, efforts against the smuggling of illegal immigrants and the online pre-arrival registration requirement for visitors from the major source country of overstayers have also yielded positive results. The numbers of non-ethnic Chinese (NEC) illegal immigrants and non-refoulement claims have decreased significantly by 80 per cent as compared with the peak.

Next, the HKSAR Government has to ensure that appeals can be processed as soon as practicable, and that claimants whose claims and appeals have both been rejected will be removed to their countries-of-origin at the earliest.

We are also considering legislative amendments to plug the existing loopholes, with a view to improving the screening procedures in the long run, preventing various delay tactics and expediting the completion of every case, while at the same time strengthening the powers of the ImmD in removal, detention and enforcement as appropriate, so as to avoid a rebound in the number of claims and processing time. Plugging the relevant loopholes will help solve the various long-standing social problems (including security risk) caused by non-refoulement claimants.

My reply to the various parts of Dr Hon Priscilla Leung's question is as follows:

(1) The Government has been monitoring the situation of crimes committed by NEC persons (including non-refoulement claimants) and their taking part in triad activities in Hong Kong. The Police have been deploying manpower to step up control according to the crime trends in various districts for prevention and detection of crimes.

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". Its duties cover monitoring the trend of NEC persons taking part in organized crimes and triad activities; developing strategies for the Police Force; coordinating enforcement operations and enhancing the capability in gathering intelligence.

On combatting crimes at the district level, the Organized Crime and

Triad Bureau launched new strategies in 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.

Besides, the Police have also maintained liaison with local and overseas law enforcement agencies, consulates in Hong Kong and NEC communities, and will take timely actions against any illegal acts, intelligence or trends.

All persons, regardless of their background, nationality or race, shall abide by the law of Hong Kong. The Police will continue to, in accordance with the relevant crime trends and operational needs, formulate effective measures and take targeted actions for maintaining law and order.

(2) It is imperative and important to fundamentally solve the problems relating to non-refoulement claimants through legislative amendments in the long run. As such, we consulted the Panel on Security in July 2018 and last Tuesday in respect of the proposed amendments under consideration.

Firstly, we have put forward a series of proposals for plugging procedural loopholes and improving the overall screening efficiency, such as requiring claimants to lodge their claims within three months, shortening the statutory time frames for, inter alia, submitting claim forms and filing appeals, and tightening rules on rescheduling requests after absence at interviews or hearings, etc. with a view to minimising the room for claimants to abuse the procedures so that claims can be handled promptly and the rejected claimants can be removed to their countries-of-origin as soon as possible.

In addition, the Government has proposed legislative amendments against unlawful employment, including:

(i) increasing the penalty on overstayers or persons refused landing for taking up unlawful employment by increasing the maximum imprisonment from 2 to 3 years to align with the penalty on illegal immigrants for taking up unlawful employment;

(ii) expanding the coverage of unlawful employment by stipulating that where the employment of illegal worker(s) by a person of a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of any director, manager, secretary, partner or other similar officer, then that other person commits the like offence;

(iii) increasing the penalty for employing illegal immigrants, overstayers and persons refused landing, etc. by increasing the maximum fine and imprisonment to \$500,000 and 10 years respectively.

It is believed that by expediting screening, plugging procedural loopholes, increasing penalties for taking up unlawful employment and hiring illegal workers, further examining detention strategies which are lawful,

feasible and effective, as well as sustaining efforts against smuggling of illegal immigrants and enhancing law enforcement, the incentives for lawbreakers to enter Hong Kong can be effectively eliminated.

(3) We understand the grave concerns in the community over the potential security risk posed by some non-refoulement claimants. As repeatedly emphasized by the Government, we have been actively considering all lawful, feasible and effective measures when dealing with the relevant problems. Regarding the suggestion of setting up reception centres, we will continue to examine the requirements and considerations on detention. Tackling detention-related problems, under the current approach or in other manners, involves a series of elements including land, infrastructure, manpower, resources, management and security, etc. Therefore, a prudent and holistic research has to be conducted before making any decision.

As I explained during the consultation with the Panel on Security last week, on detention strategies, we are considering legislative amendments to ensure that the ImmD has the lawful and justifiable grounds to detain claimants at different stages of the screening and removal procedures. As such, I hope that the bill to be submitted by the SB will be approved early by the Legislative Council, so as to provide clearer legislation for solving a series of problems that must be addressed, including detention.

Separately, in accordance with the judgment laid down by the CFA in 2012 for the Ubamaka case, the Government cannot remove any person, however dangerous or undesirable his conduct is, to another state where he faces a genuine and substantial risk of cruel, inhuman or degrading treatment or punishment. In other words, if a claimant is guilty of any crime or even sentenced to imprisonment, the ImmD still has to complete all the screening procedures (including appeal) before taking removal actions. The SB has already requested the ImmD and the Torture Claims Appeal Board to expedite screening, particularly the screening of claimants with criminal records, so as to complete their screening before the full sentence is served, thus enabling early commencement of repatriation. The ImmD will continue to speed up the removal procedures, including further discussing with governments of major source countries, airlines and other government departments on enhancing the overall removal efficiency, with a view to removing especially the rejected claimants to their countries-of-origin as soon as possible.

Thank you, President.