

LCQ22: Non-refoulement claims

Following is a question by the Hon Lai Tung-kwok and a written reply by the Secretary for Security, Mr Tang Ping-keung, in the Legislative Council today (January 8):

Question:

It has been learnt that at present, unsubstantiated claimants of non-refoulement claims (claims) who are still stranded in Hong Kong have different ways to delay their repatriation, such as lodging appeals continuously after their applications for leave for judicial review (JR) have been rejected, refusing to co-operate in obtaining travel documents, lodging subsequent claims, and applying for writs of habeas corpus. In this connection, will the Government inform this Council:

- (1) of the number of lodged claims received in each month of last year;
- (2) of the number of illegal immigrants (IIs) who lodged claims in each month of last year;
- (3) of the current number of claimants in Hong Kong, with a breakdown by (i) nationality, (ii) nature of stay (i.e. IIs, overstayed visitors, overstayed foreign domestic helpers and refused entrants), and (iii) status of stay in Hong Kong (i.e. being screened, being handled by the Appeal Board, being arranged to be repatriated, and requests for subsequent claims yet to be processed, etc.);
- (4) among the applications for leave for JR in respect of claims made by unsubstantiated claimants in the past five years, of the number of those pending determination by the Court of First Instance of the High Court;
- (5) of the number of detained claimants who applied for writs of habeas corpus in each month of last year and, among them, the number of those who were successfully released;
- (6) of the number of subsequent claims lodged by claimants in each month of the past five years, their success rates, and the number of cases in which leave for JR was sought again after the requests for subsequent claims had been rejected; and
- (7) of the number of claimants holding what are commonly known as "going-out passes" who were arrested for committing criminal offences last year, with a tabulated breakdown by type of offences; whether the number of such cases has shown an upward trend?

Reply:

President,

The overall policy objective of handling non-refoulement claims, under

the premise of preventing potential abusers of the non-refoulement claim mechanism from entering Hong Kong, is to ensure as far as possible high efficiency in processing the claims and relevant appeals while meeting the high standards of fairness required by law, and to remove unsubstantiated claimants from Hong Kong as soon as possible. Over the years, the Government has adopted a multi-pronged strategy in handling non-refoulement claims.

The Government amended the Immigration Ordinance (the Ordinance) in 2021 to include provisions addressing claimants' delaying tactics, which are applicable for the Government to assess the reasonableness and lawfulness of the detention period of individual claimant, such as whether the claimants have been co-operative in obtaining travel documents for returning to their countries of origin, and whether they have caused any hindrance to the removal process, etc. In fact, in July 2023, the Government lodged an appeal for a habeas corpus case (Johnson Benjamin v Director of Immigration and Secretary for Security (CACV 229/2023)), and the Court of Appeal (CA) allowed the appeal in November 2023. The relevant judgment specified that any period of prolonged detention or delay in the processing of a non-refoulement claim caused by a detainee's own unco-operative or unreasonable behaviours should not be regarded or counted as an unreasonable period of detention. Otherwise, it would result in an absurd situation where the more unco-operatively the detainee behaves in the removal procedures, the more likely he/she is to be released. That is against the intention of the relevant common law principles. This judgment directly provides clear legal guidance on relevant common law principles, which greatly helps the Government in detaining claimants in accordance with the law.

In addition, the Government implemented the updated removal policy in December 2022 to counter unsubstantiated claimants employing the institution of legal proceedings as a delaying tactic to prolong their illegal stay in Hong Kong. Under the updated removal policy, the Immigration Department (ImmD) could proceed with the removal of unsubstantiated claimants from Hong Kong upon dismissal of their judicial review (JR) or relevant leave applications pertaining to their non-refoulement claims by the Court of First Instance (CFI) of the High Court, irrespective of whether there are outstanding court proceedings (including appeals lodged to the higher courts against the decisions of the CFI).

Meanwhile, the Judiciary has been proactively implementing a host of measures to ensure that non-refoulement claim related cases are handled as expeditiously as reasonably practicable, including increasing manpower to handle the growing number of cases, as well as streamlining the relevant court procedures to enhance efficiency, etc.

In response to the question raised by the Hon Lai Tung-kuok, having consulted the ImmD, the Hong Kong Police Force (Police) and the Judiciary, the consolidated reply is as follows:

(1) and (2) In 2024 (as at end-November), the number of non-refoulement claims received by the ImmD was 2 646, among which there were 790 claimants entered Hong Kong illegally. The monthly breakdown of the two figures is as follows:

2024	Number of non-refoulement claims received	Number of illegal immigrants (IIs) among the claims received in that month
January	513	287
February	154	27
March	250	81
April	193	43
May	178	34
June	143	39
July	230	53
August	239	59
September	210	53
October	277	60
November	259	54
January to November	2 646	790

(3) According to the information of the ImmD, as at end-November 2024, there were 15 782 claimants remaining in Hong Kong, including about 900 claimants with their claims pending determination by the ImmD, about 1 100 claimants with their appeals against the ImmD's decision pending determination by the Torture Claims Appeal Board (TCAB), about 8 400 claimants with on-going applications to the CFI for JR after their claims/appeals were rejected/dismissed by the ImmD/TCAB or other litigation proceedings, as well as about 1 900 unsuccessful claimants being imprisoned, remanded, involved in ongoing prosecution or investigation process, or remaining in Hong Kong due to other reasons. For the 3 500 or so remaining claimants, removal was being arranged (including about 2 600 persons pending confirmation of repatriation eligibility by their countries of origin). The breakdowns by nationality and status in Hong Kong of the aforesaid non-refoulement claimants are tabulated below:

Table 1

Nationality	Number of claimants (as at end-November 2024)
Indonesian	3 154
Vietnamese	3 028
Pakistani	2 312
Indian	2 140
Bangladeshi	1 884
Filipino	1 382
Thai	279

Sri Lankan	270
Nigerian	248
Others	1 085
Total	15 782

Table 2

Status in Hong Kong	Number of claimants (as at end-November 2024)
IIs	6 664
Overstayers	7 748 (Note)
Others	1 370
Total	15 782

Note: Including 3 504 former foreign domestic helpers.

(4) According to the information provided by the Judiciary, as at end-November 2024, over the past five years, the number of JR leave applications raised by unsubstantiated claimants against their claims that were pending the CFI's decision is as follows:

Year	Number of JR leave applications raised by unsubstantiated claimants that were pending the CFI's decision
2020	1 590
2021	952
2022	844
2023	1 633
2024 (January to end-November)	1 867

(5) According to the information of the ImmD, in 2024 (as at end-November), the number of habeas corpus applications lodged to the CFI by immigration detainees (mainly non-refoulement claimants) was 114, among which only three were allowed by the CFI. The monthly breakdown of the relevant application figures is as follows:

2024	Number of habeas corpus applications
January	17
February	6
March	17
April	12
May	14

June	8
July	9
August	10
September	5
October	7
November	9
January to November	114

After careful consideration, the Government lodged an appeal against one of the above habeas corpus applications allowed by the CFI, and the CA allowed the appeal. For cases which have been arranged on recognisance in lieu of detention in view of the judgment by the Court, the Government will continue to carefully consider the case background, the judgment by the Court and the advice from the Department of Justice, when deciding whether to appeal for each individual case.

(6) From 2020 up to end-November 2024, the ImmD received a total of 2 179 subsequent claims (SC) requests. Amongst the 2 073 SC requests processed, 192 (around 9 per cent) were allowed to make SCs and only one of them was substantiated eventually. The monthly breakdown of the number of SC requests received is as follows:

SC requests received					
	2020	2021	2022	2023	2024
January	29	31	53	22	20
February	8	36	15	11	23
March	36	61	55	17	34
April	20	52	37	41	21
May	36	21	72	22	23
June	48	55	75	33	35
July	58	28	70	33	26
August	49	25	60	27	34
September	47	31	30	29	40
October	52	70	31	21	49
November	35	37	30	37	42
December	28	63	30	25	–
Total	446	510	558	318	347

The Judiciary did not maintain the breakdown of the JR lodged by relevant persons against the refusal of their SC requests.

(7) According to the information of the Police, in 2024 (as at end-November), the number of non-ethnic Chinese (NEC) persons on recognisance and issued with Form No. 8 (mainly non-refoulement claimants) who were arrested for criminal offences is tabulated below with breakdown by crime category:

Offence	2024 (as at end- November)
Shop theft	162
Miscellaneous thefts	85
Wounding and serious assault	68
Serious drug offences (Note 1)	60
Criminal damage	44
Burglary	26
Serious immigration offences (Note 2)	23
Others (Note 3)	235
Total	703

Note 1: Serious drug offences include possession of dangerous drugs exceeding a specified amount (i.e. possession of drugs, such as five grams of cocaine/heroin/marijuana, etc.), manufacturing dangerous drugs and trafficking of dangerous drugs, etc.

Note 2: Serious immigration offences include aiding and abetting IIs, arranging passage of unauthorised entrants to Hong Kong and using an identity card relating to another person, etc.

Note 3: Others include forgery and coinage, pickpocketing, disorder/fighting in public places and possession of offensive weapon etc.

In 2024 (as at end-November), the monthly average of the number of NEC persons on recognisance and issued with Form No. 8 (mainly non-refoulement claimants) who were arrested for criminal offences was 64, which was slightly increased by two persons when compared to the monthly average of 2023 (62 persons).

Regarding those triad-related or violent cases and serious offences such as robbery that are of concern, it is imperative for the Police to solve these cases as soon as possible. In May last year, the Police upgraded its Crime Wing Working Group on NEC Involvement in Organized Crime and Triad Activities to a steering committee. The steering committee, chaired by a Senior Assistant Commissioner of Police, strengthens the review of the relevant crime situation and intelligence collection; enhances co-ordination; and formulates more strategic enforcement actions. After the conviction of individual NEC person on recognisance and issued with Form No. 8 of an offence in Hong Kong, the prosecution will also provide to the Court the crime statistics or case laws of the relevant group and invite the Court to consider enhancing the sentence as a result of the accused's status. The Police will conduct risk assessment based on the crime situation, including strengthening patrol, stop and search and carrying out anti-crime operations in high risk hours and regions.

To further enhance crime prevention and detection, and achieve a greater deterrent effect on violent and serious crimes on the streets, the Police have started to install closed-circuit televisions (CCTV) in public places with higher crime rate and pedestrian flow, among which 15 installations have been completed for technical tests in Mong Kok in early April 2024. In the same month, the Police successfully used CCTV cameras to detect a robbery case involving NEC persons issued with Form No. 8 and a triad-related possession of imitation firearm case respectively, and arrested four suspects within 24 hours after the time of the incident. The Police has continued to install the remaining 600 sets of CCTV cameras in regions with higher crime rates starting from mid-2024, and completed the installation of 589 sets of CCTV cameras as at November 30. These CCTV cameras successfully assisted in detecting 87 cases, and 151 persons were arrested.

In addition, according to the ImmD's record, in 2024 (up to end-November), the number of NEC persons on recognisance and issued with Form No. 8 (mainly non-refoulement claimants) who were arrested for taking unlawful employment contrary to section 38AA of the Ordinance was 357 (monthly average was 32), meaning a reduction of eight persons when compared to the monthly average in 2023 (40 persons).

The ImmD will continue to closely monitor the trend of unlawful employment crimes, step up enforcement actions against unlawful employment, disseminate the serious consequences of employing illegal workers on multiple fronts, raise public awareness of not to employ illegal workers and take resolute enforcement actions.