

LCQ4: Non-refoulement claims

Following is a question by the Hon Elizabeth Quat and a reply by the Secretary for Security, Mr Tang Ping-keung, in the Legislative Council today (November 15):

Question:

It has been reported that the number of illegal immigrants (IIs) has soared recently, and non-ethnic Chinese IIs, after entering Hong Kong illegally, will usually lodge non-refoulement claims so as to stay in Hong Kong, and the law and order problems caused by non-refoulement claimants (claimants) have been bothering Hong Kong for years. In this connection, will the Government inform this Council:

(1) among the unsubstantiated claimants, of the number of those who are remaining in Hong Kong and their reasons of stay, as well as the number of claimants remaining in Hong Kong who have criminal records; whether it has projected the public expenditure incurred for such claimants next year;

(2) of the number of crimes and the offences involving the claimants this year, and among which the number of crimes involving triad societies; as it is learnt that some illegal organisations have arranged lawbreakers to enter Hong Kong illegally and then lodge non-refoulement claims so that they can stay in Hong Kong to engage in illegal activities, of the authorities' measures in place to prevent such a situation; and

(3) whether it has formulated plans to completely resolve the problems caused by the claimants as soon as possible, including the measures in place to step up efforts against illegal immigration activities and prevent abuse of the non-refoulement claim mechanism by IIs, as well as whether it will consider exploring the suggestion made by some members of the public for amending the legislation to impose "immediate repatriation upon arrest" on IIs and prohibit their lodging of non-refoulement claims?

Reply:

President,

The Security Bureau (SB) is highly concerned about the recent surge in the number of non-ethnic Chinese (NEC) illegal immigrants (IIs). Amongst the 968 NEC IIs intercepted between January and October this year, around 75 per cent were intercepted in the last three months. Over the last three years, the proportion of the number of NEC IIs intercepted to that of NEC IIs who made non-refoulement claim in the same period is about 80 per cent. However, since the implementation of the Unified Screening Mechanism in 2014, only around 1.3 per cent of the non-refoulement claims were substantiated. Under the premise of preventing potential abusers of the non-refoulement claim mechanism from entering Hong Kong, the Government has all along adopted a

multi-pronged strategy by maintaining high efficiency in processing non-refoulement claims while meeting the high standards of fairness required by law, and removing unsubstantiated claimants from Hong Kong as soon as possible.

My reply to the various parts of the question is as follows:

(1) As at October this year, there were around 14 700 claimants remaining in Hong Kong for different reasons, among which over half (7 755 persons) still had judicial review cases related to their non-refoulement claims pending disposal by the Court of First Instance of the High Court and the confirmation of repatriation eligibility of 2 670 persons by their countries of origin was pending. Details are at Appendix 1.

The crime statistics of NEC persons on recognisance and issued with Form No. 8 (mainly non-refoulement claimants) in Hong Kong are at Appendix 2.

The estimated expenditures on handling non-refoulement claims and related work in 2023-24 is \$1.4 billion. Based on the spending to-date, it is estimated that the eventual actual expenditures should be less than the estimate. It is estimated that the expenditures in 2024-25 would be at a similar level.

(2) & (3) In view of the general resumption of international flights in the Mainland after the pandemic, the Mainland visa-issuing authorities abroad have resumed issuing visas to Mainland China to foreigners since March this year. Coupled with rumors inducing IIs to come to Hong Kong, the number of NEC IIs in recent months has been on a rise. However, only 17 NEC persons on recognisance and issued with Form No. 8 were arrested for triad-related cases this year, which only account for 3 per cent of the arrested. There is currently no evidence that criminal syndicates systematically recruit NEC persons to smuggle into Hong Kong to participate in illegal activities.

Nonetheless, we have taken measures in response to the situation:

(i) On intercepting at source, after discussions between the Mainland and Hong Kong, Mainland law enforcement agencies (LEAs) have been strictly examining the purposes of suspicious NEC persons for entry into the Mainland and would refuse their entry in case of suspicion. The SB recently met with the Consulates-General of different countries in Hong Kong, expressed great concern about the influx of NEC IIs into Hong Kong and secured their agreement to fully collaborate. Since 2016, Hong Kong has also been conducting dedicated operations with Mainland law enforcement units as well as the public security authorities of Guangdong, Guangxi, Yunnan and Xinjiang provinces to collaborate in cracking down smuggling of NEC persons into Hong Kong through the Mainland.

(ii) On enforcement and intelligence, a one-month anti-illegal immigration joint operation in Guangdong, Hong Kong and Macao, the "Operation Clear Bay", was recently launched under the co-ordination of the Office of the Leading Group for Combating Smuggling of Guangdong Province. Local LEAs arrested a

total of 405 persons. The Mainland and local LEAs also conducted dedicated operations, and mounted a three-day dedicated joint operation, "Mungoshunt-3", in November. The Immigration Department (ImmD) and the Hong Kong Police Force (the Police) arrested 70 persons. The arrested persons in the two operations were mainly NEC IIs, and included 10 persons and three persons respectively for aiding and abetting others to land in Hong Kong unlawfully and remain in Hong Kong. The Mainland and local LEAs have also continued to strengthen intelligence exchange; tighten the issuance of visas to Mainland China and control over the entry of NEC tourists into the Mainland; investigate syndicates organising cross-boundary illegal immigration; conduct interception at black spots in the Mainland and joint patrols at sea to deter NEC IIs from entering Hong Kong. The Guangdong provincial security unit has recently uncovered a number of cases involving smuggling into Hong Kong, and arrested a number of persons involved in organising smuggling operations and NEC persons who intended to smuggle.

In May this 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.

In view that some NEC IIs would work illegally after making non-refoulement claims, the ImmD conducted a total of 11 081 inspections and arrested 512 NEC illegal workers from January to October this year in order to lower their economic incentives. The Government will continue to conduct surprise inspections on black spots where illegal immigrants hide and engage in illegal employment and to step up efforts in publicising that employment of illegal workers is a serious offence punishable by a maximum fine of \$500,000 and imprisonment of 10 years.

(iii) On expediting the handling of claims, the Government will continue to take different measures, including maintaining high efficiency in screening non-refoulement claims and related appeals, expediting the removal of unsubstantiated claimants under the updated removal policy, making good use of the significantly increased detention capacity and strengthening the management of detention facilities.

Regarding the view of not allowing NEC IIs to make non-refoulement claims, the relevant legality and pros and cons must be carefully considered. In accordance with the judgment laid down by the Court of Final Appeal in 2012 for the Udamaka case, the Government cannot remove any person, no matter how 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, even if a claimant has been convicted of an offence, it remains a duty of the Government to meet the Court's requirement

to complete all the screening procedures which meet the high standard of fairness before proceeding with repatriation of the claimant.

Thank you, President.