

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

香港添馬添美道 2 號

SBCR 26/15/5691/74

2 Tim Mei Avenue, Tamar, Hong Kong

本函檔號 Our Ref.:

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香港中區立法會 1 號
立法會綜合大樓
立法會秘書處
余寶琮女士

余女士：

尋求庇護者及難民在港的生活情況

就2015年4月30日來函及信中所附夾的291封書面陳述，現回覆如下。

背景

2. 根據《入境條例》(第115章)，偷渡入境的外國人，以及在入境事務處(下稱「入境處」)准許的逗留期限屆滿後仍然留在香港，或到港時已遭入境處拒絕入境的旅客(上述人士統稱「非法入境者」)須被遣離香港。為維護出入境管制及公眾利益，他們應該盡快被遣返。然而，根據自1992年適用於香港的聯合國《禁止酷刑公約》¹及法院自2004年的多項裁決，若非法入境者在另一國家有真實及針對他本人的風險會遭受酷刑、殘忍、不人道或侮辱之處遇或懲罰或迫害，

¹ 《禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約》第3條訂明，如有充分理由相信任何人在另一國家將有遭受酷刑的危險，締約國便不得將該人驅逐、遣返或引渡至該國。

入境處不能將他遣返至該國家。同時，法院裁決亦規定，如有非法入境者聲稱被遣返後會遭受上述風險（下稱「免遣返聲請」），入境處必須按照合乎高度公平標準的程序處理審核有關風險是否存在。

3. 根據記錄，291 位申述人均為須被遣離香港的非法入境者，當中 281 人曾提出免遣返聲請以抗拒被遣返，包括：

- 228 人聲請尚待審核；
- 51 人聲請已被入境處拒絕，並向酷刑聲請上訴委員會（上訴委員會）提出上訴；當中 3 宗上訴已被上訴委員會拒絕；
- 1 人已撤回聲請；及
- 1 人的聲請獲確立，正待聯合國難民事務高級專員署安排移居至第三國家。

4. 至於另外 10 名申述人，入境處沒有他們提出免遣返聲請的記錄。換言之，291 名申述人當中，只有 1 人確實為已獲得免遣返聲請保護。

5. 為跟進終審法院於 2012 年 12 月及 2013 年 3 月作出的兩項相關裁決，政府於 2014 年 3 月實施統一審核機制²，審核非法入境者就所有適用的理由提出抗拒被遣返的聲請。統一審核機制實施時，尚待審核的免遣返聲請有 6 700 宗。截至 2015 年 5 月，有 1 900 宗聲請已作決定，1 400 宗被撤回，但同期接獲的新聲請有 6 500 宗，令尚待審核的聲請增至 9 900 宗。

6. 無論聲請的結果如何，免遣返聲請人乃非法入境者的身份都不會因為他們提出聲請而有所改變。免遣返聲請人和其他非法入境者一樣，不可在香港工作，否則屬違法。2014 年 2 月，終審法院確認免遣返聲請人（即使其聲請獲確立）在《基本法》或任何其他法律下均沒有在香港工作的權利。相關重要裁決摘要見附件一。

² 統一審核機制的程序根據於 2012 年 12 月生效的《入境條例》第 VIIC 部下的酷刑聲請法定審核程序所制訂。

7. 聯合國《1951年關於難民地位的公約》從來未曾適用於香港；與申述人的說法不同，在香港要求免被遣返的非法入境者，包括現時的申述人，不會被視為「尋求庇護者」或「難民」。舉例而言，無論他們的聲請結果為何，處方都不會批准他們在港合法定居，只會暫緩遣返他們。事實上，長久以來，政府的一貫政策，是不給予任何人庇護，亦不會決定或確認任何人為難民。

人道援助計劃

8. 個別免遣返聲請人在等候審核期間未必能應付基本生活需要。基於人道理由，政府自2006年起向這些聲請人提供實物援助，讓有關人士不致陷於困境（下稱「援助計劃」）。援助範圍包括臨時住屋、基本公用設施津貼、食物、衣履、基本日用品、適當的交通津貼，以及輔導服務。

9. 社會福利署（下稱「社署」）自2006年4月起透過非政府機構推行援助計劃。援助計劃旨在確保免遣返聲請人在港期間不致陷於困境，但不會為免遣返聲請人提供超出基本需要的援助，以避免出現磁石效應，對援助計劃的長遠承擔能力及香港的出入境管制造成嚴重影響。

10. 此外，醫院管理局／社署會按個別個案的情況，為在港有需要的聲請人提供公立診所或醫院的醫療費用減免。若未成年的免遣返聲請人希望在滯港期間就學，如預計他們不會在短時間內被遣返，教育局會按每宗個案的情況，作適當的就學安排³。在職家庭及學生資助辦事處亦會按個別個案需要，考慮相關資助的申請。

³考慮因素包括是否有學位可供分配、修讀期、有關兒童的年齡和教育背景等。

改善措施

11. 經考慮包括價格水平變化等相關因素及服務使用者、相關非政府機構及議員在立法會福利事務委員會會議上提出的意見後，政府自 2014 年 2 月推出改善措施，包括住屋、食物、交通及公用設施津貼等方面。詳情如下：

- 住屋：每名成年聲請人的租金津貼增至每月 1,500 元；另提供最高 3,000 元或相等於兩個月租金金額（以較少者為準）作租金按金，及最高 750 元或相等於半個月租金金額（以較少者為準）作物業代理費用；
- 食物：每名聲請人的食物津貼預算增至每月 1,200 元；
- 公用設施：每名聲請人津貼增至每月 300 元；及
- 交通津貼：按聲請人的居住地點及慣常車程數目，每名聲請人的交通費用增至每月 200 至 420 元不等。

詳情請參閱立法會 CB(2)626/13-14(06)號文件。

12. 就住宿援助方面，截至 2015 年 3 月底，超過 90% 的服務使用者選擇自行尋找居所。這是援助計劃自 2006 年推行以來所採用的慣常做法。在一般情況下，香港國際社會服務社（服務社）不會為服務使用者尋找居所。事實上，近期數據顯示，拒絕被遣返的非法入境者一般在到港平均 14 個月後才提出免遣返聲請。在向社署及服務社申請援助時（只有免遣返聲請人才合乎資格接受援助），大部份服務使用者已與業主簽訂租約。服務社的主要角色是在評估服務使用者所選擇的居所後，直接向單位業主發放每月的租金津貼。無論如何，一份租約包括業主和租客雙方須遵守的條款，由雙方直接簽訂租約較為合適。

新服務合約

13. 援助計劃的第七輪服務合約於 2015 年 5 月屆滿。就此，第八輪服務合約的新一輪招標邀請工作於 2014 年 11 月展開。經考慮部份關注援助計劃的非政府機構及立法會議員的意見後，政府將原為一份的服務合約改為三份服務範圍較小的服務合約，按服務區域（香港島及離島、九龍、新界）劃分，以鼓勵更多有條件的非政府機構提供服務。招標工作嚴格遵從《物料供應及採購規例》所載列的規定和程序進行。服務社獲批出新服務合約，涵蓋三個服務區域，為期兩年。合約由 2015 年 5 月 26 日起生效。

14 另一方面，因應收集到的意見，政府在新服務合約內引入「食物券」以代替實物食物援助。在新服務合約下，每名服務使用者每月會獲發食物券，價值為 1,200 元。食物券只可用作購買食物之用，不得兌換為現金，亦不可轉讓他人。對於緊急個案或有合理需要的其他服務使用者，服務社會繼續安排以實物形式發放食物，作應急之用。

15. 服務社自 2015 年 5 月 26 日起通知所有服務使用者有關批出的新服務合約以及上文提及的相關安排。服務社通知服務使用者的信件載於附件二。

財政預算

16. 如上文所述，尚待審核的免遣返聲請由 2014 年 2 月的 6 700 宗增加至 2015 年 5 月的 9 900 宗。接受援助計劃的服務使用者人數在同一段時間相應地由 5 700 人增至 9 300 人。援助計劃的開支由 2014-15 財政年度的 2 億 4,600 萬元增至 2015-16 財政年度預算的 3 億 2,900 萬元。

17. 社署會繼續嚴格監管新服務合約的推行，包括引入食物券的情況。為確保服務水平和公帑得以適當運用，社署會繼續嚴格監管服務，包括透過進行定期或突擊巡查，善用已有的處理投訴機制，以及細察服務社每月呈交的財政報告及服務報告。

18. 我們會詳細考慮所有意見，包括你於 2015 年 4 月 30 日的信件所夾附的 291 個個案中所表達的關注，以期盡快、公平地為免遣返聲請人審核其申請，打擊非法入境，防止現有機制被濫用。與此同時，我們會繼續為聲請人提供實物援助，讓有關人士不致陷於困境。

保安局局長

(胡德英 代行)

副本送：

入境事務處處長（經辦人：馮伯豪先生）

社會福利署署長（經辦人：馮民重先生）

2015 年 6 月 22 日

附件一

法院有關免遣返保護的主要裁決

日期	案件	裁決
2004 年 6 月	Sakthvel Prabakar 訴 保安局局長 [2004] 7 HKCFAR 187	終審法院裁定，對將被遞解離境的人而言，他的酷刑聲請涉及免受酷刑的基本人權，是生死攸關的事。因此，政府必須以合乎高度公平標準的程序獨立地審核有關聲請。
2008 年 12 月	FB 訴 入境處處長及 保安局局長 [2009] 2 HKLRD 346	高等法院原訟法庭裁定，政府須採取一系列措施，包括在審核酷刑聲請的過程中為聲請人提供公費法律支援，以合乎 Prabakar 案所指的高度公平標準。
2011 年 4 月	BK 及 CH 訴 入境處處長 [2011] HKCA 85	高等法院上訴法庭裁定，審核聲請的過程，需要聲請人及入境處共同努力。聲請人不能在提出聲請後袖手旁觀，等待入境處推翻其聲請。
2012 年 12 月	Ubamaka Edward Wilson 訴 保安局局長 [2012] 15 HKCFAR 743	終審法院裁定，《香港人權法案》第 3 條下免受酷刑，或殘忍、不人道或侮辱之處遇或懲罰（不人道處遇）的權利是絕對及不容減免的。因此，無論一個人的行為如何危險或不可取，若他在另一國家有確切及相當大的風險會遭受不人道處遇，政府亦不可將他遣返至當地。
2013 年 3 月	C 等人 訴 入境處處長 [2013] 16 HKCFAR 280	終審法院裁定，若入境事務處處長維持一貫做法，在行駛權力遣返某人至另一國家前會考慮他在當地是否有遭受迫害的風險，則處長必須在遣返他至當地前，獨立地審核有關風險。

日期	案件	裁決
2014 年 2 月	GA 等人 訴 入境處處長 [2014] 17 HKCFAR 60	終審法院裁定，免遣返聲請人，即使其聲請獲確立，在《基本法》或任何其他法律下仍然沒有在香港工作的權利。
2014 年 6 月	ST 訴 Betty Kwan [2014] HKCA 309	高等法院上訴法庭裁定，在上訴過程中聲請人沒有獲安排口頭聆訊的絕對權利，但是酷刑聲請上訴委員會在考慮安排口頭聆訊時應按照若干準則處理。上訴法庭亦認為在上訴時為聲請人安排口頭聆訊應是常規而非例外做法。

附件二

**香港國際社會服務社****向免遣返聲請人提供的援助服務
通告**

香港國際社會服務社成功獲授予第八輪「向免遣返聲請人提供的援助服務」合約，詳情請參考由社會福利署於 2015 年 5 月 21 日發出之通知函。

就最新的服務合約內容，要點如下：

1. 項目名稱更改

由 2015 年 5 月 26 日起，項目名稱將更改為「向免遣返聲請人提供的援助服務」¹。

2. 地區辦事處

服務使用者須按住址向所屬的地區辦事處報到。

住址所屬區域	香港國際社會服務社辦事處
香港及離島	九龍大角咀彌蘭街 22 號李寶椿健康院 1 樓
九龍區	九龍大角咀彌蘭街 22 號李寶椿健康院 1 樓 九龍旺角塘尾道 18 號嘉禮大廈 21 樓
新界區	新界荃灣川龍街 118 號百悅坊 11 樓

如服務使用者隨後有任何住址變更，將被轉介至新住址所屬的地區辦事處繼續接受服務。

3. 食物券

按照社會福利署最新政策，每位服務使用者每月將獲發價值港幣 1,200 元的食物券，為此現正開展的電子食物券制度將於稍後實施。在電子食物券制度開始實施前，每位服務使用者每月將獲發總值港幣 1,200 元的超級市場食物券以作過渡性安排。

食物券只能用作購買食物，不能兌換現金或轉讓。

只能用作購買食物—食物券只容許購買基本食物，不包括酒精、香煙、藥物、健康及美容產品、糖果、朱古力、雪糕、薯片、零食、禮品及非食用的嬰兒產品。

¹已被聯合國難民事務高級專員認可，等候被安置於第三方國家的已確認難民身份者，亦將合資格獲得此項目的援助。

不能兌換現金—食物券不能以兌換或退還方式獲取現金。此食物券的使用方式與其他現金券相同，此項目的供應商不會提供找贖，因此使用者須按食物券的價值購買食物，食物券不能轉售。

不能轉讓—為防止食物券被轉讓、兌換現金或用作其他用途，服務使用者必須保留購物單據，並交予香港國際社會服務社，以取得下月的食物券。如服務使用者未能在月內用畢食物券，須向香港國際社會服務社展示剩餘的食物券（只作檢查及記錄用途）。

食物券如被刮花、損毀或塗改，即告作廢。

食物券如有遺失、被竊或損壞，將不獲補發。

4. 緊急援助食物只會以實物形式發放

待香港國際社會服務社審核的新服務使用者，或經香港國際社會服務評估急需緊急援助食物的服務使用者，將獲地區辦事處以實物形式發放食物。有關要求應向負責的個案工作人員提出，而緊急援助食物將不會以食物券形式提供。

5. 日用品將維持以實物形式發放，但改為在地區辦事處領取

所有日用品將維持以實物形式發放，並於服務使用者所屬的地區辦事處派發。領取時間將與每月合約更新為同一天。

6. 住宿

有關租金按金、地產經紀收費及每月租金援助的政策將維持不變。每名成人及小童每月的租金津貼金額，分別為港幣 1,500 及 750 元。

免遣返聲請人與香港國際社會服務社，有著共同的責任在可負擔的津貼水平尋找合適的居所。一般情況下，香港國際社會服務社將協助每名免遣返聲請人，尋找合適居所最多三次，特殊個案情況將不受此限。

7. 以下援助將維持不變：

- a. 公用設施津貼維持每人每月港幣 300 元
- b. 交通費津貼維持按所住地區計算
- c. 衣物將會按及要求及需要時發放

8. 如有任何疑問或其他需要，請聯絡負責的個案工作人員。

我們期待與您們繼續保持良好的合作關係，謝謝。

22/5/2015

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ACTION

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

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來函檔號 Your Ref.:

CP/C 4931/2015

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Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn. Ms Yvonne Yu)

22 June 2015

Dear Ms YU,

**Matters relating to humanitarian assistance for
non-refoulement claimants in Hong Kong**

I write in response to your letter of 30 April 2015, enclosing similar written submissions from 291 complainants in relation to the captioned matter.

Background

2. Foreigners who smuggled themselves into Hong Kong, and visitors who overstayed their limit of stay allowed by the Immigration Department (ImmD) or who were refused entry by ImmD upon arrival at Hong Kong (collectively "illegal immigrants") are subject to be removed from Hong Kong in accordance with the Immigration Ordinance (Cap. 115). To safeguard immigration control and for public interest, they should be removed as soon as practicable. However, pursuant to the United Nations Convention Against Torture which applies to Hong Kong since 1992¹ and multiple court rulings since 2004, ImmD cannot remove

¹ Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that "no State Party shall expel, return ('refouler') or

those illegal immigrants to another country where they would face a genuine and personal risk of being subjected to torture, or cruel, inhuman or degrading treatment or punishment or persecution at that country. Moreover, court rulings mandate that if an illegal immigrant alleges that he cannot be removed to another country because he would face such risks there (non-refoulement claim), ImmD must assess whether such risks exist under procedures which meet high standards of fairness.

3. From our records, all the 291 complainants above are illegal immigrants who are subject to be removed from Hong Kong. 281 of them have been resisting removal by making a non-refoulement claim –

- 228 of these claims are pending decision by ImmD;
- 51 of these claims were rejected by ImmD, and the claimants have lodged an appeal to the Torture Claims Appeal Board (TCAB) against ImmD's decision; three of these appeals were already rejected;
- 1 person has withdrawn the claim; and
- 1 person has his claim substantiated; he is now pending re-settlement to a third country being arranged by the United Nations High Commissioner of Refugees.

4. For the remaining 10 complainants, there is no record of them making any non-refoulement claim to ImmD. That is to say, none but one of the 291 illegal immigrants are "persons granted non-refoulement protection" as proclaimed in the complaint.

5. The Government commenced operating a unified screening mechanism (USM)² in March 2014 following two rulings by the Court of Final Appeal (CFA) to screen claims made by illegal immigrants refusing to be removed to another country on all applicable grounds. When the USM commenced, there were 6 700 illegal immigrants resisting removal from Hong Kong by making a non-refoulement claim; by end May 2015, 1 900 of these claims were determined and 1 400 other illegal immigrants withdrawn their claim, yet 6 500 more illegal immigrants made a non-refoulement claim to resist being removed, bringing the total number of claims pending assessment to 9 900.

extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

² Screening procedures of the USM follow those of the statutory screening mechanism for torture claims under Part VIIC of the Immigration Ordinance already in place since December 2012.

6. The illegal immigrant status of non-refoulement claimants will not change because of their non-refoulement claim, regardless of the result of their claim. As all other illegal immigrants, non-refoulement claimants are prohibited from taking up employment in Hong Kong under the law. In February 2014, the CFA upheld that non-refoulement claimants, even if their claim is substantiated, have no right under the Basic Law or any other legal right to work in Hong Kong. A summary of the relevant key court rulings is at **Annex A**.

7. The 1951 United Nations Convention relating to the Status of Refugees has never applied to Hong Kong, and, contrary to the complainants' assertion, **illegal immigrants seeking non-refoulement in Hong Kong**, including those making this current complaint, **are illegal immigrants and are not to be treated as "asylum seekers" or "refugees"**. For example, they will not be offered legal status to settle in Hong Kong, regardless of the result of their non-refoulement claim (which only offers them temporary suspension of removal). In fact, the Government has a long-established policy of not granting asylum to anyone, and not determining or recognizing anyone as a refugee.

Humanitarian Assistance

8. Some non-refoulement claimants may not be able to meet their basic needs when their claim is being assessed. Since 2006, on humanitarian grounds, the Government has been offering in-kind assistance to those claimants to prevent them from becoming destitute (the assistance programme). Coverage of such assistance includes temporary accommodation, basic utilities allowance, food, clothing, basic necessities, appropriate transport allowance and counselling activities.

9. The Social Welfare Department (SWD) is charged with the responsibility to provide the assistance programme through non-governmental organisations (NGOs) since April 2006. The objective of the assistance programme is to ensure that non-refoulement claimants will not, during their presence in Hong Kong, become destitute. The assistance programme is not intended to provide them with extra assistance than is necessary to meet their basic needs, so as to avoid any magnet effect which may have serious implications on the sustainability of the assistance programme and on our immigration control.

10. In addition, the Hospital Authority or SWD will grant one-off waivers of medical expenses at public clinics or hospitals to claimants in need on a case-by-case basis. If minor claimants will not be removed from Hong Kong within a short period and would wish to attend school whilst here, the Education Bureau (EDB) will, depending on case details, arrange for his school placement as appropriate³. The Working Family and Student Financial Assistance Agency will also consider applications for relevant fee subsidy on a need basis.

Service enhancements

11. Taking into account relevant factors such as changes in price level, as well as the views of service users, concerned NGOs and Members given at the meetings of the Legislative Council (LegCo) Panel on Welfare Services, the Government has enhanced the service package in terms of accommodation, food, transportation and utilities allowances since February 2014. To recap, they include –

- Accommodation: the rent allowance grid per adult claimant has been increased to \$1,500 per month; rental deposits of up to \$3,000 or an amount equivalent to two months of rent, whichever is less; and property agent fees of up to \$750 or an amount equivalent to the rent for half a month, whichever is less;
- Food: the budget for food for each claimant has been increased to \$1,200 per month;
- Utilities: the allowance per claimant has been increased to \$300 per month; and
- Transportation allowance: the allowance per claimant has been increased, ranging from \$200 to \$420 per month depending on their location of residence and the number of routine journeys.

Please refer to LegCo Paper No. CB(2) 626/13-14(06) for details.

12. On rent allowance, as at end of March 2015, over 90% of service users choose to identify suitable accommodation on their own, which has been the prevailing *modus operandi* of the assistance programme since 2006. The International Social Service Hong Kong Branch (ISS-HK) does not assume the general responsibility to identify suitable

³ Factors to consider may include, for example, whether there are enough school vacancies for placement, the duration of schooling required, the age and education background of the minor, etc. Apart from those claimants who are subject to removal within a short period of time, EDB has successfully arranged placement for all the minor claimants during their stay in Hong Kong over the past five years.

accommodation options for users. In fact, our latest statistics reveal that illegal immigrants resisting removal from Hong Kong only made a non-refoulement claim 14 months on average after their arrival here. A lot of service users have already entered into a tenancy agreement when they approached SWD and ISS-HK for assistance (only non-refoulement claimants are eligible for assistance). The major role of ISS-HK is to release the monthly rent allowance to the landlord direct, after assessment of the suitability of the accommodation chosen by the service user. In any event, a tenancy agreement includes terms which bound both the landlord and the resident(s), it is more appropriate for the two parties to enter into an agreement direct.

New Service Contracts

13. The 7th service contract for the assistance programme since 2006 was due to expire in May 2015. Accordingly, a new round of invitation for tender for the 8th service contracts has been conducted since November 2014. In the light of views of some concerned NGOs and LegCo Members, instead of one single tender for providing service under the entire assistance programme, the Government invited tender for three service contracts, each serving one region in Hong Kong (Hong Kong Island and Islands, Kowloon, and the New Territories), with a view to encouraging more potential NGOs to provide such service. The tendering exercise was conducted in strict compliance with the requirements and procedures laid down in the Stores and Procurement Regulations. ISS-HK has been awarded the service contracts for the three service regions for two years, commencing 26 May 2015.

14. Another new arrangement introduced in the light of views collected is the introduction of food coupons in lieu of the provision of in-kind food assistance. Under the new service contracts, food coupons in the amount of \$1,200 are provided to each service user every month. The food coupons are for food items only, non-cashable and non-transferable. For emergency cases and service users with other justifiable needs, in-kind food assistance will continue to be provided as a contingency arrangement.

15. ISS-HK has, since 26 May 2015, informed all service users of the award of the new contracts and changes in relevant arrangements mentioned above. A copy of the letter of ISS-HK to service users is at **Annex B**.

Budget

16. As mentioned above, the number of pending non-refoulement claimants in Hong Kong has increased from 6 700 as at end February 2014 to 9 900 as at end May 2015. Correspondingly, the number of service users under the assistance programme also increased from 5 700 to 9 300 during the same period. The expenditure of the assistance programme will increase from \$246 million in 2014-15 to \$329 million (Estimate) in 2015-16.

17. SWD will continue to closely monitor implementation of the assistance programme under the new service contracts, in particular the new food coupon system. To ensure service quality and proper use of public money, SWD will also continue to closely monitor the service through regular and surprise inspections, established mechanism on handling complaints from service users and scrutiny of monthly financial statements and service reports submitted by ISS-HK.

18. We will carefully consider all the views received, including the concerns expressed in the 291 cases enclosed with your letter, with a view to ensuring that non-refoulement claims are screened in a fair and expeditious manner and deterring illegal immigration and abuses to our current system. Meanwhile, we will continue to ensure claimants do not fall destitute whilst in Hong Kong.



(Billy Woo)

for Secretary for Security

c.c. Director of Immigration, Immigration Department
(Attn: Mr P H FUNG)

Director of Social Welfare, Social Welfare Department
(Attn: Mr FUNG Man-chung)

Annex A**Major Court rulings in relation to non-refoulement protection**

Date	Case	Ruling
June 2004	<i>Sakthvel Prabakar vs Secretary for Security</i> [2004] 7 HKCFAR 187	The CFA ruled that, to a potential deportee who has made a torture claim, his life and limb are in jeopardy and his fundamental human right not to be subjected to torture is involved. Accordingly, the Government must determine his claim independently and properly in a way that meets the high standards of fairness .
December 2008	<i>FB vs Director of Immigration and Secretary for Security</i> [2009] 2 HKLRD 346	The Court of First Instance ruled that the Government must implement a series of measures, including the provision of publicly-funded legal assistance to claimants during the torture claim screening process, to meet the high standards of fairness required in <i>Prabakar</i> .
April 2011	<i>BK & CH vs Director of Immigration</i> [2011] HKCA 85	The Court of Appeal (CA) ruled that the exercise of determining whether torture claim is valid must be one of joint endeavour. It is not for a claimant, having stated a claim, to simply sit back and require ImmD to disprove it .

Date	Case	Ruling
December 2012	<i>Ubamaka Edward Wilson vs the Secretary for Security</i> [2012] 15 HKCFAR 743	The CFA ruled that the right not to be subjected to torture or cruel, inhuman, or degrading treatment or punishment (CIDTP) enshrined under Article 3 of the Hong Kong Bill of Rights ⁴ is absolute and non-derogable. Accordingly, the Government must not remove a foreigner to a country where he has a genuine and substantial risk of being subjected to CIDTP, no matter how undesirable or dangerous he is.
March 2013	<i>C & Ors vs Director of Immigration</i> [2013] 16 HKCFAR 280	The CFA ruled that as long as the Director of Immigration maintains a prevailing practice of considering a person's claimed fear of persecution before exercising the power to remove him to another country, the Director is required to independently determine whether the claimed fear of persecution is well-founded before executing such removal.
February 2014	<i>GA & Ors vs Director of Immigration</i> [2014] 17 HKCFAR 60	The CFA ruled that non-refoulement claimants have no right under the Basic Law or any other legal right to work in Hong Kong , even if their claim is substantiated.

⁴ Article 3 of the Hong Kong Bill of Rights implements Article 7 of the International Covenant on Civil and Political Rights, which was applied to Hong Kong in 1976 and remains in force pursuant to Article 39 of the Basic Law.

Date	Case	Ruling
June 2014	<i>ST vs Betty Kwan</i> [2014] HKCA 309	The CA ruled that, while there is no absolute right to an oral hearing during the appeal process, certain guidelines should be followed in deciding whether an oral hearing should be held, having regards to facts of the case. The CA also observes that conducting an oral hearing should be the norm rather than the exception.

Annex B**International Social Service Hong Kong Branch (ISS-HK)****Notice to Service Users****Provision of Assistance for Non-Refoulement Claimants**

ISS-HK has been successfully awarded of the 8th Round of Service Contracts of "Provision of Assistance for Non-refoulement Claimants". For details, please refer to the letter issued by Social Welfare Department of 21.5.2015.

For the new Services Contracts, please note the following:

1. Change in Project Name:

From May 26, 2015, the project will be renamed as **Assistance for Non-Refoulement Claimants¹**

2. District Offices

Service users will report to the District Office according to their residential address as follows:

District of Residence	ISSHK Offices
Hong Kong and the Islands	1/F Li Po Chun Centre, Arran Street, Prince Edward, Kowloon
Kowloon	1/F Li Po Chun Centre, Arran Street, Prince Edward, Kowloon 21/F Skyline Tower, 18 Tong Mi Road, Mong Kok, Kowloon
New Territories	11/F Optimall 118 Chuen Lung Street, Tsuen Wan, New Territories

Subsequent change in the district of residence means that the service users will be transferred to the new district office for continuous assistance.

3. Food Coupons

Following the latest Social Welfare Department Policy, food coupons worth HK\$1,200 will be provided to each service user every month. For this purpose, an electronic food coupon system is being developed and will be implemented later on. As an *Interim* arrangement, supermarket food coupons with a total value of \$1,200 per month will be distributed to each service user every month, until the electronic food coupon system is implemented.

The food coupons are for food items only, non-cashable and non-transferable.

For food items only - The food coupons will allow for purchase of basic food items. Alcohol, cigarettes, medicines, health and beauty products, sugar confectioneries, chocolates, ice cream, chips, snacks, gift items and baby non-food items are not allowed to be purchased using the coupons.

¹ Mandated refugees recognized by the United Nations High Commissioner for Refugees pending resettlement to a third country will also be eligible for assistance under this project.

22/5/2015

Not cashable - The coupons cannot be exchanged, refunded or redeemed for cash. When used, like any other coupons, vendors under this project **will not provide change** so the goods bought should be according to the coupon amount. Coupons are not for resale.

Not transferable - Receipts are to be kept by service users and submitted to ISSHK to receive the next month's food coupons allocation to ensure that they were not transferred or cashed by other means. If service users have not consumed all the coupons within the month, the unused coupons should be shown to ISSHK (for checking and recordkeeping only).

Invalid coupons are coupons that are defaced, damaged or tampered. It will not be accepted and considered invalid.

No replacements will be made for lost, stolen or damaged coupons.

4. Emergency Food will be food in kind

New service users or those in dire need of emergency food that subject to ISS's assessment will be issued food in kind available in District Offices. Requests should be made with the caseworkers assigned. Coupons will NOT be issued as emergency food.

5. Toiletries will remain in kind but collected at district office

All toiletries will remain in kind and distributed in the district office where the service users are assigned. Pick up schedule will be the same day as the monthly contract renewal date.

6. Accommodation

Policies for rent deposit, payment of property agencies, and the monthly rental assistance will remain the same. The monthly rental rate for adults is HK\$1500 and children are at HK\$750.

Locating a suitable accommodation within the assistance level is the joint responsibility of the claimants and ISSHK and ISSHK would in general assist at most three times in the identification of available housing for each claimant unless for very special cases.

7. The following assistance will remain unchanged:

- a. **Utilities Assistance** will remain the same at HK\$300 per person per month.
- b. **Transportation** will remain as computed according to the Districts of residence.
- c. **Clothing** will be provided on request and need basis.

8. Please contact your caseworker for your concerns, clarifications and other needs.

Thank you very much and we look forward to a positive collaboration with you all.

22/5/2015