

For information on
8 June 2015

Legislative Council Panel on Welfare Services

Humanitarian Assistance for Non-refoulement Claimants

PURPOSE

This paper briefs Members on the latest development of the humanitarian assistance programme for non-refoulement claimants.

BACKGROUND

Non-refoulement claimants

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” below) 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 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 would face such risks upon removal, ImmD must follow procedures which meet high standards of fairness in assessing whether such risks exist.

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

3. Pursuant to two rulings by the Court of Final Appeal (CFA) in December 2012 and March 2013, the Government commenced operating a unified screening mechanism (USM)² in March 2014 to screen claims made by illegal immigrants refusing to be removed to another country on all applicable grounds (non-refoulement claims). When the USM commenced, there were 6 700 non-refoulement claims pending assessment; by end March 2015, 1 500 were determined and 1 200 withdrawn, whilst 5 700 more new claims were received, bringing the total number of claims pending assessment to 9 700.

4. 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**.

5. The 1951 United Nations Convention relating to the Status of Refugees has never applied to Hong Kong, and **illegal immigrants seeking non-refoulement in Hong Kong 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.

6. The United Nations High Commissioner for Refugees (UNHCR) has decided to cease screening asylum claims in Hong Kong after commencement of the USM, but it continues to be mandated to provide durable solution to those persons whom it recognizes as refugees. To this end, claimants who are found by ImmD to have a well-founded fear of being persecuted in another country will be referred to the UNHCR for

² Screening procedures of the USM follow those of the statutory screening mechanism for torture claims under Part VIIC of the Immigration Ordinance (Cap.115) already in place since December 2012.

recognition as refugee and resettlement to a third country.

The Humanitarian Assistance Programme

7. 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.

8. 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.

9. 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 in the foreseeable future 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.

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.

LATEST DEVELOPMENTS

Service enhancements

10. 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.

New Service Contracts

11. The 7th service contract for the assistance programme 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. The International Social Service Hong Kong Branch (ISS-HK) has been awarded the service contracts for the three service regions for two years, commencing 26 May 2015.

12. 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.

13. 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

14. As mentioned in paragraph 3 above, the number of pending non-refoulement claimants in Hong Kong has increased from 6 700 as at end February 2014 to 9 700 as at end March 2015. Correspondingly, the number of service users under the assistance programme also increased from 5 700 to 8 600 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.

THE WAY FORWARD

15. 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.

Security Bureau
Social Welfare Department
June 2015

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.



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 Claimants**¹

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.

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.