

LEGISLATIVE COUNCIL PANEL ON SECURITY BRIEFING
Comprehensive Review of Strategy of Handling Non-Refoulement Claims
2016 年 11 月 11 日立法會保安事務委員會
全面檢討處理免遣返聲請的策略備忘

11 November 2016

This briefing outlines Justice Centre's concerns in regards to the Administration's proposals as outlined in the LC Paper No. CB(2)110/16-17(06). We emphasise that the **primary reason** for the backlog of unresolved claims within the USM is the Administration's repeated failure to implement a fair and comprehensive system from the very start. This failure is an inevitable and foreseeable result of the repeated shortcomings to consult adequately and seek relevant expertise – all of which has resulted in the need for successive numbers of judicial reviews over the years, brought to improve fairness within the system, requiring considerable expenditure on legal aid and causing delays in access to justice for those in genuine need of protection.

這份備忘由 Justice Centre Hong Kong 撰寫，我們留意到保安事務委員會將於今個星期五討論檢討免遣返聲請策略，希望針對保安局於會議前提供的討論文件 (LC Paper No.CB(2)110/16-17(06))提供本機構的分析。

我們需要強調，現時統一審核機制 (USM) 之所以積壓大量聲請，**最主要原因**是政府未能實行有效而公平的制度。由於政府推行審核機制時沒有仔細向民間社會及尋求專業意見，審慎按法律設計完善的制度，因而自招法庭的覆核，直接引致尋求免遣返聲請的積壓，令真正有需要的人士未能受保障，亦增加法援開支。

It is time to finally learn from these mistakes – not to blindly repeat them. Rather than doing the bare minimum, we urge the HKSAR Administration to avoid its previous failures in planning and implementing the USM. These are complex matters of grave importance and require more due diligence and care in making changes to policy and law reform which will maintain procedural standards. The quickness with which the Administration seeks to act on the "comprehensive review" and create legislative proposals is unnecessary; rushing now will only create more problems further down the line.

在這個時候，政府有必意承認過往錯誤，放棄過往頭痛醫頭、腳痛醫腳的策略和思維，方向解決現時積壓的案件。免遣返聲請牽涉眾多複雜的問題，政府在規劃和檢討現行制度時，絕不應倉猝立法推出新的措施，否則只會適得其反。以下是數個值得關注的議題：

1. Comprehensive review and legislation on the USM

全面檢討統一審核機制及立法事宜

In the background brief prepared by the Legislative Council (LC Paper No. CB(2)110/16-17(07), para. 5, it is noted that in response to concerns and recommendations that were raised in the concluding observations by the UN Committee against Torture (UNCAT), the HKSAR Administration introduced legislative amendments in 2011 and 2012 to previous torture screening assessment mechanism.

在立法會提供的背景資料文件中(LC Paper No. CB(2)110/16-17(07) 段五提到，政府按聯合國《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》委員會的建議，於 2011 及 12 向立法會提交了《入境條例》(第 115 章)及酷刑聲請制度的修訂草案。

However we note that UNCAT reviewed HKSAR again in November 2015, and in its concluding observations raised **even stronger** concerns and recommendations in relation to the USM and non-refoulement protection. Yet addressing UNCAT's more recent concerns has been wholly absent from discussions on the USM in 2016. We continue to urge that these recommendations inform the process of the comprehensive review and plans, as outlined in the administration's paper, para. 11, to draw up legislative proposals on the USM within 2016-2017. Justice Centre is enclosing the concluding observations from UNCAT as an annex. Honouring these international human rights mechanisms is a fundamental component of the rule of law and vital to Hong Kong's in international reputation. State parties have a duty to implement the recommendations made by these treaty bodies.

- **QUESTION:** What is the HKSAR Administration doing to follow up and implement on the recommendations highlighted by UNCAT as part of its "internal review", "comprehensive review" and legislative proposals on the USM?

然而，政府在這段時間未有盡力按聯合國建議改善現行制度。聯合國防止酷刑委員會於 2015 年 11 月再度審議香港情況，並在其總結報告中，以**更強烈的**操辭表達他們對香港免遣返聲請制度表達關注，要求香港執行聯合國的建議。可惜，過往一年的香港政府並無將聯合國的建議放入立法會的討論議程。保安局在是次會議提供的文件(LC Paper No. CB(2)110/16-17(06) 段 11 指，政府已開始檢討《入境條例》(第 115 章)，並於 2016-17 年草擬有關法案。作為國際人權公約的締約方，以及維持香港的法治和國際聲譽，我們認為香港政府在檢討及草擬法案的過程，必須納入聯合國的建議，彰顯法治精神。(聯合國的總結報告請見附件)

- **我們建議 閣下可作出以下質詢：**「入境處在其內部檢討、保安局就統一審核機制的檢討和相關條例的修訂/草擬法案時，究竟參考了聯合國防止酷刑委員會總結報告的哪一個部份？」

The Administration's paper, para. 13, states that the ImmD has completed an "internal review" on how to further expedite screening. However, any credible comprehensive review worth the name would engage in broad consultation with all stakeholders that have expertise on the issues – civil society working on the frontline, the legal profession and independent experts. There should be regular systems for monitoring and evaluation of the

USM and reviewing the quality of decision-making and procedures. These reviews should be transparent and made public. Justice Centre regrets that the comprehensive review has not been open to consultation and that little mention is given in the paper on drawing from technical expertise from other countries or the United Nations High Commissioner for Refugees (UNHCR). Lastly, the scope of the review appears to be arbitrarily limited to three areas mostly related to removal and enforcement, whilst there is no explanation for ignoring the UNCAT's clear concerns and specific recommendations.

- **QUESTIONS:** What is the government's rationale for failing to consult with external stakeholders and independent experts in its "comprehensive review"? How and why has the administration limited the "comprehensive review" to just four areas related to removal and enforcement? Is the "comprehensive review" and the "internal review" one and the same? What monitoring and evaluation mechanisms are built into the USM to assess the quality of decision-making?

在保安局文件(LC Paper No. CB(2)110/16-17(06)段 13 中，指入境處已經完成了審核機制的「內部檢討」。然而，入境處在檢討過程中沒有諮詢過其他持份者，例如協助前線民間機構、法律專業及其他獨立專家。保安局在今次會議文件(LC Paper No. CB(2)110/16-17(06)第 2-7 頁指出，2016-17 年進行的全面檢討只集中討論羈留難民、遣返等強制性措施，並刻意將聯合國的建議排除檢討範圍，亦甚少參考其他國家或聯合國難民署(UNHCR)的經驗。我們認為，政府應該設立一個恆常的監察及檢討機制，用作檢討入境處處理申請的質素和程序，並向外界公佈結果。唯有公眾參與及增加檢討時的透明度，議會及民間社會才能有效避免政府片面地推動地審核機制的立法。

- **我們建議 閣下可作出以下質詢：**「在政府進行機制的全面檢討時，他們為什麼沒有諮詢過其他持份者及獨立專家？為什麼政府的全面檢討，會集中在入境前管制、羈留及遣返措施？政府的「全面檢討」及入境處「內部檢討」其實是否沒有分別？最後，政府在檢討時用了什麼方法監察和檢討統一審核機制處理案件的質素呢？」

2. Logical foundation justifying the review and proposals 檢討和建議的事實基礎

There is no evidence, based on the information provided by the Administration, to demonstrate a significant increase in protection claims made, nor any credible link between claimants and crime, yet much publicity and belabouring by the Administration has been made on this point, and it appears to form the very premise of the "comprehensive review". The HKSAR Administration has repeatedly described the influx of so-called "Non-Ethnic Chinese Illegal Immigrants" (NECIIs) as a "surge", "worsening influx" and cause for "considerable public concern", and a "jeopardy to public safety and social stability".

在過去一年，我們觀察到政府有不少關於難民議題的公關工作，並將香港難民情況與罪案掛勾，用以支持政府這「全面檢討」，但其實政府文件中並沒有證據顯示免遣返聲請數字大增。政府不斷重申「非華裔非法入境者湧入香港」、「引起公眾關注」和「擾亂公眾及社會秩序」。然而，政府的指控沒有事實基礎。

For example, the Administration's paper, CB(2)648/15-16(05) para. 2, states that some 500 to 1,000 claims per year before 2013 were filed, increasing to 1,984 in 2014 and 3,189 in 2015. First, we note that statistics pre-USM (before 2014) to post-USM (after 2014) are incomparable. These were two different systems. Before the USM, there were two separate mechanisms for seeking protection in Hong Kong – one for asylum claims to the UNHCR and another for torture claims under the Immigration Department. After the USM, claims that would have gone to the UNHCR, as well as some open claims already in the UNHCR, were transferred to the USM. At the start of the USM, this transferring of claims, as well as many months of transition, resulted in a great backlog at the start.

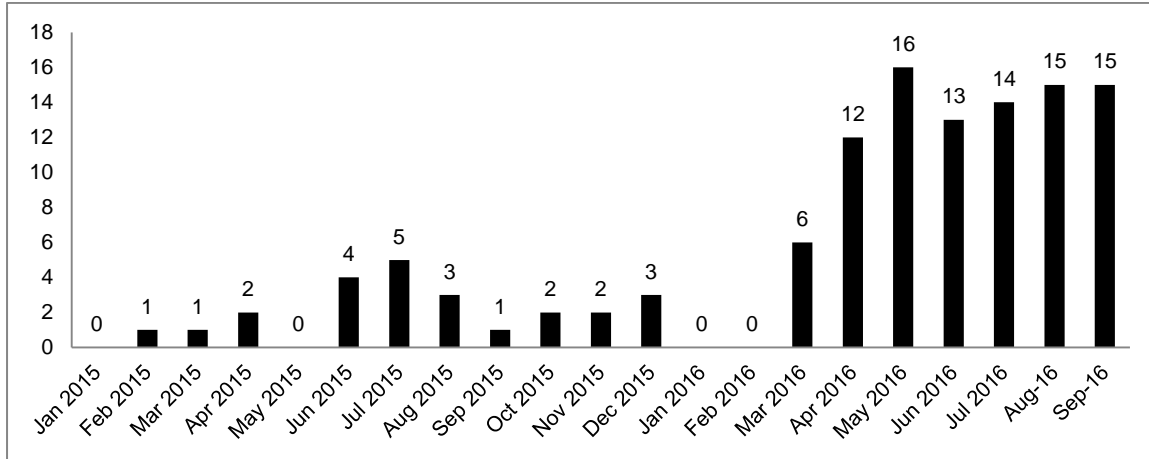
舉例，保安局在今年 2 月 2 日的保安事務委員會會議文件中 CB(2)648/15-16(05)段 2 提及 2013 年之前，每年約有 500 至 1,000 宗申請，2014 年有 1,984 宗，後增至 2015 年的 3,189 宗。事實上，香港在 2014 年前及 2014 年後的審理機制屬兩套截然不同的制度，兩段時間的難民申請數字根本不能互相比較。2014 年統一審核機制(USM)實行前，聯合國難民署負責審核尋求難民庇護的申請；香港入境處只處理酷刑聲請。因此，當統一審核機制實行後，原來由聯合國難民署負責的新聲請者及部分已向聯合國難民署申請的聲請者都轉到入境處的隊列，再加上順理統一審核機制需時，因而造成個案累積。

Moreover, the statistics provided by the Administration show a gradual decline over the past two years. This is in stark contrast to the rhetoric around claimants, which has only increased in volume. For example, Justice Centre has documented the number of press releases containing the word "recognizance" issued by the HKSAR Administration over the course of the past year (below), which has greatly increased in the past year. However, the quarterly statistics of non-refoulement claims provided in the HKSAR Administration's paper (the first time quarterly statistics are provided on this, despite repeated requests for publicly available statistics by civil society) actually show that the number of non-refoulement claims since 2014 has generally been on a downwards trend. It therefore appears that the volume of press releases by the Administration has increased at a rate that is **inversely proportionate** to the actual figures of new claims.

再者，政府文件中提供的季度數據顯示，免遣返聲請的數字至 2014 年開始不單沒有如政府口中不斷增加，反而是穩步下降。(見圖二，這是在民間團體多次要求後首次政府公布季度數字) 同時，有關聲請者的負面評論卻不斷增加。Justice Centre 在過去一年持續紀錄政府新聞處有關持「行街紙」人士的公佈(見圖一)，我們觀察到有關公佈在今年第一季突然暴增。然而，同期的免遣返聲請卻穩步下降中。政府新聞稿數目和新聲請數字的增長成反比例。

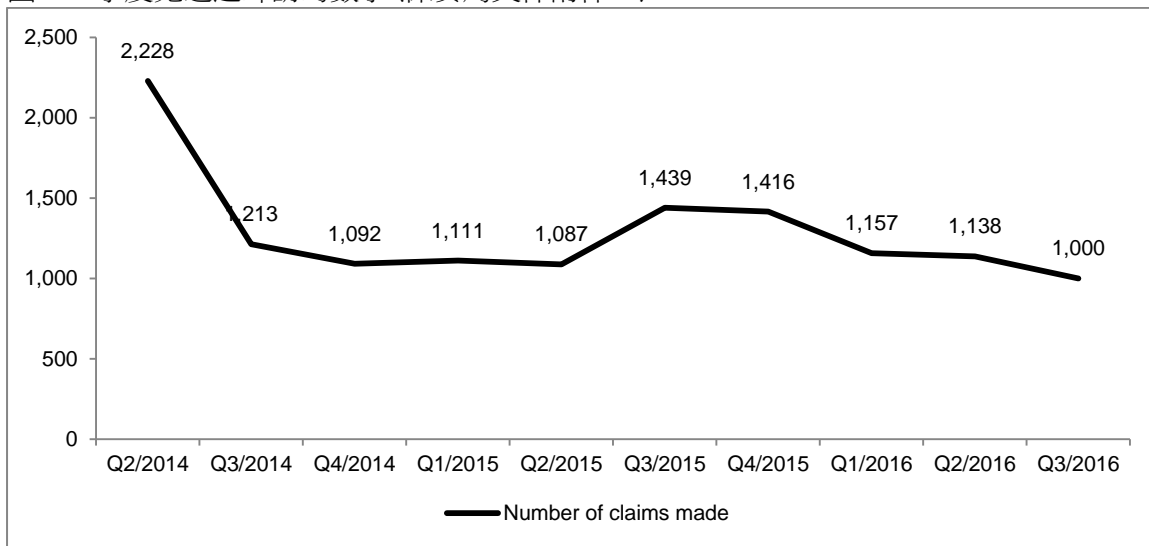
NUMBER OF PRESS RELEASES WITH WORD "RECOGNIZANCE" BY ADMINISTRATION EACH MONTH (JAN 2015-SEP 2016)

圖一：政府新聞網及入境處有關持「行街紙」人士的公佈數字（2015年1月至2016年9月）



NUMBER OF NON-REFOULEMENT CLAIMS MADE (QUARTERLY STATISTICS) (FROM PANEL ON SECURITY PAPER)

圖二：季度免遣返聲請的數字（保安局文件附件二）



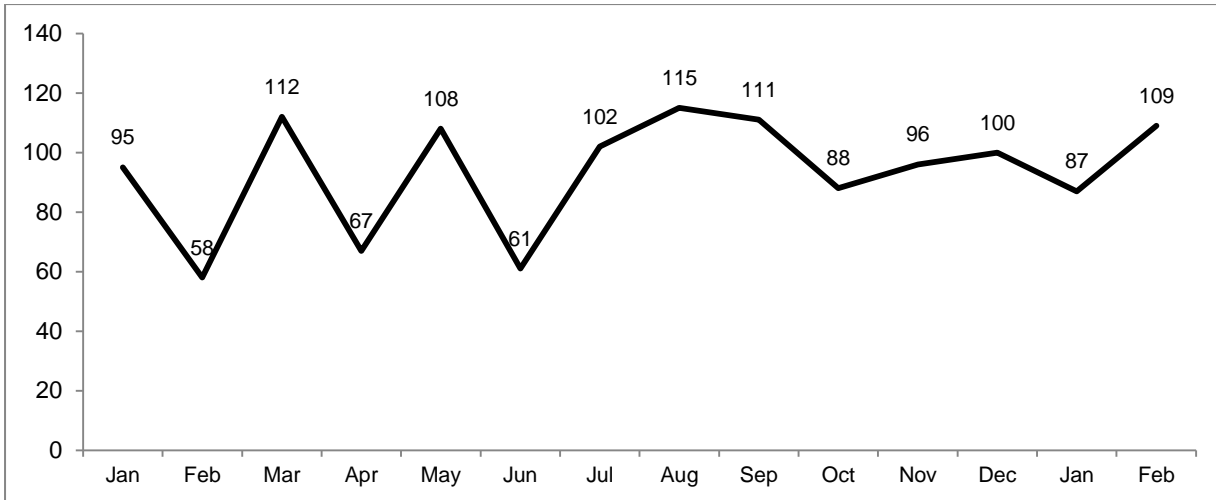
The LegCo background paper, para. 15, highlights that several members were concerned that there was an increase in crime committed by claimants and that this was affecting the daily life of Hong Kong residents. In fact, beginning last year, papers by the HKSAR Administration to the LegCo Panel on Security, for the first time, began to insert statistics on arrests of NECIs for crimes in discussions about the USM. This has since become the subject of much media coverage as well, prompting Justice Centre to seek an access to information request on this matter in February 2016. In April, the ImmD issued a reply to our request that shows the following:

在立法會秘書處的背景資料文件(LC Paper No. CB(2)110/16-17(07) 段 15 中提到，有數位立法議員對難民涉及罪案表達關注，他們聲稱免遣返聲請對市民日常生活造成影響。政府於本年度開始，在立法會保安事務委員會會議文件中，加插「非華裔非法入境者」涉及的拘捕數字。免遣返聲請者與罪案這兩個

概念，隨即被傳媒大肆報導。Justice Centre 曾於本年二月向入境處查詢免遣返聲請者被拘捕的數字，我們在四月收到以下數字：

NUMBER OF NECII ON RECOGNIZANCE ARRESTED (JAN 2015 – FEB 2016) BY MONTH FOR "SERIOUS CRIMES"

圖三：持「行街紙」的非華裔非法入境者因涉及嚴重罪行而被捕數字（2015年1月至2016年2月）



The rates of arrests are not a reliable indication of criminality. Only prosecution and conviction rates (i.e. where after due process people have actually been found to be guilty) can be a reliable barometer. However, when Justice Centre requested these statistics, the reply from the Administration stated that these figures were not available. All that the above arrest data indicates is that although there have been fluctuations from month to month, the total number of arrests has actually remained overall static in the past year. And moreover, "NECII" arrests account for only 4% of those for potentially "serious crimes" in Hong Kong vis-à-vis Hong Kong residents. Lastly, we note that "NECII" and "non-refoulement claimants" have been used interchangeably, but claimants are actually a subset of NECII and thus an imprecise category. Justice Centre has also vocalised concern that "NECII" is a dehumanising and charged term.

再者，單憑拘捕數字，是無法判斷真正的犯罪率；較準確的指標，應該是檢控率和定罪率（即經過正當程序被定罪的數字）。然而，當 Justice Centre 查詢有關數字時，政府回覆它們沒有統計相關項目。單從以上拘捕數字分析，會見到每月的拘捕數字略有浮動，以全年計則是穩定在一定比率。以上有關「非華裔非法入境者」的拘捕數字只佔香港整體數字的百分之四。我們觀察到「非華裔非法入境者」及「免遣返聲請者」兩詞被交替使用，然而，「免遣返聲請者」只佔「非華裔非法入境者」一部份人。我們非常關注使用「非華裔非法入境者」這個帶負面意思的字眼。

The premise and supposed sense of urgency for the proposed measures in the comprehensive review is that there is an influx of claims and that this is causing public security and order issues. However, no credible evidence has been advanced to support any of this. Regardless of the policy position of lawmakers on the issue of protection, it is a matter of good governance (and perhaps even of the reputation of Hong Kong law-making body itself) that decisions have an evidential approach.

這「全面檢討」的「迫切性」是基於聲請者湧入，引起社會治安問題，但其實沒有可靠數據支持這些說法。無論議員持什麼政策立場，為確保良好管治（甚至香港立法會聲譽），都應以事實為依歸。

These decisions will have a considerable impact on people who have faced grave human rights abuses, torture and persecution and are some of the most marginalized groups in society. The focus on crime and abuse by the Administration has only fuelled negative stereotyping in the media and an increase in xenophobia and racial discrimination towards any "non-Ethnic Chinese" person. A recent [survey](#) by the Department of Asian and Policy Studies at the Education University of Hong Kong found that the public is largely misinformed about refugees and recommended the government should strengthen civic education and public awareness of this group.

- **QUESTIONS:** The number of claims filed over the past two years is steadily decreasing, so why has the government described the situation as a worsening influx? What is the government doing to dispel public misunderstandings about refugees and protection claimants? Has the Administration considered the potential negative impact of its "tough" rhetoric about "NEClls" on how ethnic minorities are treated generally in Hong Kong?

議員及政府作出的政策和決定，會對一班尋求庇護的難民造成深遠影響。難民面對嚴重人權侵犯、以及酷刑及迫害而逃難，是社會上最被邊緣的一群。政府若只集中渲染難民濫用制度及涉及罪案，只會助長傳媒及社會排外情緒、令所有「非華裔」人士更受種族歧視之苦。最近，香港教育大學亞洲及政策研究學系發表[民調](#)，指普羅大眾對難民議題有甚多誤解，並建議政府加強公民教育，提升市民對難民群體的認識。

- **我們建議閣下可作出以下質詢：**「過往兩年，免遣返聲請的數字穩步下降。為什麼政府反而會聲稱難民湧入的情況惡化呢？政府做了什麼工作，消除公眾對難民群體的誤解？政府有沒有考慮過它們以強硬及負面藻辭形容「非華裔非法入境者」時，會為香港少數群體帶來什麼負面影響？」

3. Proposal to increase detention powers

有關加強禁閉權力的建議

Many lawmakers have put forward proposals to set up detention camps to accommodate non-refoulement claimants, most often framed around putative "public security" concerns, and the HKSAR Administration's paper, para. 21, states that it will consider increasing the capacity to detain illegal immigrants (including non-refoulement claimants). We express great concerns in relation to detention for the following reasons:

有為數不少的議員提出，免遣返聲請者造成治安問題，建議設立禁閉營。在保安局的背景資料文件 (LC Paper No. CB(2)110/16-17(06)段 21 提到，政府會從多角度研究如何拘留非法入境者，包括免遣返聲請者。我們認為拘留是極不可取的措施，原因如下：

- It is not an effective deterrent: There is no empirical evidence to suggest that the threat of being detained deters irregular migration. This was concluded by both UNHCR in their report of 2011, and the International Detention Coalition in a 2015 report – finding that detention was “not only ineffective at reducing irregular migration to desired levels, but also weakens other migration management outcomes such as case resolution, departure for refused cases and integration for approved cases.”

羈留無助遏止入境：沒有實證證據顯示，拘留方式會有效阻遏異常移徙(irregular migration)。根據聯合國難民署於 2011 年及 International Detention Coalition 於 2015 年發表的報告指出，「拘留未能有效減低異常移徙，卻會帶來更多負面後果，例如個案處理、遣返及受確立個案的融入。」

- Detention is expensive: In 2015-16, HK\$329 million (estimate) was spent on humanitarian assistance to ensure that non-refoulement claimants are not left destitute, given their restriction from working in Hong Kong. Assuming that there are an estimated 11,000 people seeking protection in Hong Kong (exact figures are not readily available publicly),¹ this works out at roughly HK\$82 per person per day. However, the cost of building, running, and maintaining such facilities will be a far greater, ongoing expense. Examples below shows even just the maintenance and oversight of refugee detention centres have posed massive public costs in other jurisdictions.

禁閉營成本更貴：2015—16 年，政府估計共花了約 3 億 2900 萬元在免遣返聲請者的人道援助，由於法律禁止聲請者在港工作，沒有人道援助的話免遣返聲請者會極度貧困。政府沒公布準確數字(請見註解 1)，假設現時香港有約 11,000 名聲請者計，香港政府平均每日只花 82 元在每個聲請者。但如政府決定羈留聲請者，則需花費大量金錢在建築成本、設施維護、羈留管理等開支。以下是其他國家營運禁閉營成本列表，顯示維持和管理禁閉營就已造成極大開支：

COST OF DETENTION PER DAY IN HONG KONG DOLLARS
 每日花費在每位囚禁聲請者的開支(以港元計)

Australia 澳洲	Austria 奧地利	United States 美國	United Kingdom 英國
\$3,855.87	\$1,013.72	\$1,225.27	\$984

Moreover, significant public money has been spent in these jurisdictions on the liability arising from unlawful detention. For example, the United Kingdom spent £13.8 million (HK\$131 million) on compensation payments for unlawful detention over last 3 years alone.²

按其他地方的經驗，拘留聲請者可能會招致非法拘留的法律訴訟。例如英國單在過去三年，因非法拘留已賠償 1380 萬英鎊(即 1 億 3100 萬港元)。

¹ HKSAR Immigration Department, Torture/Non-refoulement Claim Cases (as at End of September 2016), available at: <http://www.immd.gov.hk/eng/facts/enforcement.html>

² UK Minister for Immigration Robert Goodwill, Holding answer received on 13 October 2016, available at: <https://www.theyworkforyou.com/wrans/?id=2016-10-10.47658.h&s=immigration+detention#g47658.q0>

- Detention has a human cost: Detention causes unnecessary harm to people who are already highly vulnerable. There are concerns about what access detainees have to medical care, to interpreters and to legal aid. Several independent psychologists' reports have documented the human cost of detention; depriving people of freedom is inherently disempowering, causes self-harm behaviours and inflicts significant psychological harm,³ which can be long-lasting and even permanent. Detention has repeatedly been found across jurisdictions to be in breach of the right to personal liberty.⁴ Increasingly, the international community has recommended moving towards alternatives to closed immigration detention.

羈留對聲請者的傷害：難民為了逃避迫害，往往已身心受創，羈留他們只會導致更多不必要的傷害。羈留期間，亦難以保證聲請者能獲得充足的治療、翻譯服務及法律支援。不同的心理研究報告曾紀錄過，羈留限制當事人的人身自由，會導致自殘行為及長期甚至永遠心理創傷。多個國家的禁閉措施都被批評侵害人身自由，國際社會對關閉羈留設施的呼聲亦愈來愈大。（請見第 2 至 4 項註解）

- **QUESTION:** Since February 2016, the Administration has continued to say it will consider ways to increase the capacity to detain illegal immigrants, but has not provided detailed answers on what this means or when it would take effect; nor what the relevant ongoing costs of this will be? Can the Administration clarify this?
- **我們建議閣下可作出以下質詢：**「由 2016 年 2 月開始，政府便不斷提出要研究加強拘留非法入境者的能力，卻沒有提供任何細節。請解釋相關的研究內容及執行的時間表；請提供羈留措施的預算。」

4. Response to “advice sought” by the Administration 有關保安局背景資料文件「諮詢意見」的項目

保安局背景資料文件(LC Paper No. CB(2)110/16-17(06)段 22 指政府向議員諮詢意見。然而，諮詢的範疇只列舉入境限制措施，指政府計劃實施入境前登記系統，防止「高入境風險旅客來港」；以及設立輔助名冊提供公費法律支援，將 2017 年入境處處理個案數目增加至每年 5,000 宗。整體而言，我們認為只將諮詢議程集中在這兩項事宜，是忽略對聯合國防止酷刑委員會所提出的建議，亦收窄了議員能監察和提供意見的範圍。

The Administration's paper states that advice is sought. But that advice is to be limited to the plan to introduce a PAR system to prevent visitors of “high immigration risks” from embarking on their journey to Hong Kong, and to operate a supplementary roster of PFLA to support ImmD to increase the number of determined claims by 75% to 5,000 or more per year in early 2017. Overall, we feel that the focus on just these two points distracts attention from the more pertinent concerns raised by UNCAT which continue to go unaddressed. In turn this arbitrarily limits

³ See, for example: Doherty, Ben, “Nauru and Manus incident reports reveal stream of despair and privation”, The Guardian, 19 June 2016, available at: <https://www.theguardian.com/australia-news/2016/jun/20/nauru-and-manus-incident-reports-reveal-stream-of-despair-and-privation>

⁴ See: *Namah v Pato* [2016] PGSC 13; SC1497 (26 April 2016), available at: <http://www.paclii.org/pg/cases/PGSC/2016/13.html>

the ability of lawmakers to interrogate questions outside of this narrowed scope. On these two areas where advice is sought, we do nonetheless have the following questions.

- **QUESTIONS:** If "retention" and "recruitment" is raised as an issue within the DLS system being in needs of improvement and being key to the efficiency and integrity of the system - how will the pilot scheme proposed (which both increases caseload and lowers pay) serve the purpose of addressing this matter? How will it be sustainable for the DLS to ensure quality legal aid?
- **QUESTION:** Can the Administration clarify what is meant by "high immigration risks"? How will they ensure that the proposals do not just single out people with genuine claims?
- **我們建議 閣下可作出以下質詢：**「儘管如此，我們亦建議 閣下就上述兩個範疇提出質詢：「保安局背景資料文件段 16 指出，當值律師服務面對招聘困難及人手流失，導致律師的個案量大增，減慢處理案件的速度。當招聘及挽留人手已困難重重時，為什麼保安局在段 18 介紹新的輔助名冊計劃時，會建議接案律師由 '按時數收費'變成收取 '一筆過標準律師費'(變相削減了律師費)呢？律師收入減少工作量增加時，會否難以招聘及挽留人手呢？這又是否能夠有效地維持當值律師服務的質素？」
- **我們建議 閣下可作出以下質詢：**「政府應解釋段 22 '高入境風險旅客'的意思，政府會如何保障新的入境管制下，真正受迫害、酷刑等的免遣返聲請者不被拒絕入境？」

ANNEX: Concluding observations on the fifth periodic report of China with respect to Hong Kong, China (UN Doc.: CAT/C/CHN-HKG/CO/5) by the UN Committee against Torture, 3 February 2016

"Paragraph 6: The Committee notes with appreciation the compliance of Hong Kong, China with the follow-up procedure. While appreciating some positive legislative (see para. 4 (a) above) and administrative (see para. 5 (b) above) measures, the Committee notes with concern that, according to the data provided by Hong Kong, China, from December 2009 to May 2015, only 32 non-refoulement claims out of 6,628 were considered substantiated, which is indicative of a distinctly high threshold for granting protection. The Committee also takes into account reports on the difficulties claimants face in accessing the decisions of the Torture Claims Appeal Board, which are not published, thereby impeding the effective preparation of their cases. Furthermore, the Committee is concerned at the plans to fast-track the system to address the large backlog of pending applications (of which there are currently more than 10,000), since such a measure may negatively impact the fairness and thoroughness of the screening procedure. It notes with concern the position of Hong Kong, China that the extension to it of the 1951 Convention relating to the Status of Refugees "would subject its immigration regime to abuses and thus undermine public interest", which prima facie portrays all claimants in need of protection as abusers of the system. In that regard, the Committee is concerned that claims of non-refoulement are not entertained unless the person concerned has overstayed his or her visa and becomes officially "illegal", forcing potential victims of torture to wait until that period expires in order to register with the unified screening mechanism and gain access to rehabilitation and humanitarian assistance. The Committee also notes with concern that, by failing to give refugee status to unified screening mechanism claimants, it denies them access to legal work, thereby compelling them to live on in-kind assistance below the poverty line for long periods of time (art. 3).

7. The Committee calls on Hong Kong, China to review the non-refoulement claim screening procedure in order to ensure that persons in need of international protection, including those fleeing indiscriminate violence, are fully protected against refoulement. In particular, Hong Kong, China should:

- (a) Ensure unhindered access to the unified screening mechanism to all individuals wishing to claim protection, irrespective of their immigration status;
- (b) Enhance the fairness and transparency of the screening process by, inter alia, ensuring that non-refoulement claims are thoroughly and individually examined; allowing sufficient time for claimants to fully indicate the reasons for their application and to obtain and present crucial evidence, such as their own medical expert evidence; and publishing redacted versions of the decisions of the Torture Claims Appeal Board;
- (c) Develop mechanisms for the early identification of victims of torture, their priority access to the unified screening mechanism and their immediate access to redress;
- (d) Grant an alternative immigration status to refugees and substantiated unified screening mechanism claimants that would allow them to remain legally in Hong Kong, China until the end of the process and facilitate their access to legal work in order to avoid destitution and degrading treatment;
- (e) Consider extending to it the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.