

政府總部
香港下亞厘畢道



GOVERNMENT SECRETARIAT
LOWER ALBERT ROAD
HONG KONG

本函檔號 OUR REF:

來函檔號 YOUR REF:

CB2/PL/SE

Tel: 2810 2099

Fax: 2868 1552

24 June 2008

Mr Raymond LAM
Clerk to Panel on Security
Legislative Council Building
8 Jackson Road
Central, Hong Kong

(By Fax only)
2509 0775

Dear Mr LAM,

Panel on Security

Further to the meeting of the Panel on Security held on 5 December 2006 concerning the *Fourth and Fifth Reports of the People's Republic of China under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – Part Two: Hong Kong Special Administrative Region*, we write to provide supplementary information relating to the subject.

Claims for refugee status

The 1951 United Nations Convention relating to the Status of Refugees ("the Refugees Convention") does not apply to Hong Kong. Hong Kong is small in size and has a dense population. Our unique situation, set against the backdrop of our relative economic prosperity in the region and our liberal visa regime, makes us vulnerable to possible abuses of the Refugees Convention if it was extended to Hong Kong. We thus have a firm policy of not granting asylum and do not have any obligation to admit individuals seeking refugee status under the Refugees Convention.

Claims for refugee status lodged in Hong Kong are dealt with by the United Nations High Commissioner for Refugees Hong Kong Sub-Office ("UNHCR-HK"). The Immigration Department ("ImmD") maintains close liaison with UNHCR-HK to ensure persons whose claims for refugee status have been

denied and who have no permission to remain here leave Hong Kong in accordance with the law.

Torture claims

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) applies to Hong Kong. The Government has put in place an administrative mechanism for handling torture claims.

For a torture claimant who has failed to establish his claim, he will be removed from Hong Kong in accordance with the law. For a torture claimant who has established his claim, he will not be removed to the country where there are substantial grounds for believing that he will be in danger of being subjected to torture. However, his removal to another country to which he may be admitted without the danger of being subjected to torture will be considered. Furthermore, if subsequent changes in country conditions are such that a torture claim established earlier by a claimant in respect of a particular country can no longer be substantiated, removal of the claimant to that country will be considered.

Increasing number of torture claims lodged

The number of torture claims lodged in Hong Kong increased eightfold between 2005 and 2007: ImmD received 186 claims in 2005, 514 in 2006 and 1 583 in 2007. In the first five months of 2008, the number of new claims has reached 1 017. As at 26 May 2008, there are 3 092 torture claimants in Hong Kong. As regards refugee claims, UNHCR-HK received 998 claims in 2005, 2 481 in 2006 and 1 624 in 2007.

Humanitarian assistance to torture claimants and asylum seekers

On humanitarian grounds, the Administration, in collaboration with non-governmental organisations and on a case-by-case basis, offers assistance-in-kind to refugees, asylum seekers and torture claimants who are deprived of basic needs during their presence in Hong Kong pending resettlement overseas or while their claims are being processed by relevant authorities. The types of in-kind assistance offered include temporary accommodation, food, clothing, other basic necessities, appropriate transport allowances, counselling and medical services. As an indication of the size of the group requiring assistance, the International Social Service Hong Kong Branch (ISS), one of the major service providers for asylum seekers and torture claimants, is supporting 1 752 such clients on commission by the

Administration as at 31 March 2008. In addition, there are another 483 cases pending ISS' assessment and service arrangement.

Offences committed by detained asylum seekers and torture claimants

Regarding the offences committed by detained asylum seekers and torture claimants and their period of detention, the details are set out in **Annex A**. It should be noted that, being an asylum seeker or torture claimant will not itself lead to a person's prosecution or detention. A person who is found in violation of Hong Kong laws may be liable to such enforcement actions.

Number of persons granted refugee status and number of persons who had settled overseas

As at 30 April 2008, the accumulated number of torture claimants is 3 196. Among them, 1 591 are known to have lodged refugee claims. UNHCR has granted refugee status to 35 of them; 14 of these refugees have settled overseas.

Possible abuse of the existing mechanism by torture claimants

Among the cases handled up to 30 April 2008, 91% of torture claimants did not make any claim until after having arrived in Hong Kong for an average of 15.1 months. Most of these claimants (91%) lodged their torture claims only when they were arrested for undertaking illegal employment or committing other criminal offences in Hong Kong, or when they faced imminent removal or deportation from Hong Kong. 48% of all torture claimants lodged their claims after an average of 11.5 months since lodging refugee status claims with the UNHCR. These are indications that there is possible abuse of the torture claim mechanism by illegal immigrants/overstayers who have sought employment in Hong Kong.

Case of HKSAR v Chuen Lai-sze and others

In regard to the case of *HKSAR v Chuen Lai-sze and others*, four police officers were tried in 1998 for assaulting a suspect to force a confession. The decision to charge them with offences under the Offences Against the Person Ordinance was made after a careful review of the evidence available at the time. The evidence revealed that there was no reasonable prospect of securing a conviction for an offence under the Crimes (Torture) Ordinance. They were subsequently convicted of assault occasioning actual bodily harm and sentenced to imprisonment.

Police officers are required and trained to treat all persons as individuals with humanity and respect, and to act in accordance with the law at all times. Training topics include the Hong Kong Bill of Rights Ordinance, Crime (Torture) Ordinance, practical knowledge about the use of force, handling and questioning of suspects, and the care and custody of detainees. Officers are also made aware of the consequences of any misuse of police powers.

Lawful sanctions

For the purpose of section 3(5) of the Crimes (Torture) Ordinance, “lawful authority, justification or excuse” means -

- (a) in relation to pain or suffering inflicted in Hong Kong, lawful authority, justification or excuse under the law of Hong Kong;
- (b) in relation to pain or suffering inflicted outside Hong Kong –
 - (i) if it is inflicted by a public official acting under the law of Hong Kong or by a person acting in an official capacity under that law, lawful authority, justifications or excuse under that law;
 - (ii) in any other case an authority, justification or excuse which is lawful under the law of the place where it is inflicted.

This defense is consistent with Article 1.1 of the CAT which provides that “[Torture] does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”. The defense is intended to cover matters such as the reasonable use of force to restrain a violent prisoner. It is not intended – nor would the courts be asked to interpret them as such – to authorise unlawful conduct which constitutes torture.

Statistics on deaths in official custody

Regarding the number of deaths in official custody, statistics on deaths between 2000 and 2007 in institutions under the Correctional Services Department are at **Annex B**.

Training of ImmD staff in handling torture claims

Officers of ImmD responsible for handling claims made under the CAT receive various forms of training and instruction which fully equip them with

knowledge and skills to handle torture claims. On assuming duty, they receive instruction and guidance on the CAT, the assessment mechanism and the handling procedures. They also receive training and coaching in conducting interviews, assessing claims with reference to different sources of information, and so on. ImmD officers also attend relevant programmes conducted by other organisations. Examples include UNHCR-HK's workshops on handling claims made under the CAT and on interview technique in connection with claims made under the CAT.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Phidias TAM', written in a cursive style.

(Miss Phidias TAM)
for Secretary for Security

List of Offences Committed by Detainees
Who Have Made Refugee/Torture Claims

Description of Offence
Breach of condition of stay by overstaying
Breach of condition of stay by taking up unapproved employment
Illegal remaining
False representation / forgery
Breach of deportation order
Assault with intent to rob
Attempted buggery with a mentally incapacitated person
Attempted fraud
Attempted robbery
Dealing with property known or believed to represent the proceeds of an indictable offence
Handling stolen goods
Misleading a member of the Immigration Service by giving false information
Misleading a police officer
Obtaining property by deception
Possession of obscene article for the purpose of publication
Possession of offensive weapon in a public place
Theft
Trafficking in dangerous drugs
Unlawful gambling in a place not being a gambling establishment
Wounding

Period of Detention as at 30 April 2008
for Detainees who have made Refugee/Torture Claims

Period of Detention	No. of Detainees	Percentage
Less than 3 months	153	76.1%
3 - 6 months	31	15.4%
Over 6 months	17	8.5%
Total	201	100%

**Number of Deaths in Institutions under the
Correctional Services Department**

Cause of Death ⁽¹⁾	2000	2001	2002	2003	2004	2005	2006	2007
Suicide	4	0	4	5	4	2	3 ⁽²⁾	1
Natural	21 ⁽³⁾	18	12	19	22	23 ⁽³⁾	15	10
Open Verdict	1	1	2	4	3	0	1	0
Pending decision by the Coroner's Court	0	0	0	0	0	0	0	7
Total	26	19	18	28	29	25	19	18

Explanatory Notes:

- ⁽¹⁾ In accordance with Section 15 of the Coroners Ordinance (Cap. 504), where a person dies whilst in official custody, a coroner shall as soon as practicable hold an inquest into the death.
- ⁽²⁾ Excluding 1 case in which a detainee committed suicide in Castle Peak Bay Immigration Centre on 25.10.2006.
- ⁽³⁾ Including 1 accident case.