

**The Administration's Response to Issues Raised at
Meetings of the Bills Committee on
Immigration (Amendment) Bill 2009 on
8 and 27 July 2009**

Introduction

The Bills Committee on the Immigration (Amendment) Bill 2009 ('the Bill') met on 8 and 27 July 2009 to discuss issues relating to the Bill. At the second meeting, the Bills Committee invited public deputations including those from the labour sector, the legal profession and groups and individuals interested in matters relating to torture claims. We hereby provide a response to the views and concerns raised by Members and the deputations.

Background of the Offence of Taking Unlawful Employment

2. Some Members asked why there was previously no specific offence against employees taking unlawful employment while there was an offence against employers employing illegal immigrants ('IIs'). Moreover, some Members were concerned about the upsurge of foreign IIs since March this year. Some labour groups expressed concern about the deteriorating situation of IIs taking employment, thus affecting the employment opportunities of local workers.

3. The offence against employers employing IIs and other persons not lawfully employable were enacted in 1980. For IIs taking employment, we had all along been prosecuting them for 'unlawful remaining' under section 38(1)(b) of the Immigration Ordinance (Chapter 115). However, this was challenged in a judicial review case (Iqbal Shahid, Waseem Abbas & Others v Secretary for Justice) in March 2009. Consequently IIs would have a defence against the charge of unlawful remaining, hence there is a need to amend the Ordinance to specify the offence in question. As for other persons not lawfully employable such as visitors, they are given conditions of stay pursuant to section 11 of the Ordinance. The conditions prohibit them from taking any employment, paid or unpaid, or establishing or joining in any business. They will be prosecuted for breach of condition of stay under section 41 of the Ordinance. Furthermore, in respect of a person who is permitted to land in Hong Kong for employment, he is also subject to

a prescribed condition of stay that he shall only take such employment or establish or join in such business approved by the Director of Immigration (Regulation 2(4) of the Immigration Regulations, Chapter 115, subsidiary legislation A).

4. The number of foreign IIs continues to surge. The monthly average for March to May 2009 was 136. The monthly average rose to 152 for June to August, from 37 for January and February 2009 (representing an increase by 310%). There is an urgent need to specify as an offence for the taking of employment or establishing/joining in business by IIs. This will deter those who intend to smuggle to Hong Kong, thus preventing the situation from deteriorating. Details figures (including IIs arrested for taking employment etc.) are at Annex A.

5. Moreover, some Members asked about the number of torture claimants and asylum seekers who made their claims only after they were arrested for taking employment. There are respectively 2 902 IIs and 3 804 overstayers who lodged torture claims to the Immigration Department between 2006 and August 2009. Among them, 2 839 IIs and 3 292 overstayers lodged the claims only after they were arrested. As regards asylum seekers, the Immigration Department does not have the corresponding figures since the applications are handled by the United Nations High Commissioner for Refugees ('UNHCR') Sub-Office Hong Kong.

Other Issues Relating to the Bill

6. Some Members asked if the Administration had considered making 'prohibition from work' a recognizance condition to be prescribed to IIs. We had considered this issue when we prepared the Bill. We consider that it is more appropriate to specify the offence for IIs taking employment for the following reasons –

- (a) at present persons not lawfully employable other than IIs will be prosecuted for and convicted of the relevant offence through judicial proceedings. This is in line with the proposed arrangement;

- (b) recognizance normally involves reporting conditions. If other conditions were to be introduced, the administrative decisions involved might be subject to judicial challenge.

7. Some Members asked whether IIs authorised to remain under section 13 of the Ordinance would be subject to the proposed offence. After such an authorisation is made by the Director of Immigration, a person will have lawful permission to remain in Hong Kong. He will not be caught by the new section 38AA(1)(a).

8. Some Members asked if the proposed offence against IIs taking employment would cover self-employed persons. The proposed new section specifically prohibits IIs from establishing or joining in business, hence covers self-employed persons. The wording has been devised with reference to the relevant provisions in the Immigration Regulations.

9. Moreover, some Members asked about the immigration arrangement for Macao permanent residents visiting Hong Kong in the future. At present, Macao visitors coming to Hong Kong are given limit and conditions of stay. Since the limit and conditions of stay cannot be endorsed on the card surface of a Macao permanent identity card, the relevant conditions will be issued on a printed slip to a Macao visitor using traditional counter or e-Channel (after enrolment). The Immigration Department is finalising the design of the slip and a tentative design is at Annex B.

Issues Relating to Torture Claims

10. Members asked whether the Administration would allow IIs who were torture claimants and asylum seekers to work for a living during their stay in Hong Kong.

11. Allowing torture claimants to undertake employment while undergoing screening could potentially attract more economic migrants coming to Hong Kong. Under the Convention against Torture, the Administration would not remove a person to another country if he would face torture on return. However, this does not mean that the persons concerned are entitled to the right to work. As for screened-in claimants, they are still subject to removal from Hong Kong if the risk to torture is eliminated, and they may also be removed to a safe alternate country or

territory. Furthermore, the Refugee Convention does not apply to Hong Kong.

12. On humanitarian grounds, the Administration, in collaboration with non-governmental organisations and on a case-by-case basis, offers in-kind assistance to torture claimants and asylum seekers who cannot meet their basic needs while their claims are being processed. The assistance offered includes temporary accommodation, food, clothing, other basic necessities, appropriate transport allowances, counselling and medical service. As at end of August 2009, 4 234 persons were receiving such assistance. In 2008/2009, the direct expenditure of the Government in this area amounted to \$56 million; the provision for the financial year 2009/2010 would be \$159 million. The provision of the assistance is arranged by the International Social Service Hong Kong Branch under a service project commissioned by the Social Welfare Department. As requested by Members, details on the provision of food are set out at Annex C. Some Members also asked about the role of the UNHCR Sub-Office Hong Kong in the provision of assistance. The Office has a mandate to provide assistance and arrange for resettlement in recipient countries for refugees. The assistance is provided through non-governmental organisations.

13. We believe that the basic needs of the above groups of persons are catered for by the humanitarian assistance. There is no need for them to take employment to earn a living. Considering the unique circumstances of Hong Kong and to prevent an abuse of our immigration regime, we have no plan to change the present policy regarding torture claimants and refugees/asylum seekers.

14. Some Members asked about overseas practices regarding access to work for torture claimants/refugees/asylum seekers and the detention arrangements. They are set out at Annex D.

15. Some Members asked about information on 'economic refugees' and torture claimants in the nearby area. We provide the number of refugees in some countries in the region as provided on the UNHCR website is set out at Annex E (there is no readily available statistics of the number of torture claims handled in these countries).

16. Some Members asked about access to education for minors of asylum seekers/torture claimants. The Administration has been providing assistance to such minors in terms of school placement and student financial assistance to cover education-related expenses on a case-by-case basis, if they will likely remain in Hong Kong for a period of time. In arranging placement, the Education Bureau will consider the education needs of the children. For example, new arrival children may attend Initiation Programmes to improve their Chinese and English, and assist them in adjusting to the local community and fostering personal development. Apart from the assistance provided by the Administration, there are other resources in the community in support of the development of child asylum seekers/torture claimants.

17. Moreover, some Members asked whether torture claimants or asylum seekers would be prosecuted for the offence of entering Hong Kong illegally. According to the relevant policy of the Department of Justice, a person who seeks asylum or make torture claim will not normally be prosecuted for an immigration offence (including entering Hong Kong illegally) until their claims and all appeal procedures are completed.

18. Members are invited to note the content of this paper.

**Security Bureau
September 2009**

Annex A

Statistics Regarding Illegal Immigrants and Unlawful Employment

| Year | Foreign Illegal Immigrants (not including Vietnamese) | |
|------|--|-----|
| 2006 | 273 | |
| 2007 | 1419 | |
| 2008 | 964 | |
| 2009 | January | 32 |
| | February | 41 |
| | March | 102 |
| | April | 167 |
| | May | 138 |
| | June | 120 |
| | July | 145 |
| | August | 191 |
| | Total | 936 |

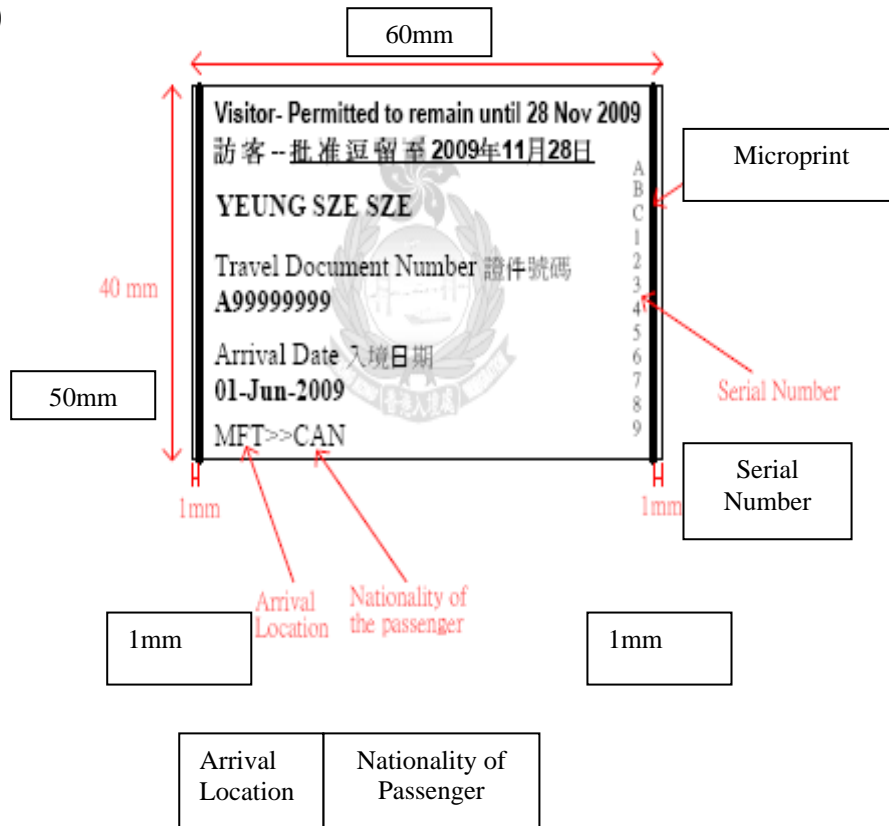
| Year | Employers Prosecuted for Employing Persons Not Lawfully Employable | Illegal Immigrants Prosecuted for Taking Employment* | Persons Prosecuted for Breach of Condition of Stay Prohibiting Taking of Employment |
|--------------------------------|---|--|--|
| 2006 | 309 | 635 | 3 113 |
| 2007 | 245 | 409 | 1 981 |
| 2008 | 278 | 405 | 1 827 |
| 2009 (January to August) | 208 | 200 | 1 208 |

*Including Mainland and all foreign illegal immigrants

Note: breakdown of type or location of work not available

Sample of Slip for Limit of Stay for Macao Visitors Tentative)

(Front)



(Back)

Important Notice to Visitors
重要通告 訪客須知

Please keep this landing slip while remaining in Hong Kong.
在香港逗留期間，請保留此入境標籤。

A visitor is required to leave Hong Kong on or before the limit of stay expires.
訪客必須於逗留期限屆滿日或之前離港。

A visitor shall not take any employment (whether paid or unpaid); establish or join in any business; and/or become a student at a school, university or other educational institution.
訪客不得從事任何僱傭工作（不論有薪或無薪）；開辦或參與任何業務；及/或就讀於學校、大學或其他教育機構。

PERSONS WHO BREACH A CONDITION OF STAY ARE LIABLE TO CRIMINAL PROSECUTION
違反逗留條件的人士會被刑事檢控

If you are in any doubt, please enquire with the officers at our control points or call 2824 6111 during office hours.
如你有任何疑問，請向管制站職員提出或於辦公時間內致電2824 6111查詢。

Humanitarian Assistance – Provision of Food

The International Social Service Hong Kong Branch (ISS-HK), operator of the service project providing assistance to asylum seekers and torture claimants, provides service users with a variety of food items (see food order checklist attached), including vegetables, fruit, meat as well as baby / children food as required. Nutritional, cultural, religious and other specific needs of individual service users are catered for as appropriate. The ISS-HK ensures the quality of the provision of food through the following measures –

- making reference to the principles of healthy eating recommended by the Department of Health, the ISS-HK has revised the food order checklist for service users to choose their food with a view to facilitating better meal planning;
 - the Food Service Unit of the ISS-HK responsible for the provision of food is headed by a professionally trained doctor from Nepal and includes medical professionals within the team. The Unit advises service users on making food order to ensure that the food provided can meet the nutritional needs of the users;
 - the ISS-HK has increased the number of food collection points and the frequency of collection of fresh items, such as bread, milk, vegetables, fruit, fresh fish etc to once every five days so as to ensure the freshness of these items;
 - the ISS-HK has been organising programmes for and disseminating information to service users to help enhance their awareness on concepts of healthy eating and balanced diets;
 - the ISS-HK has arranged staff to station at the food suppliers' shops throughout the operating hours to monitor the day-to-day food provision and handle requests from service users such as replacement of individual food items; and
 - the ISS-HK has put in place more channels to collect feedback and complaints from service users regarding the provision of food such as setting up suggestion boxes at all the food collection points and offices of the service project. The agency also has an established mechanism to follow up complaints from service users.
2. The Social Welfare Department has been conducting regular scheduled and unannounced visits to the food collection points for service monitoring purpose.

FOOD ORDER CHECKLIST

ISS REF. NO. _____

Pick-up Point: KOWLOON NEW TERRITORIES

Batch No. _____

| 1ST ISSUANCE: | | | |
|--|---|---|---|
| GRAINS AND CEREALS: | | VEGETABLES: | |
| <input type="checkbox"/> Regular Rice (5 kg) | <input type="checkbox"/> Basmati Rice (5 kg) | <input type="checkbox"/> Wheat Flour ATTA (5 kg) | <input type="checkbox"/> Semolina (500 gms. X 5) |
| <input type="checkbox"/> Regular rice (2 kg) | <input type="checkbox"/> Basmati Rice (2 kg) | <input type="checkbox"/> Wheat Flour ATTA (2 kg) | <input type="checkbox"/> Pasta <input type="checkbox"/> Dhal |
| <input type="checkbox"/> Brown Bread (2 lbs) | <input type="checkbox"/> Regular Bread (2 lb) | <input type="checkbox"/> Life Bread (2 lbs) | <input type="checkbox"/> Breakfast Cereals |
| BEVERAGES: | | <input type="checkbox"/> Garlic <input type="checkbox"/> Onion | |
| <input type="checkbox"/> Fresh Milk-UHT(3 l) | <input type="checkbox"/> Evap.Canned Mil | <input type="checkbox"/> Powder Milk | <input type="checkbox"/> Low-Fat Fresh Milk |
| <input type="checkbox"/> Tea (50 bags) | <input type="checkbox"/> Coffee (50 gm) | <input type="checkbox"/> MILO (400 gm) | <input type="checkbox"/> Horlicks (350 mg) |
| <input type="checkbox"/> Mr. Juicy (Orange) | <input type="checkbox"/> Mr. Juicy (Apple) | <input type="checkbox"/> Vita Juice (Per Pack) | <input type="checkbox"/> Soya Milk (Per Pack) |
| CONDIMENTS/SPICES: | | <input type="checkbox"/> Tomato <input type="checkbox"/> Potato | |
| <input type="checkbox"/> Chilli Powder | <input type="checkbox"/> Black Pepper | <input type="checkbox"/> Curry Powder | <input type="checkbox"/> Yellow Powder |
| MEAT & MEAT PRODUCT: | | <input type="checkbox"/> Lettuce <input type="checkbox"/> Cauliflower | |
| <input type="checkbox"/> Frozen Pork | <input type="checkbox"/> Frozen Beef (HAL) | <input type="checkbox"/> Frozen Chicken (HALA) | <input type="checkbox"/> Frozen Fish |
| <input type="checkbox"/> Frozen Mutton (HALAL) | <input type="checkbox"/> Fresh Fish | <input type="checkbox"/> Lamb Leg | <input type="checkbox"/> Luncheon Meat (Pork) |
| <input type="checkbox"/> Sardine in Tom. Sauce | <input type="checkbox"/> Tuna in can | <input type="checkbox"/> Corned Beef | <input type="checkbox"/> Cabbage <input type="checkbox"/> Bitter Melon |
| OTHERS: | | <input type="checkbox"/> Carrot <input type="checkbox"/> Broccoli | |
| <input type="checkbox"/> Eggs (1/2 tray) | <input type="checkbox"/> Chicken Powder | <input type="checkbox"/> Yogurt | <input type="checkbox"/> Tomato Paste |
| <input type="checkbox"/> Sugar | <input type="checkbox"/> Salt | <input type="checkbox"/> Coconut Milk | <input type="checkbox"/> Tofu (Bean Curd) |
| <input type="checkbox"/> Cooking Oil (900 mL) | <input type="checkbox"/> Ghee (1 Litre) | ADDITIONAL ITEMS: | |
| FRUITS: | | | |
| 2ND ISSUANCE: | | <input type="checkbox"/> Orange <input type="checkbox"/> Apple | |
| GRAINS AND CEREALS: | | <input type="checkbox"/> Banana | |
| <input type="checkbox"/> Regular Rice (5 kg) | <input type="checkbox"/> Basmati Rice (5 kg) | <input type="checkbox"/> Wheat Flour ATTA (5 kg.) | <input type="checkbox"/> Semolina (500 gms. X 5) |
| <input type="checkbox"/> Regular rice (2 kg) | <input type="checkbox"/> Basmati Rice (2 kg) | <input type="checkbox"/> Wheat Flour ATTA (2 kg.) | <input type="checkbox"/> Pasta <input type="checkbox"/> Dhal |
| <input type="checkbox"/> Brown Bread (2 lbs) | <input type="checkbox"/> Regular Bread (2 lb) | <input type="checkbox"/> Life Bread (2 lbs) | <input type="checkbox"/> Breakfast Cereals |
| BEVERAGES: | | <input type="checkbox"/> Lettuce <input type="checkbox"/> Cauliflower | |
| <input type="checkbox"/> Fresh Milk-UHT(3 l) | <input type="checkbox"/> Evap.Canned Mil | <input type="checkbox"/> Powder Milk | <input type="checkbox"/> Low-Fat Fresh Milk |
| <input type="checkbox"/> Tea (50 bags) | <input type="checkbox"/> Coffee (50 gm) | <input type="checkbox"/> MILO (400 gm) | <input type="checkbox"/> Horlicks (350 mg) |
| <input type="checkbox"/> Mr. Juicy (Orange) | <input type="checkbox"/> Mr. Juicy (Apple) | <input type="checkbox"/> Vita Juice (Per Pack) | <input type="checkbox"/> Soya Milk (Per Pack) |
| CONDIMENTS/SPICES: | | <input type="checkbox"/> Cabbage <input type="checkbox"/> Bitter Melon | |
| <input type="checkbox"/> Chilli Powder | <input type="checkbox"/> Black Pepper | <input type="checkbox"/> Curry Powder | <input type="checkbox"/> Yellow Powder |
| MEAT & MEAT PRODUCT: | | <input type="checkbox"/> Carrot <input type="checkbox"/> Broccoli | |
| <input type="checkbox"/> Frozen Pork | <input type="checkbox"/> Frozen Beef (HAL) | <input type="checkbox"/> Frozen Chicken (HALA) | <input type="checkbox"/> Frozen Fish |
| <input type="checkbox"/> Frozen Mutton (HALAL) | <input type="checkbox"/> Fresh Fish | <input type="checkbox"/> Lamb Leg (HALAL) | <input type="checkbox"/> Luncheon Meat (Pork) |
| <input type="checkbox"/> Sardine in Tom. Sauce | <input type="checkbox"/> Tuna in can | <input type="checkbox"/> Corned Beef | <input type="checkbox"/> String beans <input type="checkbox"/> Choi Sam |
| OTHERS: | | <input type="checkbox"/> Okra <input type="checkbox"/> Spinach | |
| <input type="checkbox"/> Eggs (1/2 tray) | <input type="checkbox"/> Chicken Powder | <input type="checkbox"/> Yogurt | <input type="checkbox"/> Tomato Paste |
| <input type="checkbox"/> Sugar | <input type="checkbox"/> Salt | <input type="checkbox"/> Coconut Milk | <input type="checkbox"/> Tofu (Bean Curd) |
| <input type="checkbox"/> Cooking Oil (900 mL) | <input type="checkbox"/> Ghee (1 Litre) | <input type="checkbox"/> Fresh Pepper <input type="checkbox"/> Bok Chai | |
| FRUITS: | | | |
| 3RD ISSUANCE: | | <input type="checkbox"/> Orange <input type="checkbox"/> Apple | |
| GRAINS AND CEREALS: | | <input type="checkbox"/> Banana | |
| <input type="checkbox"/> Regular Rice (5 kg) | <input type="checkbox"/> Basmati Rice (5 kg) | <input type="checkbox"/> Wheat Flour ATTA (5 kg.) | <input type="checkbox"/> Semolina (500 gms. X 5) |
| <input type="checkbox"/> Regular rice (2 kg) | <input type="checkbox"/> Basmati Rice (2 kg) | <input type="checkbox"/> Wheat Flour ATTA (2 kg.) | <input type="checkbox"/> Pasta <input type="checkbox"/> Dhal |
| <input type="checkbox"/> Brown Bread (2 lbs) | <input type="checkbox"/> Regular Bread (2 lb) | <input type="checkbox"/> Life Bread (2 lbs) | <input type="checkbox"/> Breakfast Cereals |
| BEVERAGES: | | <input type="checkbox"/> Lettuce <input type="checkbox"/> Cauliflower | |
| <input type="checkbox"/> Fresh Milk-UHT(3 l) | <input type="checkbox"/> Evap.Canned Mil | <input type="checkbox"/> Powder Milk | <input type="checkbox"/> Low-Fat Fresh Milk |
| <input type="checkbox"/> Tea (50 bags) | <input type="checkbox"/> Coffee (50 gm) | <input type="checkbox"/> MILO (400 gm) | <input type="checkbox"/> Horlicks (350 mg) |
| <input type="checkbox"/> Mr. Juicy (Orange) | <input type="checkbox"/> Mr. Juicy (Apple) | <input type="checkbox"/> Vita Juice (Per Pack) | <input type="checkbox"/> Soya Milk (Per Pack) |
| CONDIMENTS/SPICES: | | <input type="checkbox"/> Cabbage <input type="checkbox"/> Bitter Melon | |
| <input type="checkbox"/> Chilli Powder | <input type="checkbox"/> Black Pepper | <input type="checkbox"/> Curry Powder | <input type="checkbox"/> Yellow Powder |
| MEAT & MEAT PRODUCT: | | <input type="checkbox"/> Carrot <input type="checkbox"/> Broccoli | |
| <input type="checkbox"/> Frozen Pork | <input type="checkbox"/> Frozen Beef (HAL) | <input type="checkbox"/> Frozen Chicken (HALA) | <input type="checkbox"/> Frozen Fish |
| <input type="checkbox"/> Frozen Mutton (HALAL) | <input type="checkbox"/> Fresh Fish | <input type="checkbox"/> Lamb Leg (HALAL) | <input type="checkbox"/> Luncheon Meat (Pork) |
| <input type="checkbox"/> Sardine in Tom. Sauce | <input type="checkbox"/> Tuna in can | <input type="checkbox"/> Corned Beef | <input type="checkbox"/> String beans <input type="checkbox"/> Choi Sam |
| OTHERS: | | <input type="checkbox"/> Okra <input type="checkbox"/> Spinach | |
| <input type="checkbox"/> Eggs (1/2 tray) | <input type="checkbox"/> Chicken Powder | <input type="checkbox"/> Yogurt | <input type="checkbox"/> Tomato Paste |
| <input type="checkbox"/> Sugar | <input type="checkbox"/> Salt | <input type="checkbox"/> Coconut Milk | <input type="checkbox"/> Tofu (Bean Curd) |
| <input type="checkbox"/> Cooking Oil (900 mL) | <input type="checkbox"/> Ghee (1 Litre) | <input type="checkbox"/> Fresh Pepper <input type="checkbox"/> Bok Chai | |
| FRUITS: | | | |
| Requested By: | | Received By: | |
| Name of Client: _____ (with signature) | | Name of Staff: _____ (3rd Schedule: _____) | |
| Current Address: _____ | | 1st Issuance Schedule: _____ 4th Schedule: _____ | |
| Date: _____ | | 2nd Issuance Schedule: _____ 5th Schedule: _____ | |

FOOD ORDER CHECKLIST: CHILDREN

Pick-up Point: KOWLOON NEW TERRITORIES ISS REF. NO. _____
 Name: _____ Batch No. _____
 Age: _____

1ST ISSUANCE:

| | |
|--|--|
| <input type="checkbox"/> Powdered Milk/ Baby Formula (pls. specify) _____ | <input type="checkbox"/> Fresh Milk |
| <input type="checkbox"/> Infant Cereal (for ages 0 - 2 years) | |
| <input type="checkbox"/> Oatmeal | <input type="checkbox"/> Breakfast Cereal |
| <input type="checkbox"/> Biscuits/ Wafers, etc | <input type="checkbox"/> Bread (2 lbs.) |
| <input type="checkbox"/> Juices | <input type="checkbox"/> Chocolate Powder |
| <input type="checkbox"/> Honey | <input type="checkbox"/> Jam <input type="checkbox"/> Yogurt |
| <input type="checkbox"/> Chicken sausage | <input type="checkbox"/> Luncheon Meat |

Remarks: _____

2ND ISSUANCE:

| | |
|--|--|
| <input type="checkbox"/> Powdered Milk/ Baby Formula (pls. specify) _____ | <input type="checkbox"/> Fresh Milk |
| <input type="checkbox"/> Infant Cereal (for ages 0 - 2 years) | |
| <input type="checkbox"/> Oatmeal | <input type="checkbox"/> Breakfast Cereal |
| <input type="checkbox"/> Biscuits/ Wafers, etc | <input type="checkbox"/> Bread (2 lbs.) |
| <input type="checkbox"/> Juices | <input type="checkbox"/> Chocolate Powder |
| <input type="checkbox"/> Honey | <input type="checkbox"/> Jam <input type="checkbox"/> Yogurt |
| <input type="checkbox"/> Chicken sausage | <input type="checkbox"/> Luncheon Meat |

Remarks: _____

3RD ISSUANCE:

| | |
|--|--|
| <input type="checkbox"/> Powdered Milk/ Baby Formula (pls. specify) _____ | <input type="checkbox"/> Fresh Milk |
| <input type="checkbox"/> Infant Cereal (for ages 0 - 2 years) | |
| <input type="checkbox"/> Oatmeal | <input type="checkbox"/> Breakfast Cereal |
| <input type="checkbox"/> Biscuits/ Wafers, etc | <input type="checkbox"/> Bread (2 lbs.) |
| <input type="checkbox"/> Juices | <input type="checkbox"/> Chocolate Powder |
| <input type="checkbox"/> Honey | <input type="checkbox"/> Jam <input type="checkbox"/> Yogurt |
| <input type="checkbox"/> Chicken sausage | <input type="checkbox"/> Luncheon Meat |

Remarks: _____

Other Considerations:

| | |
|--|---|
| Requested by: Name and signature: _____ | Received by: Name and signature: _____ |
| Date: _____ | Date: _____ |

Overseas Arrangements for
Torture Claimants/Refugees/Asylum Seekers on
Work and Detention*

Detention Arrangements

United States (US)

Pursuant to the Immigration and Nationality Act, an alien may be arrested and detained pending a decision on his/her removal from the US, and an applicant for asylum, withholding of removal, or CAT relief is likely to face detention during part or all of the adjudication process. The US law requires the detention of some categories of inadmissible or deportable aliens.

Canada

2. Immigration officers are empowered under the Immigration and Refugee Protection Act 2001 to detain non-citizens on entry into the territory if the officer considers it necessary to do so in order for an examination to be completed, or the officer has reasonable grounds to suspect that the person is inadmissible on grounds of security or for violating human or international rights. In addition to the power to detain at the border, an immigration officer may arrest and detain a non-citizen believed to be inadmissible and who is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada; or if the officer is not satisfied of the identity of the foreign national.

Australia

3. The Migration Act 1958 requires people who are unlawful non-citizens to be mandatorily detained until they were granted a visa (pursuant to a refugee claim) or were removed from the country. Starting from July 2008, only three groups of unlawful non-citizens are subject to mandatory detention. Once in detention, a detainee's case will be reviewed every three months to ensure that the future detention of the individual is justified.

* The Refugee Convention is applicable to these countries.

United Kingdom (UK)

4. The power to detain ‘pending examination and pending a decision to give or refuse leave to enter’ is contained in paragraph 16.1 of Schedule 2 to the Immigration Act 1971. This power is supplemented by section 62 of the Nationality, Immigration and Asylum Act 2002. Individuals without valid entry clearance at ports of entry or upon the apprehension of persons who are suspected of entering the UK clandestinely may be detained. The exercise of the discretion to detain is governed by specified criteria.

Work Arrangements

US

5. Asylum applicants may apply for employment authorization no earlier than 150 days after the completed asylum application has been filed. Employment authorization may not be granted prior to 180 days after the date of filing the asylum application. Such authorization is renewable for the continuous period of time necessary for the asylum officer or immigration judge to decide the asylum application and, if necessary, for completion of any administrative or judicial review.

Canada

6. A refugee claimant must first obtain a work permit if he/she wishes to work there. A work permit will generally be granted unless the routine medical examination suggests otherwise (e.g. health risks).

Australia

7. Protection visa applicants are only eligible for work right if they lodge their visa application within 45 days of arrival or where a decision on their application cannot be made within six months and they can demonstrate a compelling need to work.

UK

8. Asylum applicants can request permission to work after he/she has waited for 12 months for an initial decision on his/her application.

Annex E

Number of Refugees in
Some Countries in the Region

| Country | Number of Refugees (end 2008) |
|-----------------|--|
| India | 184 543 |
| Nepal | 122 332 |
| Pakistan | 765 720 |
| Thailand | 112 932 |

Source: Website of Office of United Nations High Commissioner for Refugees