

**For discussion on  
29 June 2009**

**Legislative Council Panel on Security  
Combating Illegal Immigration**

**Introduction**

The Government spares no effort in combating illegal immigration. This paper sets out the various measures taken by the Government in this regard.

**Background**

2. Section 38 of the Immigration Ordinance provides that an illegal immigrant shall be liable on conviction to a fine of \$25,000 and imprisonment for three years. Generally, unless an illegal immigrant:

- (i) is found to have taken up employment;
- (ii) has committed other offences; or
- (iii) has been previously sentenced to imprisonment in Hong Kong,

we would not initiate prosecution but arrange repatriation as soon as possible.

3. The arrest number of illegal immigrants from 2006 to May 2009 is tabulated as follows:

<b>Nationality</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009 (Jan to May)</b>
Mainland	3 173 (3 151)	3 007 (3 175)	2 368 (2 460)	794 (853)
Vietnam	598 (483)	631 (614)	653 (694)	212 (182)
Others <sup>1</sup>	273 (186)	1 419 (339)	964 (242)	480 (42)
<b>Total</b>	<b>4 044 (3 820)</b>	<b>5 057 (4 128)</b>	<b>3 985 (3 396)</b>	<b>1 486 (1 077)</b>

( ) Repatriation figures

As shown, the number of Mainland illegal immigrants is on a decreasing trend. However, there is an upsurge in the number of illegal immigrants of other nationalities (except Vietnam).

### **Interception at Source**

4. The Frontier Closed Area and the boundary fence are important security measures for combating illegal immigration and other cross-boundary criminal activities. The existing boundary fence is installed with the Fence Protection System<sup>2</sup>, which is connected to the Centralized Monitoring and Control System at Man Kam To Police Operational Base for monitoring the boundary security situation round the clock. To tackle illegal immigration by land, the Police have already stepped up operations along the boundary, paying close attention to black spots of illegal immigration with enhanced patrol to intercept illegal immigrants. The Police also inspect incoming vehicles at the Lok Ma Chau, Man Kam To and Sha Tau Kok Boundary Control Points to prevent people from entering Hong Kong illegally by hiding in the vehicles. The Police will continue to enforce the law rigorously, and deploy resources and manpower flexibly having regard to the circumstances and operational needs.

<sup>1</sup> Mainly from Pakistan, Bangladesh, Nepal, Sri Lanka and India.

<sup>2</sup> The Fence Protection System, which comprises thermal imagers, a sensor alarm system and CCTV cameras, is used for security surveillance along the boundary fence.

5. To tackle illegal immigration by sea, the Administration has set up buoyed floating barriers at the sea off Sha Tau Kok to enhance effectiveness in intercepting vessels engaging in smuggling goods and illegal immigrants. Meanwhile, in response to the trend of smuggling activities, the Marine Police will flexibly deploy their launches and officers to enhance patrol at sea. The Marine Police will also join hands with the Police land regions to conduct anti-illegal immigration operations at landing black spots for illegal immigrants. Since March this year, the Marine Region, in collaboration with the Police land regions and the Border Force of Guangdong Province, has been conducting joint operations to step up combat action having regard to the rising number of non-ethnic Chinese entering Hong Kong illegally by sea.

6. Law enforcement agencies in Guangdong and Hong Kong hold meetings and exchanges on the tackling of illegal immigration regularly. The Police provide the relevant units in Guangdong Province with information on illegal immigration from the Mainland (including non-ethnic Chinese entering Hong Kong illegally from the Mainland) on a regular basis to facilitate their follow-up and investigation as well as the formulation of preventive measures. Having regard to the significant increase in the number of arrests of foreign illegal immigrants recently, the Police have requested their counterparts in Guangdong Province to step up preventive action at both the land boundary and the sea boundary. The law enforcement agencies of both sides will continue to conduct joint operations at both the land boundary and the sea boundary of Guangdong and Hong Kong to intercept illegal immigrants. Moreover, the Immigration Department would continue to liaise closely with relevant Mainland authorities on deterring Mainland residents from breaching immigration regulations in Hong Kong. Particulars of offenders will be passed to the relevant Mainland authorities so that their future applications for entry can be subject to closer scrutiny.

## Combating Illegal Employment

7. To reduce the incentive for illegal immigration, the Government has been taking rigorous measures to combat illegal employment. An inter-departmental Task Force comprising the Security Bureau, the Police, the Immigration Department, the Labour Department, the Customs and Excise Department, the Correctional Services Department, etc. has been set up since April 2003 to enhance coordination of joint operation and gathering of information. Relevant departments conduct frequent anti-illegal employment operations, including patrol in illegal employment black spots and conducting publicity campaigns.

8. Section 17I of the Immigration Ordinance provides that employing a person who is not lawfully employable is an offence liable on conviction to a fine of \$350,000 and imprisonment for three years. Illegal immigrant who takes up employment is, under Section 38 of the Immigration Ordinance, liable on conviction to a fine of \$25,000 and imprisonment for three years. Persons who have breached their conditions of stay by taking up illegal employment are, under Section 41 of the Immigration Ordinance, liable on conviction to a fine of \$50,000 and imprisonment for two years.

9. Statistics on employers and illegal workers arrested are as follows:

	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009 (Jan to May)</b>
Employers arrested	985	699	885	440
Illegal Workers arrestd	4 285 (81)	2 612 (56)	2 490 (254)	906 (35)

( ) Illegal immigrants

10. In addition to enforcement actions, the Government attaches great importance to education and publicity:

- Announcements in the Public Interest (APIs) on TV and radio, Government websites, posters and leaflets are produced to enhance public awareness of the relevant legislation. In particular, employers are reminded that employing illegal workers is a serious offence which, according to the Court’s sentencing guidelines, even first-time offenders would be imprisoned.
- Talks and seminars are held to brief employers and employment agencies on the security features of the Hong Kong Identity Card and the relevant regulations / points to note in employing a person or handling employment contracts.
- Setting up of a hotline and an online reporting system for the public to report suspected cases of illegal employment.

### **Amending the Immigration Ordinance**

11. The Government used to prosecute illegal immigrants found taking employment in Hong Kong for the offence of “unlawful remaining” under section 38 of the Immigration Ordinance<sup>3</sup>. In a judicial review case in March this year, the Court of First Instance of the High Court held that recognizance<sup>4</sup> granted to illegal immigrants pending decision for asylum / torture claims represented an authority from the Director of Immigration for them to remain in Hong Kong. Hence they could not be prosecuted for “unlawful remaining”. Following the ruling, there is an upsurge in the number of illegal immigrants of foreign nationalities arrested: from 41 in February to 102 in March. The figures

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<sup>3</sup> Section 38(1)(b) of the Immigration Ordinance provides that a person, who has landed in Hong Kong unlawfully and remains in Hong Kong without the authority of the Director, shall be guilty of an offence.

<sup>4</sup> Currently around 99% of torture claimants are allowed to enter into a recognizance, awaiting results of the determination of their cases.

soared to 167 and 138 in April and May respectively. In view of this, we will introduce on 24 June 2009 the Immigration (Amendment) Bill into the Legislative Council. The Bill will provide for a criminal offence against taking of employment, or establishing / joining in of business by illegal immigrants and other ineligible persons.

12. In recent years, the number of claims made under the “The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” rose drastically<sup>5</sup>. The claimants are mainly illegal immigrants or overstayers from South Asia and Africa. Most of them made their claims after remaining in Hong Kong for a long time, some even after their arrest or detention. We are conducting a comprehensive review on the torture claim assessment mechanism. We will brief the Security Panel on the progress of the review on 6 July.

**Security Bureau**  
**June 2009**

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<sup>5</sup> The Immigration Department received on average 183 claims against torture per month in 2008, 10 times the figure of 2005. In the first five months of 2009, the average number of claims per month increased to 242.