

For information
29 September 2009

Panel on Security of the Legislative Council

Torture Claim Screening Mechanism: Latest Progress

Purpose

This paper aims to report the latest progress of the enhancements to the torture claim screening mechanism and to address the issues raised by Members at the meeting on 6 July.

Background

2. At the meeting of the Panel on Security on 6 July 2009, we briefed Members on the following enhancement measures concerning the screening of torture claims:

- (i) Screening procedures be revised including that immigration officers responsible for conducting screening interviews would decide whether the claims are substantiated;
- (ii) Training and support for screening officers be strengthened;
- (iii) Petitions against the decisions on the claims will be decided by independent persons with a legal background, and hearings will be conducted in the petition process if required; and
- (iv) Legal assistance will be provided to claimants who lack economic means.

Latest situation

Torture claim figures

3. The number of torture claims received has continued to increase since the last meeting. The intake of new cases was about 300 per month this July and August. The number of outstanding cases has increased from 5,053 by end-June to 5,638 by end-August. Detailed figures are set out at Annex 1.

4. Among the 6,657 torture claims ever received by the Immigration Department (ImmD), 44% of the claimants are known to have lodged refugee claims. Before the suspension of screening in December last year, there were 304 completed cases, the screening of which took about 14 months on average. We have not kept breakdown figures on the processing time for claimants who are also asylum seekers. Since torture claims and refugee claims are processed independently, lodging dual claims should not have significant effect on the processing time.

5. In reviewing the screening mechanism, we have made reference to the procedures of the United Nations High Commissioner for Refugees (UNHCR) and other jurisdictions for handling refugee claims. Our screening workflow will be streamlined, and specific time limits will be laid down for various steps in the process. With such enhancements, we envisage that the screening of claims would be expedited significantly.

Screening procedures

6. Regarding paragraphs 2(i) and 2(ii) above, ImmD has organised a new round of training with the assistance from UNHCR, Office of the High Commissioner for Human Rights and the United Kingdom Border Agency. As for paragraph 2(iii), we shall appoint retired judges/magistrates to handle petitions.

Legal assistance

7. The Administration has further discussed with the Duty Lawyer Service (DLS), as well as the Law Society and the Bar Association the arrangements for providing publicly-funded legal assistance to claimants.

8. At the Panel meeting on 6 July, the Law Society and the Bar Association expressed concerns about whether the legal assistance to torture claimants should be provided through DLS. We note that further discussions have taken place between the two legal professional bodies and DLS. We have also made clear to the legal professional bodies that DLS should be in a position to provide the legal assistance given that it is an independent legal professional organisation and possesses relevant experience. In late August, we were informed that the two legal professional bodies have agreed that the DLS should continue discussion with the Administration on the legal assistance scheme for torture claimants.

9. The discussion between the Administration and DLS on the provision of legal assistance to torture claimants has reached the final stage. Once the scheme is confirmed, we agree to launch it as a pilot scheme for 12 months. The legal assistance for torture claimants would cover the following:

- Duty lawyers will provide legal advice to claimants in articulating the grounds of claims and submitting evidence, and ensure claimants understand the claim procedure and their rights, and make complete submissions within the time limit;
- The claimant may be accompanied by a duty lawyer, if necessary, at the screening interview of ImmD;
- The claimant may consult the duty lawyer on the merits of petition if his/her claim is refused; and
- If the claimant wants to lodge a petition and the duty lawyer considers that there are sufficient meritorious grounds, the claimant may receive legal assistance in the petition process, including legal representation at any oral hearing.

10. Moreover, we understand that DLS preliminarily intends to make the following practical arrangements:

- (i) Duty lawyers will provide appropriate legal assistance to claimants considering the circumstances of each case. DLS will monitor the provision of the service;

- (ii) For duty lawyers who provide legal assistance under the new scheme, the remuneration level is the same as that under the existing duty lawyer scheme. Duty lawyers currently receive remuneration at \$670/hour or \$2,710/half day¹ under the existing scheme; and
- (iii) DLS will recruit local qualified lawyers with minimum three years' experience to enrol as duty lawyers for the new scheme of legal assistance to torture claimants.

11. In our discussion with DLS, we have made reference to the provision of legal assistance to asylum seekers and torture claimants in other common law jurisdictions, including the United Kingdom, Canada and Australia. Relevant information is at Annex 2.

12. We note that the Hong Kong Academy of Law, an institute under the Law Society, is granted funding from the Government's Professional Services Development Assistance Scheme to organise courses for lawyers who are interested in enrolment as duty lawyers for torture claimants in the new scheme. We will also support the arrangement of relevant training by DLS.

13. The Administration and DLS have in broad terms agreed on the above legal assistance scheme. We hope that a memorandum of administrative arrangements could be signed in due course such that the screening of torture claims could commence as soon as possible.

Other relevant matters

Humanitarian assistance

14. For torture claimants who have difficulty meeting basic needs during their presence in Hong Kong, the Administration provides in-kind assistance through a non-governmental organisation. As at end-August 2009, 4,234 persons are receiving the assistance. In the financial year 2008/09, the direct expenditure of the Government on this front was about \$52.6 million. In the current financial year, the Government's budget for the assistance is \$155 million. Details of the assistance provided are at Annex 3.

¹ We understand that the two legal professional bodies preliminarily consider that the fee rates should be higher.

Advice Sought

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

Security Bureau
September 2009

**Number of Torture Claims
Received by the Immigration Department**

Year	No. of New Cases		Outstanding Cases (Accumulative figure at year-end)
	Whole Year	(Monthly average)	
2005	186	(16)	204
2006	514	(43)	630
2007	1,583	(132)	2,080
2008	2,198	(183)	3,967
2009	January	202	
	February	189	
	March	211	
	April	302	
	May	308	
	June	322	
	July	306	
	August	292	
(As at end- August)	2,132	(267)	5,638

**Provision of Publicly-funded Legal Assistance to Asylum Seekers:
Scope of Assistance and Fees in Overseas Countries¹**

United Kingdom	Canada ²	Australia ³
<ul style="list-style-type: none"> • <u>Basic Fees</u> Fixed rates for each phase, generally capped at £1,341 per case, covering: <ul style="list-style-type: none"> – Initial advice: £459 – Prior to appeal hearing (if any): £252 – Attending appeal hearing (if any): £630 • <u>Additional Payments</u> <ul style="list-style-type: none"> – Attending screening interview (only in exceptional cases, e.g. detained minors or persons with mental disability): £296 – Attending UK Border Agency’s Case Management Review Hearing: £100-£184 – Representation at appeal hearing: £336 (Additional £179 if further hearing required) • For exceptional cases that require substantially more hours, an <u>hourly rate</u> 	<ul style="list-style-type: none"> • Legal representatives paid at CAN\$78 to CAN\$97 per hour. Numbers of hours generally limited as follows: <ul style="list-style-type: none"> – <u>Screening stage</u> Preparation for hearing: up to 16 hours Attendance at hearing: no limit – <u>Appeal stage</u> Application for appeal: up to 27 hours Attendance at appeal hearing: no limit 	<ul style="list-style-type: none"> • In 2007-2008, the cost of providing the Immigration Advice and Application Assistance Scheme was some AU\$2.2 million, including: <ul style="list-style-type: none"> – AU\$0.7 million for application assistance to 387 protection visa applicants in immigration detention (i.e. AU\$1,809 per case); – AU\$0.9 million for application assistance to 628 disadvantaged visa applicants (i.e. AU\$1,433 per case); and – AU\$0.6 million for immigration advice to 5,825 disadvantaged persons (i.e. AU\$103 per case) • According to the Migration Agent Registration Authority, in 2008, 70% of the registered migration agents charged AU\$1,000 to AU\$3,500 for onshore

¹ The United Kingdom (UK), Canada and Australia are parties to the Convention Against Torture as well as the Refugee Convention, and are common law jurisdictions. Publicly-funded legal assistance to asylum seekers in these countries are provided primarily through legal aid institutions, with means and merits tests. The information herein was gathered in March 2009.

² The arrangement varies across provinces. Only six provinces (British Columbia, Alberta, Manitoba, Ontario, Quebec and Newfoundland) provide legal aid for hearings and appeals. The arrangement in Ontario is described here.

³ Asylum seekers in special circumstances and passing means and merits tests may receive legal aid. Those protection visa applicants who are in detention or most disadvantaged but ineligible for legal aid may seek assistance from the Immigration Advice and Application Assistance Scheme.

<p>may apply instead of the above fixed fees:</p> <ul style="list-style-type: none"> – Preparation, attendance & advocacy: £53.6 to £58.5 per hour – Travel & waiting time: £30 to £30.9 per hour – Routine letters out and telephone calls: £4.2 to £4.5 per hour 		<p>protection services and AU\$1,100 to AU\$4,000 for review applications.</p>
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Provision of Humanitarian Assistance to Torture Claimants

Rationale of the assistance

1. On humanitarian grounds, the Administration, in collaboration with non-governmental organisations (NGOs) and on a case-by-case basis, offers assistance-in-kind to torture claimants who are deprived of basic needs during their presence in Hong Kong.

2. The in-kind assistance provided to torture claimants is a form of tide-over support provided on humanitarian grounds. It is **not welfare assistance** provided to eligible Hong Kong residents. Its aim is to provide support which is considered sufficient to prevent a person from becoming destitute while at the same time not creating a magnet effect which can have serious implications on the sustainability of our current support systems.

Scope of assistance

Accommodation

3. Torture claimants in genuine need are provided with temporary accommodation together with the supply of electricity, water and other basic utilities. The types of accommodation assistance offered include -

- (i) private flats in Yuen Long rented by International Social Service Hong Kong Branch (ISS). The flats are equipped with basic furniture, beddings, household utensils and cooking facilities;
- (ii) accommodation self-arranged by the service users. ISS will enter into a direct payment arrangement with the legitimate landlord. The tenancy agreement will be renewable on a monthly basis; and
- (iii) the ISS's Anthony Lawrence International Refuge for Newcomers to Hong Kong. Service users in need of supervised housing, including women or minors, are arranged to stay in this shelter.

Food

4. Service users are provided with a variety of food items, including vegetables, fruit, meat as well as baby/children food where applicable. Nutritious, cultural, religious and other specific needs of individual service

users are catered for as appropriate. Service users collect the food items at six food suppliers' shops located in different districts on Hong Kong Island, Kowloon and the New Territories.

Clothing and basic necessities

5. Clothing, and other basic necessities, including personal toiletries, household cleansing articles, women sanitary items and baby/children items, if applicable, are provided as necessary.

Transport allowance

6. Service users with genuine travelling need for various purposes, including reporting to the Immigration Department, attending medical appointments, attending spiritual worship, meeting with lawyers, collecting food and basic necessities as well as meeting with ISS's workers etc. are provided with petty cash to meet the travelling expenses by the cheapest means of transportation.

Medical services

7. In accordance with the current practice for waiving of medical charges for non-eligible persons, recommendations for one-off waiver of medical expenses at public clinics or hospitals will be given to torture claimants on a case-by-case basis subject to the assessment by service units of the Social Welfare Department.

Level of assistance

8. The in-kind assistance provided to the individual varies according to the needs and personal situations of the person concerned, including the availability of his own resources and the resources available to him from other sources. There is **no monetary-equivalent ceiling** on how much an individual service user in genuine need may receive.