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Panel on Security

Background brief prepared by the Legislative Council Secretariat for the meeting on 1 December 2009

Review of the torture claim screening mechanism

Purpose

This paper provides background information and summarizes past discussions of the Panel on Security (the Panel) on the Administration's review of the torture claim screening mechanism.

Background

Torture claims made under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

2. The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) has been applied to Hong Kong since 1992. Torture claims made under Article 3 of CAT are dealt with by the Immigration Department (ImmD), and the Government of the Hong Kong Special Administrative Region (HKSAR) has put in place a set of administrative procedures for handling torture claims.

3. 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 would 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 country conditions subsequently change such that a torture claim established earlier in respect of a particular country can no longer be substantiated, removal to that country will be considered.

4. The administrative procedures allow a screened-out torture claimant to appeal against refusal decision made against him, and the Secretary for Security will consider the appeal. As legal proceedings are not involved in the screening and appeal

processes, no legal aid is available. However, the decision on a torture claim, including the decision on appeal, is subject to judicial review, and legal aid may be available for the judicial review proceedings. Similarly, if a deportation or removal order is made against a torture claimant, he may seek judicial review against the decision to deport or remove, and legal aid may again be available for such judicial review proceedings.

Number of torture claims lodged

5. According to information provided by the Administration to the Panel in September 2009, only a small number of torture claims were lodged pursuant to Article 3 of CAT in the past. From 1992 to 2004, the HKSAR Government received 44 claims in total.

6. In June 2004, the Court of Final Appeal decided in a judicial review case that the procedures for screening torture claims should meet high standards of fairness and allow every reasonable opportunity for the claimant to establish his claim. Thereafter, the number of torture claims has surged. The number of claims received were 186, 541, 1 583 and 2 198 respectively from 2005 to 2008, and 2 132 claims were received in the first eight months of 2009. The majority of claimants are South Asians, mostly from Pakistan, India, Bangladesh and Sri Lanka. About half of the claimants are illegal immigrants (IIs) and the other half overstayers. According to the Administration, about 90% of the claimants lodged their claims upon arrest or when facing repatriation by the law enforcement agencies, and their claims were lodged after remaining in Hong Kong for a long time in order to prolong their stay.

The Court of First Instance's judgment

7. The Administration advised that it had been reviewing the torture claim screening mechanism from time to time, with a view to achieving effective screening, ensuring procedural fairness and preventing abuses. Nevertheless, the Court of First Instance (CFI) decided in December 2008 in another judicial review case that the screening procedures put in place by the Administration were unable to meet the high standards of fairness, for reasons including the following -

(a) the Administration had not provided publicly-funded legal assistance to needy claimants;

(b) the officer who decided whether a claim was substantiated was not the one who interviewed the claimant; and

(c) the Administration had not arranged for oral hearings of the petitions lodged by claimants who were dissatisfied with the result of the screening.

8. The screening process has been suspended following the CFI's judgment. By end-August 2009, there were 5 638 claims pending screening. To deal with the backlog of claims, the Administration saw a need to resume screening as soon as

possible. Against this background, the Administration has further reviewed the torture claim screening mechanism having regard to the experiences of other common law jurisdictions, with an aim to enhance the existing mechanism by implementing a series of improvement procedures as early as possible.

Past deliberations of the Panel

9. At the Panel meetings on 6 July and 29 September 2009, the Administration briefed members on the progress of its review of the torture claim screening mechanism.

10. The Administration informed members that it planned to implement the enhanced screening procedures and resume the screening process in September or October 2009. Among others, it would revise the relevant procedures and guidelines to allow legal representatives of claimants to be present at screening interviews. It would also allow attendance of legal representatives at petition hearings. Besides, the Administration was actively exploring the provision of publicly-funded legal assistance to the claimants who lacked economic means. It was discussing with relevant service providers, including the Duty Lawyer Service, on possible provision of such services. If an agreement was reached, the Administration would, through subvention to the relevant service providers under a pilot scheme, provide legal assistance to those claimants who had such a need during the screening process, including the provision of legal advice, as well as legal representation of the claimants in petition hearings.

11. The Administration further advised that it planned to introduce legislation on the screening procedures, such that the procedures would be based on clear statutory provisions. The Administration undertook to consult the Panel on the relevant legislative proposals by the end of 2009, with a view to introducing a bill into the Legislative Council within the 2009-2010 legislative session.

12. Noting that the Administration had already started discussions with the Duty Lawyer Service regarding the provision of legal representation for CAT claimants, and it was the intention of the Administration to establish a program of such representation through an extension of the existing Duty Lawyer Scheme (DLS), some members expressed concern about the suitability of DLS to provide such a service. These members had reservations about the ability and experience of the lawyers on the panel to undertake such work, when few had knowledge and experience in the areas of refugee law, procedural fairness and management of clients with special needs. These members shared the views of the two legal professional bodies, namely, the Law Society of Hong Kong (the Law Society) and the Hong Kong Bar Association (the Bar), that necessary training should be provided to lawyers participating in the proposed legal representation scheme. They also sought information about the operation of the proposed legal representation scheme, including the duty lawyer fees.

13. The Administration responded that it had made clear to the legal professional

bodies that the Duty Lawyer Service should be in a position to provide the legal assistance given that it was an independent legal professional organization and possessed relevant experience. For duty lawyers who provided legal assistance under the new scheme, the Administration preliminarily intended to set the remuneration at the same level as that under the existing DLS, i.e. at $670 per hour or $2,710 per half day. The Administration further advised that apart from discussing with the Duty Lawyer Service on the possible provision of legal representation for CAT claimants, it had also discussed the matter with the Law Society and the Bar. The Administration informed members that it had entered into a Memorandum of Administrative Arrangement (MAA) with the Duty Lawyer Service in implementing the existing DLS which provided legal representation by qualified lawyers in private practice to eligible defendants appearing in all Magistrates Courts, Juvenile Courts and Coroners Courts. If an agreement was reached on the provision of legal services to CAT claimants, the Administration would draw up a new MAA to set out the details of all relevant arrangements, including the lawyer fees proposed for different forms of professional services, the qualification and experience required for lawyers participating in the scheme, and the specialized training to be provided for lawyers undertaking such work.

14. During the discussion, members also expressed concern about the lengthy procedures and time required for determination of torture claims. They called on the Administration to speed up the process of determining torture claims.

15. The Administration advised that the time needed for assessing each case varied with factors such as the individual circumstances of the case. Statistics of the assessed torture claim cases showed that it took about 14 months on average to complete the processing of a case. The Administration stressed that it attached great importance to improving the torture claim screening mechanism. In reviewing the procedures under the existing mechanism, the Administration had made reference to the procedures of the United Nations High Commissioner for Refugees (UNHCR) and other jurisdictions for handling refugee claims. According to its plan, the screening workflow would be streamlined and specific time limits would be laid down for various steps in the process. The Administration envisaged that with such enhancements, the screening of claims would be expedited significantly in future.

16. Some members noted with concern that there were cases where the claimants had made both refugee and torture claims. They sought information on the number of these cases, and considered that if a considerable number of asylum seekers lodged both refugee and torture claims, the Administration should consider introducing a coherent and comprehensive system for contemporaneous assessment of both torture claims made under CAT and claims for refugee status filed with UNHCR under the 1951 United Nations Convention relating to the Status of Refugees (the Refugee Convention).

17. The Administration responded that among the torture claim cases received over the years, about 44% of the claimants were known to have lodged both refugee and torture claims, with the remaining of them only lodged torture claims. Regarding the application of the Refugee Convention, the Administration advised that

the HKSAR Government's established position on the Refugee Convention remained unchanged, i.e., the Convention did not apply to Hong Kong and the Government had no obligation to admit persons seeking refugee status or to handle refugee status determination. Despite the non-application of the Refugee Convention to Hong Kong, asylum seekers might approach the Hong Kong Sub-office of UNHCR to lodge asylum/refugee claims. The HKSAR Government had all along been supporting the operation of UNHCR's Hong Kong Sub-office through provision of office accommodation at nominal rent.

18. Some members asked why the Refugee Convention, to which China and Macao had already ratified, was not extended to Hong Kong. They held the view that the Administration should reconsider its position regarding the extension of the Convention so as to speed up the refugee status determination process, since UNHCR was in lack of resources to assess the refugee claims speedily. These members suggested that the Administration should provide manpower resources, as a part of government recurrent expenditure, to UNHCR to assist the latter in refugee status determination.

19. In response, the Administration advised that ImmD had entered into a Memorandum of Understanding with UNHCR to enhance cooperation. Under the existing cooperation framework, a number of ImmD officers were seconded to the Hong Kong Sub-office of UNHCR for the purpose of staff training.

20. Expressing concern that HKSAR lacked a clear asylum policy, some members sought information on how people who sought refugee status or made torture claim came to Hong Kong. They questioned whether the refugee or torture claim lodged by a person should be processed by the country/place of his first landing.

21. The Administration advised that a great majority of torture claimants were South Asians, mostly from Pakistan, India, Bangladesh and Sri Lanka. About half of the claimants were IIs and the other half overstayers. Most of these IIs came to Hong Kong en rounte from the Mainland and many of them did not lodge any claim, including claim for refugee status, until after having arrived at Hong Kong. The Administration explained that the People's Republic of China (PRC) was a State Party to CAT. It was understood that under CAT, PRC and HKSAR were regarded as one single country and there was no clear definition for the term "place of first landing". Notwithstanding this, the HKSAR Government would explore with the Mainland authorities as to whether IIs sneaked into the territory from the Mainland and making refugee or CAT claims afterwards should be sent back to the Mainland, such that their refugee or CAT claims could be processed by the Mainland, which was the place of their first landing. The Administration noted that some countries in Europe, as well as the United States and Canada, had entered into agreements on refugee status determination which stipulated that claims for refugee status had to be dealt with by the country where the claimants first landed. The Administration would make reference to overseas practices in considering whether similar arrangements might be applied locally.

22. Members in general considered that the Administration should expedite its study regarding the introduction of a legislative regime for handling torture claims. In their view, the procedures should meet the high standards of fairness as decided by the courts. The legislative framework to be introduced for handling torture claims should also dovetail with the enhancement measures to be put in place.

23. In response, the Administration assured members that it would consider all practicable measures to enhance the torture claim screening mechanism. The legislative framework to be introduced for handling torture claims would be ready for consideration by the Panel by the end of 2009.

24. Some members were also concerned about the livelihood of torture claimants. They requested the Administration to provide more detailed information on humanitarian assistance currently provided to torture claimants and asylum seekers released on recognizance, including the nature, level and form of support for these people. The relevant information provided by the Administration for the Panel meeting on 29 September 2009 is in **Appendix I**.

Latest developments

25. In view of the reservation expressed at the Panel meeting on 29 September 2009 by the representatives of the Law Society and the Bar about the proposed arrangements for the legal representation scheme, the Administration was asked to continue discussion with the two legal professional bodies on various issues of concern, including the guidelines on the scheme, the training arrangement for duty lawyers, the role of UNHCR in screening of CAT claims and the proposed fees rates for torture claim related work. The Administration's response on the subject of legal representation for CAT claimants (LC Paper No. CB(2)33/09-10(01)) was circulated to members on 15 October 2009, a copy of which is in **Appendix II**.

Relevant papers

26. Members may wish to refer to the following documents for details of the relevant discussions of the Panel on Security -

(a) Administration's paper for the meeting of the Panel on Security on 6 July 2009 [LC Paper No. CB(2)2054/08-09(01)];

(b) Administration's paper for the special meeting of the Panel on Security on 29 September 2009 [LC Paper No. CB(2)2514/08-09(01)];

(c) Joint submission from the Law Society of Hong Kong and the Hong Kong Bar Association [LC Paper No. CB(2)2524/08-09(01)];

(d) Administration's response to the joint submission of the Law Society of Hong Kong and the Hong Kong Bar Association dated 24 September

2009 on legal representation for CAT claimants [LC Paper No. CB(2)33/09-10(01)]; and

(e) Minutes of the meeting of the Panel on Security on 6 July 2009 [LC Paper No. CB(2)2495/08-09].

Council Business Division 2
Legislative Council Secretariat
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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.

LC Paper No. CB(2)33/09-10(01)

The Administration's Response to the Joint Submission of the Law Society and the Bar Association to the LegCo Panel on Security on Legal Representation for CAT Claimants Dated 24.9.2009

Guidelines on the new scheme (Paras. 6 & 7)

1. Allegation that the Administration does not truly appreciate the difficulties faced by claimants, and the heavy burden on the legal practitioner to present the claimant's case.

   There is no basis for such an allegation by the legal professional bodies ("LPBs"). The fact that the Administration is willing to accept the *FB judgment* without lodging any appeal and to revise the torture claim screening mechanism to remedy those systemic flaws as declared by the court to be unlawful together with the negotiations with the Duty Lawyer Service ("DLS") in setting up a publicly-funded legal assistance scheme for torture claimants are clear indications that the Administration has every intention to conduct torture claim screening in accordance with the requirement of high standards of fairness. Indeed, the Administration's concession that there will be no cap on the number of sessions of legal service to be provided by DLS lawyers under the proposed legal assistance scheme has demonstrated the Administration's willingness to accommodate the need of torture claimants and their legal representatives where the particular facts of a case or the issues involved are complicated which would require further advice on the matter.

2. Time permitted for completion of the questionnaire is insufficient.

   The Administration has agreed to extend the time for returning the completed questionnaire from 14 days to **28 days**. We consider that it is a reasonable period that strikes a balance between the need to ensure a claimant is given a reasonable opportunity to establish his case and the requirement for early screening of a case with no undue delay. This is in line with the Canadian practice in that an asylum claimant in Canada will be given 28 days to return the specified form containing the required information in support of his claim for assessment by the relevant authority and is longer than the previous UK practice where a

claimant was given only 10 days to complete a standard form to lodge his asylum claim.

Indeed, the information required to be given in the questionnaire in a torture claim relate to personal information about the claimant himself and factual information about his past experience of having been tortured which a claimant should have personal knowledge thereof; and thus there should not be any difficulty for him to give the required information which is within his own knowledge. Neither is it necessary for a claimant or his legal representative to make data access request etc. for information from authority in Hong Kong before he is in a position to complete the questionnaire. In this respect, the submission that a misplaced word or incorrect statement would cause serious prejudice to a claimant's case as damaging his credibility is misconceived as a case officer is required to take into account all the relevant information of the case which includes objective information e.g. the relevant country of origin information etc. in deciding the credibility issue; and that mistakes made in the questionnaire may always be rectified/clarified at the subsequent interview or by way of supplementary information given in writing.

As regards the difficulties faced by a claimant in obtaining documentary proof, the fact that he has no such proof or is unable to obtain it would not necessarily cause prejudice to his claim given that the authority determining his claim is required to take into account the fact that a claimant who has fled from the country concerned would have few belongings and document with him; and that the authority could not adopt an attitude of sitting back and putting him to strict proof of his claim (CFA in *Prabakar (2004) at paras. 53 & 54*). Where necessary, a claimant may request for an extension for a reasonable period of time to submit any crucial documentary proof which is temporary unavailable.

In any case, given that there is an element of flexibility on the timing to return the completed questionnaire as a case officer may allow for a time extension on justifications (para. 16 of the draft Guidelines), the 28-day period as now allowed by the Administration for returning a questionnaire cannot be said to be grossly inadequate.

3. Prosecutions

Para. 48 of the draft Guidelines states that, "*The claimant must be informed that the information he/she provided will be treated in confidence…… In addition, nothing at all said by the claimant in either the questionnaire or at the interview will be used against the claimant in any subsequent criminal proceedings of any nature save an attempt to pervert the course of justice,* ***and/or making of false reports, etc. to member of Immigration Service****."* The LPB alleges that the prosecution of torture claimant for providing false information is contrary to *FB judgment*.

The CFI in *FB judgment* only dealt with the issue concerning a torture claimant giving incriminating answers in the questionnaire or at the interview in relation to immigration or other offences which he has committed when fleeing from his country e.g. being an overstayer, illegal immigrant etc. in Hong Kong (paras. 147-151 of the judgment). The said judgment does not appear to support a case to condone a torture claimant giving any false information to an immigration officer or the authority when lodging a claim where there is a duty on him to tell the truth and thus the court expressly mentions that the immunity is subject to the exception of "an attempt to pervert the course of justice" (para. 151).

Given the above, notwithstanding that there is no mention of any possible prosecution for making false report or information in the course of making a claim in *FB judgment*, it does not appear to have any objection to warn a claimant of any possible risks of such prosecution if he deliberately gives false information in the screening process where he is expected to tell the truth in the circumstances. Indeed, depending on the circumstances of a case, a claimant's deliberate act to give false report or information to a case officer handling his claim may be one of those facts upon which a prosecution for an attempt to pervert the course of justice may be initiated. Viewed in this light, it could not be said that the giving of any such warning to a claimant is contrary to *FB judgment*.

4. Medical examinations

Paras. 43 & 44 of the Draft Guidelines provide that a case officer may request a torture claimant to undergo medical examination if it appears to him that such may shed light on the credibility of the claim. The CFA in *Prabakar* held that the authority in the screening process should not adopt an attitude of sitting back and that it is appropriate for it to draw attention to matters which obviously require clarification or elaboration so that they could be addressed by the claimant (para. 54 of the judgment). Therefore, it seems that there is nothing wrong with the authority or a case officer in requesting a claimant to undergo a medical examination or submit medical evidence if such is relevant to the claim. On the question of drawing adverse inference (where the claimant refuses to consent to having such medical examination), any such inference may only be made after the claimant is given a chance to explain why consent is not forthcoming in the circumstances. Provided that such a safeguard is in place, it does not seem to have any objection to requesting a claimant to undergo medical examination for the purpose of verifying his claim.

LPBs' submission is effectively made on the basis that a torture claimant has a right to have private medical examination to be conducted at public expenses for the purpose of obtaining evidence in support of his claim. This is not in line with the *Prabakar judgment* as it is clear that the burden of proof is on a claimant to substantiate his claim albeit that the authority should not take an attitude of sitting back and put the claimant to strict proof thereof. While a torture claimant is not prevented from producing his own medical evidence in support of his case e.g. from private practitioners at his own expenses or those offering their service voluntarily, the Administration has no such obligation to pay for expenses incurred by him in having such private medical examination if the examination is not relevant to the decision on the claim, as we should secure that public resources be used reasonably.

Training and Commencement of screening (Paras. 8-11)

5. The Administration appreciates the arrangement of training for duty lawyers initiated by LPBs in ensuring the quality of legal services to torture claimants. It has offered to assist in liaison work with the Office of the United Nations High Commissioner for Refugees (UNHCR)/Office of the High Commissioner for Human Rights (OHCHR) for trainers or logistic arrangements relating to venue and will provide further assistance as appropriate.

6. We agree that lawyers acting for torture claimants should be competent to do the work through training or have the relevant experience for undertaking such work. That said, this does not necessarily mean that lawyers must attend the training course conducted by the Academy of Law before they may act for torture claimants. Whether a lawyer is competent to do the work depends on what training he has received or the relevant experience which he has had on the subject whether in Hong Kong or elsewhere. While it would be incumbent upon the Administration to further negotiate with the two professional bodies with a view to securing their blessing to permit a small number of lawyers with the relevant experience to take up the work before the commencement of the training by the Academy of Law in December, it is unfair for the LPBs to say that the Administration is not aware of any lawyers who are able to handle these cases competently without proper training if the training here refers to the training course to be conducted by the Academy of Law. It seems that there are some lawyers in Hong Kong who are competent to do torture claim related work without attending the forthcoming training course e.g. those who have been actively involved in the relevant torture claim litigation cases in Hong Kong etc. Indeed, it does not seem that LPBs may prevent any of their members from acting for a torture claimant (at his own expenses) or to act for him on pro bono basis, except that a member who has no such training or experience may be liable to be disciplined for misconduct if he/she acts negligently in the matter and/or not up to the required professional standard having regard to the strong views expressed by the LPBs that only members with the relevant training or experience are competent to do torture claim related work.

Role of the UNHCR (Paras. 12-16)

7. Given that the Refugee Convention does not apply to Hong Kong, and subject to the outcome of the appeal in "C" (CACV 132/2008) which will soon be heard by the Court of Appeal, the Administration has no obligation to conduct asylum screening in Hong Kong and that refugee matters will remain the responsibility of UNHCR - Hong Kong Office. It remains the Administration's firm policy not to conduct any asylum screening in Hong Kong or to extend the application of the Refugee Convention to Hong Kong.

8. Subject to those procedural safeguards and the requirement of fairness, and also with consent from the claimant, it seems that the "interface" with the UNHCR and use of their materials (in the asylum screening process) by a case officer in CAT screening is permissible in those circumstances as sanctioned by the CFA in *Prabakar (at paras. 56-60 of the judgment)* which is reflected in paras. 41 & 42 of the draft Guidelines. As such, it does not seem that the relevant guidelines are in breach of the requirement of high standards of fairness.

9. Secondment of officers from Immigration Department to work in the UNHCR - Hong Kong Office under the Memorandum of Understanding signed between the HKSARG and the UNHCR is solely for the purpose of staff training. As such, the fact that government officers are seconded to work in UNHCR - Hong Kong Office should not be taken as a factor which will undermine the Administration's position that the HKSARG will not conduct asylum screening as it has no such obligation to do so.

Fees (Paras. 17-22)

10. The LPBs' submission is focused on the contention that remuneration paid to lawyers doing torture claim related work should be sufficient to attract lawyers of the calibre and experience that is needed to competently handle the claims and that a comparison with overseas rates is unrealistic as Hong Kong practitioners have higher overheads costs.

11. Nevertheless, we consider that the adoption of the current duty lawyer rate (i.e. around $677 per hour) is appropriate based on the following reasons:-

    The legal assistance is available to virtually all torture claimants, whether or not their claims involve legal issues or facts disputed. The assistance to be provided in the screening process is not of the same nature as litigation work in High Court/District Court cases.

    Having due regard to the views of the LPBs as well as DLS, the Administration has stretched reasonable flexibility and accepted the suggestion from the profession that no cap should be imposed on the number of sessions for a case, which will duly take into account the individual circumstances. In this regard, the package proposed by the Administration compares favourably to the remuneration in other countries for lawyers assisting asylum seekers.

    The proposed fee rates have been endorsed by the DLS Council after full deliberations and its meeting with legal profession.

    The arrangements are made under a pilot scheme, which will last for 12 months. A review will be conducted to make necessary adjustments in the light of practical experience. The fees may be reviewed in that context, including the issue about sufficient attraction for lawyers with relevant qualifications to provide service as highlighted by the legal profession.

12. Basing on the existing duty lawyer rates and the proposed scope of assistance agreed by the LPBs, we estimate that the legal cost alone to assist a torture claimant in making their case up to the petition stage is in the region of $51,000 for a simple case (apart from other incidental expenses, e.g. interpreter's cost and translation). Bearing in mind the current influx of 300 new claims per month and we have over 5 600 cases pending determination as at end August 2009, the proposed adoption of duty lawyer rate would already pose a great financial burden to the public purse. If the rates for civil cases (ranging from $1,600 to $4,000 per hour depending on the years of practice) proposed by the LPBs are to be applied, the legal cost would shoot up

to $120,000-$300,000 per case, which we believe, will not be viable and sustainable in the long term.

13. Last but not least, for meritorious cases, claimants who have been refused at the petition stage will still be able to put forward their cases to the court through judicial review. Civil litigation fee rates ($1,600-$4,000 per hour) will be applicable upon granting of legal aid.

Security Bureau
9 October 2009