

**Legislative Council Bills Committee on
Immigration (Amendment) Bill 2011
Follow-up to the Fifth Meeting on 16 December 2011**

Purpose

This paper mainly responds to issues that Members raised at the fifth meeting of the Bills Committee on Immigration (Amendment) Bill 2011 (“the Bill”) on 16 December 2011.

Factors to be considered in determining a torture claim

2. The Bill provides that a person who meets the criteria set out in section 37W may claim non-refoulement protection on the ground of a torture risk (i.e. make a torture claim) under section 37X. Under section 37U, “non-refoulement protection” means protection under Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”).

3. Under Article 3 of CAT, in determining whether to provide such protection, authorities should take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

4. As such, in determining whether a claim is substantiated under section 37ZI of the Bill and hence non-refoulement protection is granted to the claimant, an immigration officer (and the Appeal Board) must, having regard to the individual circumstances of each case, take into account all relevant factors in compliance with Article 3 of CAT and the requirement of high standards of fairness laid down by the court. These factors include the grounds and evidence provided by a claimant and such other information as country information and background of the claimant’s place of origin, as well as case law and other relevant materials applicable at the material time, including General Comments and decisions on individual cases made by the United Nations Committee Against Torture. Given that case law and other materials are subject to

updates from time to time, it is unnecessary and difficult to set out all the factors for consideration in the Bill¹.

5. The purpose of including in the Bill certain factors to be considered in the screening process (e.g. supporting medical reports, claimants' credibility) is to set out specific details of related matters (e.g. arrangement of medical examinations, behaviours to be regarded as damaging to credibility), but not to set limits to factors which may be considered by immigration officers in determining a claim.

6. Under section 37ZJ, an immigration officer must give claimants written notice of the decision with reasons. Claimants can lodge appeal under section 37ZP and the appeal is to be considered by a statutory Appeal Board to ensure that high standards of fairness are met in the process.

Related Expenditure

7. On humanitarian support, the annual expenditure on the provision of in-kind assistance² to claimants (and asylum seekers) is as follows –

Year	Expenditure (\$'000)
2008-09	56,200
2009-10	124,420
2010-11	151,000
2011-12 (estimated expenditure)	159,000

8. On legal assistance, the annual expenditure on the provision of assistance to claimants through the Duty Lawyer Service since late December 2009 is as follows –

¹ For reference, under the torture claim screening mechanism and relevant legal provisions of other jurisdictions (such as the Asylum and Immigration Act of the United Kingdom), the factors for consideration are generally not set out in full in the relevant legislation.

² Concerning reports that claimants sold food assistance packages, such assistance is for the consumption of claimants only and not for sale. The Social Welfare Department will closely monitor the situation to guard against possible abuse.

Year	Expenditure (\$'000)
2009-10	1,570
2010-11	16,880
2011-12 (estimated expenditure)	67,500

Illegal employment

9. From 2008 to 2011 (up to the end of November), 733 torture claimants were arrested for taking up illegal employment (49 of them were arrested for more than one time).

Removal Situation

10. The ImmD will arrange for removal of those whose claim is finally determined as unsubstantiated as soon as possible after obtaining agreement of relevant governments. Of the 440 claimants who have already been removed, they departed Hong Kong two months on average after their claims were rejected upon final determination.

Security Bureau
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