

**Legislative Council Bills Committee on  
Immigration (Amendment) Bill 2011  
Supplementary Information to Matters discussed at  
the Eighth Meeting on 6 February 2012**

At the meeting on 6 February, the Bills Committee scrutinised Clause 3 to Clause 6 and Division 1 of Clause 7 of the Bill. This paper sets out the Administration's response to issues raised by Members at the meeting concerning the definition of "torture".

**Overseas legislation**

2. Domestic legislation has not been made specifically to implement the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) in the United Kingdom and Australia. The United States has made reservation to Article 1 of the Convention by stating that the term "torture" under the Convention must be an act of torture "specifically intended" to do so. Such a factor has been included in its relevant domestic legislation accordingly to determine whether an act constitutes torture.

3. Regarding the definition of "torture" in the Bill, the provisions of Article 1 of the Convention have been adopted in its entirety without any saving provision. We understand that such practice is in line with that in the domestic legislation in New Zealand and Canada.

**For reason based on discrimination**

4. For reason based on "discrimination" as mentioned in the definition of "torture", no elaboration of the term "discrimination" is provided in the Convention. Drawing reference to the decisions made by and General Comments of the Committee against Torture (the Committee) and the Office of the High Commissioner for Human Rights (the Commission) of the United Nations, "discrimination" may include those based on race, skin colour, ethnicity, age, religious belief, political views, gender etc.

**"Lawful sanctions"**

5. Article 1 of the Convention states that the term "torture" does not include "pain or suffering arising only from, inherent in or incidental to lawful sanctions". The Committee and the Commission's Special Rapporteur on

Torture once pointed out<sup>1</sup> that the questioning of a suspect or punishment of a criminal under the law may also constitute “torture” as referred to in the Convention if the examination and punishment do not comply with the requirements for human rights protection in international law.

6. In deciding whether a sanction constitutes “torture”, the Administration will give full consideration to the circumstances of each case with reference to the comments of the Committee as well as the relevant court judgments made in Hong Kong and overseas.

**Security Bureau**  
**February 2012**

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<sup>1</sup> Concluding comments of the United Nation's Committee against Torture (1997, A/52/44, paragraphs 250, 253 to 260); A Report by UN Special Rapporteur on Torture (2005, A/60/316, paragraph 27).