

立法會

Legislative Council

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by the Administration)

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Bills Committee on Immigration (Amendment) Bill 2009

Minutes of meeting on Monday, 27 July 2009, at 4:30 pm in Conference Room A of the Legislative Council Building

Members present : Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon LI Fung-ying, BBS, JP
Hon Cyd HO Sau-lan
Hon Paul TSE Wai-chun

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Kong-wah, JP
Hon CHIM Pui-chung
Hon CHAN Hak-kan
Hon WONG Kwok-kin, BBS

Public Officers attending : Security Bureau

Mr NGAI Wing-chit
Deputy Secretary for Security (3)

Mr W H CHOW
Principal Assistant Secretary for Security (D)

Mr Edward YU
Assistant Secretary for Security (D3)

Immigration Department

Mr David CHIU
Deputy Director of Immigration

Department of Justice

Mr Allen LAI
Senior Government Counsel

Attendance by invitation : Hong Kong Society for Community Organization

Mr Richard TSOI Yiu-cheong
Community Organizer

Hong Kong Construction Industry Employees General Union

Mr FUNG Kin-cho
Secretary

Hong Kong Human Rights Commission

Miss Annie LIN

Asylum Seekers' and Refugees' Voice

Gita
Spokesperson

The Lion Rock Institute

Mr Andrew SHUEN Pak-man
Co-founder

The Federation of Hong Kong and Kowloon Labour Unions

Mr LAM Chun-sing
Director of Social Affairs Committee

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

The Hong Kong Federation of Trade Union

Mr CHOW Luen-kiu
Director, Rights & Benefits Committee

Clerk in attendance : Ms Betty FONG
Chief Council Secretary (2)2

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Miss Josephine SO
Senior Council Secretary (2)1

Ms Anna CHEUNG
Legislative Assistant (2)2

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I. Meeting with deputations and the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee received views at the meeting from the following organizations on the Immigration (Amendment) Bill 2009 -

- (a) Hong Kong Society for Community Organization;
[LC Paper No. CB(2)2268/08-09(01)]
- (b) Hong Kong Construction Industry Employees General Union;
[LC Paper No. CB(2)2268/08-09(02)]
- (c) Hong Kong Human Rights Commission;
[LC Paper No. CB(2)2268/08-09(01)]
- (d) Asylum Seekers' and Refugees' Voice;
[LC Paper No. CB(2)2268/08-09(01)]
- (e) The Lion Rock Institute;
[LC Paper No. CB(2)2268/08-09(04)]
- (f) The Federation of Hong Kong and Kowloon Labour Unions;
[LC Paper No. CB(2)2268/08-09(05)]

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- (g) Hong Kong Human Rights Monitor; and
[LC Paper No. CB(2)2268/08-09(06)]
 - (h) The Hong Kong Federation of Trade Union.
[LC Paper No. CB(2)2268/08-09(07)]
3. The Bills Committee noted the submissions from the following organizations -
- (a) Hong Kong & Kowloon Trades Union Council;
[LC Paper No. CB(2)2268/08-09(08)]
 - (b) Hong Kong Bar Association; and
[LC Paper No. CB(2)2268/08-09(09)]
 - (c) The Law Society of Hong Kong.
[LC Paper No. CB(2)2268/08-09(10)]
4. The Administration was requested to provide a detailed written response to the views of the deputations as expressed at the meeting and in their written submissions.
5. Regarding the complaint about inadequate food assistance to mandated refugees as referred to in the joint submission from Hong Kong Society for Community Organization, Hong Kong Human Rights Commission and Asylum Seekers' and Refugees' Voice, the Bills Committee requested the Administration to -
- (a) revert to the Bills Committee on whether food provided to refugees, asylum seekers and torture claimants was sufficient;
 - (b) provide detailed information on the arrangements relating to the provision of food assistance to these groups of people, in particular children, together with a list of nutrients covered by various food items; and
 - (c) explain how their nutritional needs were met.
6. The Bills Committee also requested the Administration to provide the following information -
- (a) the roles and responsibilities of the United Nations High Commissioner for Refugees (UNHCR) in the provision of assistance to refugees; and
 - (b) whether children of mandated refugees were guaranteed access to

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education, while they were stranded in Hong Kong pending their resettlement elsewhere arranged by UNHCR.

II. Date of next meeting

7. The Bills Committee agreed that the next meeting would be held on Thursday, 24 September 2009, at 4:30 pm to continue discussion with the Administration. Members agreed to discuss at the meeting the Administration's response to various issues raised and concerns expressed by members and deputations.

8. The meeting ended at 6:15 pm

Council Business Division 2
Legislative Council Secretariat
11 September 2009

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**Proceedings of the meeting of the
Bills Committee on Immigration (Amendment) Bill 2009
on Monday, 27 July 2009, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000813	Chairman	Opening remarks	
000814 - 001334	Hong Kong Society for Community Organization (SOCO)	Presentation of views [LC Paper No. CB(2)2268/08-09(01)] (a) it was not appropriate for the Administration to deal with problems in a piece-meal manner. The problem of taking up illegal employment by torture claimants should be handled in the context of a comprehensive policy review including the screening mechanism for their claims, the establishment of relevant legislative framework and the humanitarian assistance provided for the claimants, including the right to work pending the outcome of their claims; (b) the Department of Justice had already lodged an appeal against the ruling of the Court of First Instance (CFI) in the case of <i>Iqbal Shahid, Waseem Abbas & Others v Secretary for Justice</i>. It was rather hasty to amend the Immigration Ordinance (Cap. 115) (IO) to prohibit IIs and other ineligible persons from taking up employment before a judgment was made on the appeal; (c) as CFI only ruled that those IIs who had been granted recognizance would have a defence against the charge of unlawful remaining, it was doubtful whether the proposed new section 38AA on prohibition of taking employment and establishing business should cover all IIs; and (d) it should suffice for the Director of Immigration (D of Imm) to spell out in the recognizance form that the person was not allowed to work	
001335 - 001619	Hong Kong Construction Industry Employees General Union	Presentation of views [LC Paper No. CB(2)2268/08-09(02)] (a) expressed support for the Immigration (Amendment) Bill 2009 (the Bill); (b) pointed out that the problem of inadequate employment and unemployment was very serious in the construction industry; and	

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		(c) expressed concern that the existing legal loophole would result in IIs or torture claimants competing for employment with local workers, the situation of which was particularly serious in the construction industry	
001620 - 002007	Hong Kong Human Rights Commission	Presentation of views [LC Paper No. CB(2)2268/08-09(01)] (a) suggested that the Administration should allow those who had been recognized by the United Nations High Commissioner for Refugees (UNHCR) as mandated refugees and those whose claims had been established under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) to work and to receive training in Hong Kong; and (b) considered that the Administration should review and adjust the level of humanitarian assistance currently provided for asylum seekers and torture claimants, so as to ensure that they could secure an adequate standard of living	
002008 - 002230	Asylum Seekers' and Refugees' Voice	Presentation of views [LC Paper No. CB(2)2268/08-09(01)] - cited her personal experience to illustrate the difficulties faced by torture claimants; called on the Administration to review the assistance provided for torture claimants to ensure that they could maintain a basic standard of living	
002231 - 002636	The Lion Rock Institute	Presentation of views [LC Paper No. CB(2)2268/08-09(04)] - considered that asylum seekers, refugees and torture claimants should have the rights to live and to work in the territory	
002637 - 002939	The Federation of Hong Kong and Kowloon Labour Unions	Presentation of views [LC Paper No. CB(2)2268/08-09(05)] (a) expressed support for the Bill; (b) echoed the view that the Administration should expedite its review of the torture claim screening mechanism and introduce a legislative regime with comprehensive and effective procedures for assessing torture claims made under CAT; (c) expressed concern about the persistently high unemployment rate in recent years and the possible negative impact of IIs taking up illegal employment in Hong Kong; and (d) pointed out that the problem of illegal employment was particularly acute in the	

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		construction and the transport and logistics industries. The taking of employment by IIs would adversely affect the employment opportunities and wages of local workers	
002940 - 003524	Hong Kong Human Rights Monitor (HKHRM)	Presentation of views - [LC Paper No. CB(2)2268/08-09(06)] (a) expressed reservation about the Bill; queried the Government's piece-meal and short-sighted approach in choosing to create a new offence in the proposed Bill; (b) suggested that the Administration should amend section 36 of IO and the standard recognizance form to enable D of Imm to impose a condition of stay, rather than creating an entirely new provision which might be inconsistent with international legal norms and create new legal loopholes; and (c) considered that the Administration should establish a comprehensive legal framework to process both torture claims and applications for asylum with improved visa arrangements	
003525 - 003740	The Hong Kong Federation of Trade Union (HKFTU)	Presentation of views [LC Paper No. CB(2)2268/08-09(07)] - expressed support for the Bill and considered that there was an urgent need to specify an offence for the taking of employment or establishing/joining in business by IIs so as to prevent them from believing that there was any loophole to exploit, thus causing the problems of illegal immigration and illegal employment to deteriorate	
003741 - 004929	Hon Emily LAU HKHRM Chairman SOCO The Lion Rock Institute	Paragraph 6 of the Legislative Council Brief (File Ref :SBCR 1/2091/08)) regarding the upsurge of non-ethnic Chinese IIs (not including Vietnamese) intercepted in recent months since the handing down of the CFI's judgment : from the monthly average of 37 in January and February 2009, to 136 in March to May 2009 (representing an increase by over 260%). In the same period, the monthly average number of torture claims increased from 196 to 274 (representing an increase by 40%); sought views from the deputations on how to tackle the issue, and whether the Administration's proposal to create a new offence prohibiting IIs and persons who were subject to removal or deportation orders from taking of employment or establishing/joining in any business a feasible solution to solve the problems of illegal immigration and illegal employment HKHRM held the view that the Administration should address the issue more directly by	

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		amending section 36 of IO to the effect that D of Imm would be given discretionary power to impose on a person entered into a recognizance a "prohibition from work" condition; and a mechanism should be established to provide different kinds of visas to persons who were waiting for the results of their asylum applications or torture claims SOCO expressed concern about the wide scope of application under the proposed new section 38AA; queried the appropriateness to specify an offence against the taking of employment to cover all IIs while CFI only ruled that recognizance granted to IIs represented an authority from D of Imm for these people to remain in Hong Kong; considered that the Administration should examine the feasibility of amending IO to the effect that D of Imm could exercise his discretionary power to allow mandated refugees and torture claimants whose claims had been established to take up employment in Hong Kong and devise a comprehensive policy to take care of the basic needs of refugees The Lion Rock Institute considered that the proposal on immigration convenience measures for Macao residents and the proposal to make new provisions under IO to specify an offence against the taking of employment by IIs should be handled separately. The latter should be complemented by a comprehensive review on the immigration policy	
004930 - 010005	Hon LI Fung-ying Chairman Hong Kong Human Rights Commission Admin SOCO	Ms LI shared the concerns of some deputations about the persistently high unemployment rate in recent years and the negative impact of illegal employment on the local workforce Discussion on whether the Administration had provided adequate food to refugees, asylum seekers and torture claimants in accordance with the nutrition guidelines issued by the Department of Health (HD) The Administration advised that - (a) on humanitarian grounds, the Administration, in collaboration with non-governmental organizations and on a case-by-case basis, offered assistance-in-kind to asylum seekers and torture claimants who were deprived of basic needs during their presence in Hong Kong while their claims were being processed by the relevant authorities. The Social Welfare Department, as a service delivery agent in support of the overall policy on asylum seekers and torture claimants under the Security Bureau, had commissioned the International Social	

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		Service Hong Kong Branch (ISS-HK) to provide assistance-in-kind to vulnerable asylum seekers and torture claimants in the form of temporary accommodation, food, clothing and other basic necessities, and appropriate transport allowance; (b) there was no standard package of food assistance for individual adult and child asylum seekers/torture claimants. They were provided with a variety of food items, including vegetables, fruit and meat as well as baby/children food where applicable. Nutritious, cultural, religious and other specific needs were catered for as appropriate. ISS-HK made reference to the healthy eating principles recommended by HD to ensure that appropriate food was provided to meet the users' nutritious needs; and (c) regarding the complaint about inadequate food assistance to mandated refugees as referred to in the joint submission from Hong Kong Society for Community Organization, Hong Kong Human Rights Commission and Asylum Seekers' and Refugees' Voice, the Administration would ascertain and revert to the Bills Committee on whether food provided to refugees, asylum seekers and torture claimants was sufficient Ms LI enquired whether persons whose refugee or torture claims had been established were allowed to work and to receive training in Hong Kong The Administration advised that - (a) allowing refugees or torture claimants to work might attract an uncontrollable influx of IIs. The issue had to be carefully considered; and (b) the object of the Bill was to tackle the problem of persons engaged in illegal employment, irrespective of whether that person was a torture claimant, an asylum seeker or a refugee	Admin to provide a written response (paragraph 5(a) of the minutes refers)
010006 - 011204	Hon WONG Yung-kan Admin	Mr WONG enquired about the effectiveness of the Bill in combating illegal immigration and illegal employment; considered that the Administration should protect the employment opportunities of local workers and expedite the review of the torture claim screening mechanism The Administration advised that apart from making new provisions under IO to specify an offence against the taking of employment by	

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		IIs, it would continue to exercise stringent controls at various control points to intercept IIs. The Administration would also strengthen its cooperation with the Mainland authorities for the exchange of intelligence on activities of IIs in Hong Kong and the Mainland The Administration explained that the 1951 United Nations Convention relating to the Status of Refugees (the Refugee Convention) had not been extended to Hong Kong. Hong Kong, henceforth, did not have any obligation to admit persons seeking refugee status under the Refugee Convention or to handle refugee status determination. Claims for refugee status were dealt with by UNHCR. Notwithstanding this, the Government of the Hong Kong Special Administrative Region liaised closely with UNHCR's Hong Kong Sub-office to ensure that persons whose claims were denied left Hong Kong in accordance with the law. Refugees mandated by UNHCR were normally permitted to enter into recognizance pending their resettlement elsewhere arranged by UNHCR. Persons awaiting the UNHCR's assessment might be permitted, on a case-by-case basis, to enter into recognizance in lieu of detention. However, it did not constitute permission to remain or to take up employment. According to the information provided by UNHCR, there were about 100 mandated refugees staying in Hong Kong and awaiting overseas resettlement The Administration provided response to views of deputations on the following issues - (a) background information on why the Government adopted the policy of immediate repatriation of IIs upon arrest; (b) whether the option of making amendments to section 36 of IO was feasible; (c) the suggestion of granting refugees and torture claimants whose claims were established the right to work had to be carefully considered; and (d) whether the scope of the new section 38AA was too wide	
011205 - 012154	Chairman SOCO The Lion Rock Institute HKHRM HKFTU Admin Chairman	SOCO, The Lion Rock Institute, HKHRM and HKFTU reiterated their views/made enquiries on the following issues - (a) whether the scope of application of the proposed new section 38AA, which covered all IIs, was wider than necessary; (b) the likely consequences if the Bill was not	

Time marker	Speaker	Subject	Action required
		passed, and whether it would lead to an influx of IIs; (c) the most straightforward solution was to amend section 36 of IO to the effect that D of Imm would be given discretionary power to impose on a person entered into a recognizance a "prohibition from work" condition; and (d) to allow refugees and torture claimants receiving humanitarian assistance to take up employment in Hong Kong would attract more illegal immigrants Discussion on humanitarian assistance provided for refugees and torture claimants; whether the assistance was adequate; new arrangements relating to the provision of food to torture claimants as part of the humanitarian assistance	
012155 - 013616	Dr Margaret NG Admin Chairman	Dr NG enquired about the support provided for mandated refugees, their rights to work and to receive training in Hong Kong, and whether torture claimants were allowed to work Dr NG considered that the issue would become less controversial should the Government have expedited the review on torture claim screening mechanism and hence shortened the waiting time for these claims. She held the view that apart from accommodation and food, humanitarian assistance should include the right to work, which gave an individual a sense of dignity Dr NG queried whether the passage of the Bill would have any impact on D of Imm in exercising his statutory discretionary power to allow a person (i.e. non-permanent Hong Kong residents) to stay and to work in Hong Kong Administration's explained that - (a) under IO and the Immigration Regulations (Cap. 115A), any person who landed in Hong Kong as a visitor would breach his "condition of stay" and would be subject to prosecution if he took up any employment without the prior permission of D of Imm; (b) on the other hand, it was the Government's established policy for IIs to be repatriated and for IIs found taking up illegal employment to be prosecuted for "unlawful remaining". However, this policy was recently challenged in the case of <i>Iqbal Shahid, Waseem Abbas & Others v Secretary for Justice</i>. The court ruled in early March 2009 that	

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		recognizance granted to IIs represented an authority from D of Imm for these IIs to remain in Hong Kong. Hence they would have a defence against the charge of unlawful remaining; (c) there was currently no offence against the taking of employment or establishing/joining in of business by IIs. The new offence as proposed in the Bill mainly tackled the problem of illegal employment by IIs and would provide a legal basis to combat such activities. It did not affect D of Imm exercising his discretionary power to grant permission to any visitors to undertake employment in Hong Kong; and (d) to protect local workers and to avoid creating any magnet effect, refugees, asylum seekers and torture claimants were not allowed to work in Hong Kong. However, assistance would be provided to those with subsistence needs to prevent them from becoming destitute	
013617 - 013854	Chairman Hon Emily LAU Hon WONG Yung-kan Hon Cyd HO	Requested the Administration to provide a detailed written response to the views of the deputations as expressed at the meeting and in their written submissions Sought detailed information on - (a) the arrangements relating to the provision of food assistance to refugees, asylum seekers and torture claimants, in particular children; list of nutrients covered by various food items, and how their nutritional needs were met; (b) the roles and responsibilities of UNHCR in the provision of assistance to refugees; and (c) whether children of mandated refugees were guaranteed access to education	Admin to provide a written response (paragraph 4 of the minutes refers) Admin to provide the requested information (paragraphs 5 and 6 of the minutes refer)
013855 - 014427	Chairman Dr Margaret NG Hon Emily LAU HKFTU	Date of next meeting	