

**2011年入境(修訂)條例草案簡介**  
**Brief on Immigration (Amendment) Bill 2011**

24.10.2011

保安局  
Security Bureau

**《禁止酷刑公約》**  
**Convention Against Torture (CAT)**

- 公約第三條：不得將某人遣返至存在實質酷刑風險的國家

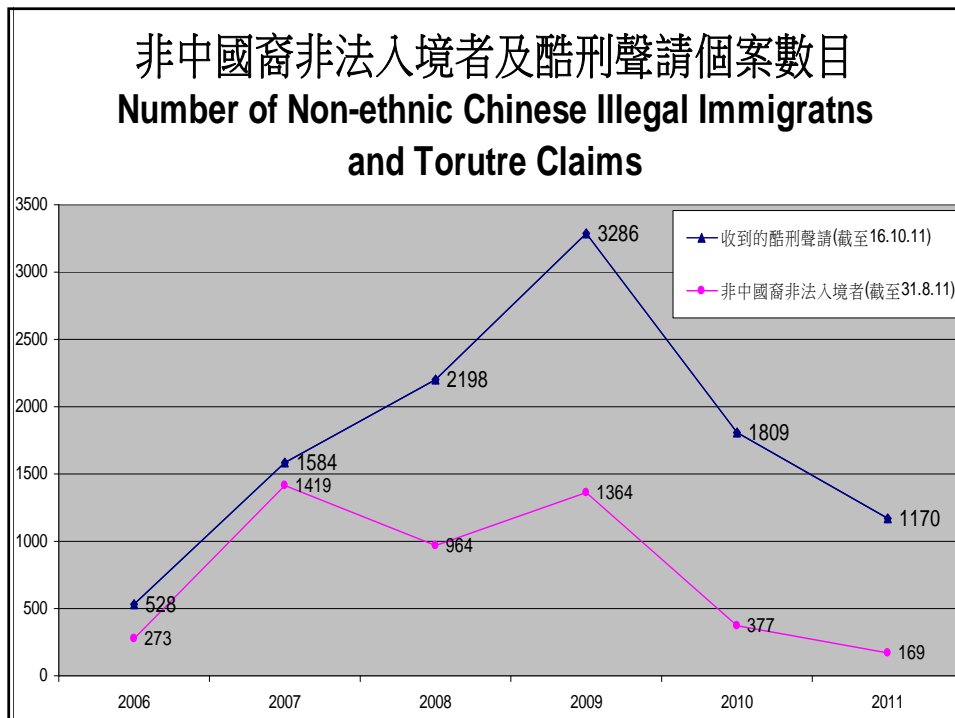
Article 3 prohibits removal of a person to another State where there are substantive torture risks

- 1992年延伸至香港

Extended to HK in 1992

## 酷刑 Torture

- 蓄意使人遭受劇烈疼痛或痛苦的行為  
Severe pain and suffering intentionally inflicted
- 是公職人員所造成的  
By public officials
- 目的為處罰或取得情報或供狀等  
For the purposes of punishing or obtaining information, confession, etc



## 聲請者背景 Profile of Claimants

- 現有**6 600**宗積存個案  
6 600 outstanding claims
- 當中**170**人被羈留  
170 claimants being detained
- 聲請人性別: 男 (**76%**) , 女 (**24%**)  
Sex of Claimants: Male (76%), Female (24%)
- **83%** 在**18 至 40 歲**之間  
Age: 83% between the age of 18 and 40

- 超過**85%**來自巴基斯坦、印度、印尼、孟加拉、斯里蘭卡及尼泊爾。  
Over 85% from Pakistan, India, Indonesia, Bangladesh, Sri-Lanka and Nepal
- **85%**的聲請人在被拘捕後才提出聲請。  
85% raised after arrest

## 行政審核機制 Administrative Screening

- 終審法院於2004年就Prabakar個案的判決：高度公平，性命攸關。

2004 CFA (Prabakar): high standards of fairness, life and limb at stake

## 經改進的行政審核機制 Enhanced Administrative Screening

- 鑑於原訟法庭的裁決(FB & others)，自2009年12月起實行 –

Since December 2009 pursuant to a CFI ruling (FB & others) –

- 同一人員負責會面聲請人及決定其聲請  
Same officer responsible for interview and determination
- 透過當值律師服務提供公費法律支援  
Publicly-funded legal assistance through Duty Lawyer Service
- 加強裁決人員的培訓  
Training for decision-makers
- 聘任退休法官或裁判官處理上訴個案  
Retired Judges / Magistrates appointed to handle petitions

- 截至2011年10月16日 –  
As at 16 October 2011 –
  - 處理超過1 800宗聲請個案  
Over 1 800 claims processed
  - 當中95%由當值律師支援  
95% assisted by duty lawyers
  - 已就約870宗聲請作出決定  
870 Decisions served

– 當中約有**200**宗撤回個案

200 claims withdrawn

– **477**名聲請人已被遣返

477 claimants removed

- 在**2011-12**年度提高目標至完成超過**1 200**宗聲請個案

Increase target to complete over 1 200 claims in 2011-12

### 法定機制 Statutory Scheme

- 目標  
Objectives

– 可確保公平及有效的程序

Ensure fair and effective process

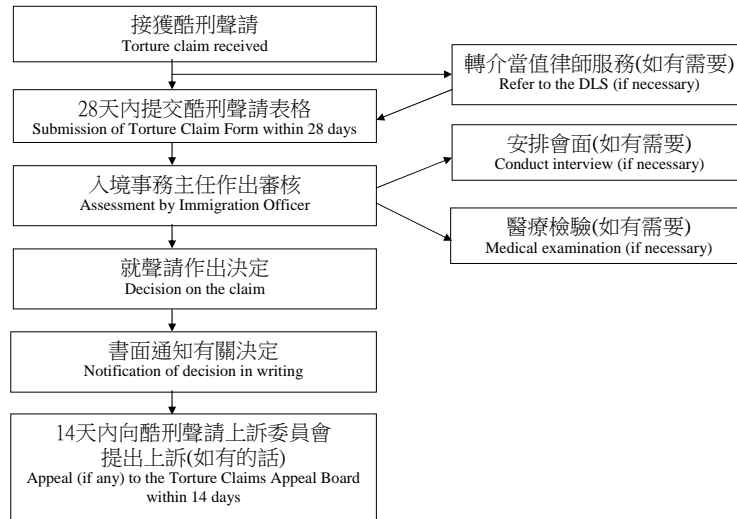
– 減少濫用

Reduce abuses

- 參考其他普通法地區經驗

Reference to overseas common law practice

### 處理酷刑聲請的流程圖 Flow Chart for Processing Torture Claims



### 聲請範圍 Scope of Claims

- 理據須關乎酷刑定義  
Grounds related to "torture"
- 有關被遣離至其他國家  
Concerning removal to another State

## 提出酷刑聲請的效果

### Effect of Making a Claim

- 在當局最終裁定聲請前，或其聲請已撤回前，不會被遣送

Removal not to be executed until claim determined/withdrawn

- 已發出的遣送令/遞解離境令維持有效

Removal/deportation remain valid

- 不會被視之為通常居於香港

Not counted as ordinarily resident

## 聲請人的責任

### Duties of Claimants

- 聲請人有責任確立其聲請

Claimant to substantiate his claim

- 除非獲延長，須在**28**天內交回聲請表格

Complete claim form to be returned within 28 days unless extended

- 否則將視作撤回論

Otherwise treated as withdrawn



- 必須提供指模、相片及最新地址

Fingerprinting, photographing, updated addresses required

- 出席會面

Attend interview

- 如聲請人離境，聲請會被視作撤回

Deemed withdrawn when claimant leaves HK

## 可信性

### **Credibility**

- 誤導或阻延其聲請的處理或隱藏重要資料等可被視為損及聲請的可信性

Mislead or delay or conceal essential information, etc. may damage the claimant's credibility

## 不實陳述可處刑罰 Offence for Misrepresentation

- 不實陳述、提供虛假偽造文件等可處刑罰

Offence for misrepresentation, falsified documents, etc

## 酷刑聲請上訴委員會

### Torture Claims Appeal Board

- 上訴期: 獲入境處通知拒絕其酷刑聲請決定後14天內  
Appeal period: 14 days after service of decision to reject a claim
- 上訴委員會成員由行政長官委任，須具等同裁判官或法官的法律專業背景  
CE to appoint persons with legal background (magistrates or judges equivalent)

- 委員會的決定屬最終決定 (可司法覆核)  
Decision final (but subject to JR)

## 重複聲請

### Repeated Claim

- 為重新啟動撤回聲請或後繼聲請設定門檻  
Thresholds for reopening withdrawn or subsequent claims
- 入境處的決定屬最終決定(只可司法覆核)  
ImmD's decision is final (JR only)

## 撤銷 Revocation

- 已確立的聲請會受覆檢  
Substantiated claim subject to review
- 聲請人如對撤銷決定不滿，可向上訴委員會提出上訴  
If revoked, aggrieved claimants may appeal to the Appeal Board

## 羈留及擔保 Detention and Recognizance

- 是否羈留聲請人時會考慮其刑事紀錄、潛逃的可能性、以及對社會構成的威脅  
Detention pending determination taking into account criminal record, likelihood of abscondance, risks to the community
- 保釋條件（出席審核會面，提供最新地址）  
Conditions on release on recognizance (attending interviews, provision of updated address)

## 工作 Work

- 一般不得在香港工作  
Generally prohibited from taking employment in HK
- 入境處處長在極其特殊的情況下，可准許已確立聲請的聲請人就業（原訟法庭於2011年1月的判決）  
D of Imm may permit a screened-in claimant to take up employment on an exceptional basis (CFI judgement in January 2011)

## 移交酷刑聲請人 Surrender of Claimants

- 《逃犯條例》（第503章）須相應作出修訂，以確保不會就已予確立的酷刑聲請者發出移交令  
Consequential amendments to the Fugitive Offenders Ordinance (“FOO”) (Chapter 503) not to allow making of a surrender order if torture risk substantiated

- 完 -  
- THE END -