

立法會
Legislative Council

LC Paper No. CB(2)935/11-12
(These minutes have been seen
by the Administration)

Ref : CB2/BC/9/10

Bills Committee on Immigration (Amendment) Bill 2011

Minutes of meeting
held on Monday, 21 November 2011, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon LAU Kong-wah, JP (Chairman)
Dr Hon Margaret NG
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon CHAN Hak-kan
Hon WONG Kwok-kin, BBS
Dr Hon PAN Pey-chyou

Members absent : Hon Cyd HO Sau-lan
Hon Paul TSE Wai-chun, JP

Public Officers attending : Item I
Mr NGAI Wing-chit
Deputy Secretary for Security 3

Mr CHOW Wing-hang
Principal Assistant Secretary for Security D

Mr LEUNG Kwok-hung, IMSM
Assistant Director
(Enforcement and Torture Claim Assessment)
Immigration Department

Ms Fanny IP
Senior Assistant Law Draftsman
Department of Justice

Mr Henry CHAN
Government Counsel
Department of Justice

Mr Billy WOO
Assistant Secretary for Security D1

Mr FUNG Ming-keung
Principal Immigration Officer
(Torture Claim Assessment)
Immigration Department

Attendance : Item I
by invitation

Christian Action

Miss Lisa LEE
Humanitarian Service (HK) Department Manager

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

The Law Society of Hong Kong

Mr Joseph LI
Council member

Hong Kong Bar Association

Mr Kumar RAMANATHAN, SC

Chairman and

Vice Chairman of Joint Working Group on CAT

Mr P Y LO

Member of Joint Working Group on CAT

The Federation of Hong Kong & Kowloon Labour Unions

Mr LAM Chun-sing

Vice Chairman

Mr WONG Wai-lun

Secretary for Social Affairs

Refugee Concern Network

Rev Hans LUTZ

Convenor

Rev Tony READ

Member

Society for Community Organization

Ms Annie LIN

Community Organizer

Asylum Seekers' and Refugees' Voice

Mr Mark

Member

Mr Sam

Member

Hong Kong Construction Industry Employees General Union

Mr FUNG Kin-cho

Beyond Asylum

Mr William NICHOLLS

Mr Allan BELL

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Ms Connie FUNG
Senior Assistant Legal Adviser 1

Ms Rita LAI
Senior Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

Action

I. Meeting with deputations and the Administration

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

2. The Bills Committee received oral representations from the following 10 organizations -

- (a) Christian Action;
- (b) Hong Kong Human Rights Monitor;
- (c) The Law Society of Hong Kong;
- (d) Hong Kong Bar Association;
- (e) The Federation of Hong Kong & Kowloon Labour Unions;
- (f) Refugee Concern Network;
- (g) Society for Community Organization;

Action

- (h) Asylum Seekers' and Refugees' Voice;
 - (i) Hong Kong Construction Industry Employees General Union;
and
 - (j) Beyond Asylum.
3. The Administration was requested -
- (a) to provide response to the recommendation of the Law Society of Hong Kong ("the Law Society") and the Hong Kong Bar Association ("the BAR") for processing both torture claims and refugee status claims at the same time;
 - (b) to provide information on whether a torture claimant was allowed to choose his own duty lawyer;
 - (c) to consider extending the deadline for submission of the completed torture claim form from 28 days to 54 days and provide information on the number of rejected cases on the ground of failure to submit the completed torture claim form within 28 days; and
 - (d) to explain whether claimants would be allowed to be assisted by their own lawyers; and whether legal representatives were allowed to be present during the screening interview.
4. The Law Society was invited to provide further information on the processing of torture claim cases by duty lawyers.

II. Date of next meeting

5. Members noted that the next meeting had been scheduled for 9 December 2011 at 10:45 am.
6. The meeting ended at 6:30 pm.

**Proceedings of meeting of the
Bills Committee on Immigration (Amendment) Bill 2011
held on Monday, 21 November 2011, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000817	Chairman	Opening remarks	
000818 - 001411	Representative of Christian Action	<p>Presentation of views</p> <p>(a) major concern was about the time required for processing the torture claims. The long period of time awaiting outcome of the determination caused the claimants much frustration;</p> <p>(b) duty lawyers of the Duty Lawyer Service ("DLS") assisting the claimants might not have the expertise and training in handling torture claims;</p> <p>(c) government's support to the claimants was inadequate, including subsidies for accommodation, utilities, and transport for meeting counsellors and joining religious activities;</p> <p>(d) there was problem of domestic violence in some families of the claimants against women and children and it was unclear to which authority that the cases should be referred;</p> <p>(e) there were difficulties in arranging financial subsidies and schooling for the minor claimants in kindergartens; and</p> <p>(f) resources of Christian Action were limited and its social workers might not be available to attend to the urgent matters of the claimants</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
001412 - 001925	Representative of Hong Kong Human Rights Monitor ("HKHRM")	Presentation of views (LC Paper No. CB(2)335/11-12(02))	
001926 - 002231	Representative of The Law Society of Hong Kong ("the Law Society")	<p>Presentation of views (LC Paper No. CB(2)335/11-12(03)) (LC Paper No. CB(2)503/11-12(01))</p> <p>There was a great improvement in the time required for completion of the torture claim form. A total of 48 days was required, including 20 days required by the Immigration Department ("ImmD") for provision of personal data of the claimants and another 28 days for the duty lawyers assigned to the claimants to help with completion of the torture claim form.</p> <p>Up to 18 Nov 2011, 129 claimants failed to turn up at the screening interview out of 1 100 screening interviews.</p>	
002232 - 003148	Representative of Hong Kong Bar Association ("the BAR")	<p>Presentation of views (LC Paper No. CB(2)335/11-12(03))</p> <p>It was illogical and irrational to have separated assessment for torture claims and refugee status determination ("RSD") in Hong Kong. The reason put forward by the Administration was not justifiable. The recommendation of the Administration by way of the proposed statutory legislation caused unnecessary duplication of resources of the legal profession and the Administration. It would be a waste of taxpayers' money as the processes of collecting information from the claimants would be similar and the claimants had to undergo recollection of traumatic experience twice. To have one holistic scheme for evaluation of both claims could streamline the determination of both claims and avoid abuse of the system which would help save taxpayers' money.</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>It was illogical to put in a legal framework to invite potential claimants to break the law first so as to become an overstayer and then be eligible to make a torture claim and seek legal assistance.</p> <p>It was unrealistic to require the claimants to return the completed torture claim form within 28 days. It was suggested to extend the time to 54 days at least. Also, there were concerns about the assignment of government doctors to the claimants and whether the assigned doctors were in possession of relevant medical expertise.</p>	
003149 - 003445	Representative of The Federation of Hong Kong & Kowloon Labour Unions ("FHKKLU")	Presentation of views (LC Paper No. CB(2)335/11-12(05))	
003446 - 004148	Representative of Refugee Concern Network ("RCN")	<p>Presentation of views (LC Paper No. CB(2)335/11-12(06))</p> <p>The right to work was important to the claimants as this would have great impact on their spirit and the ability to survive. If the claimants were allowed to work, it would help improve their image and they could make contribution to the society. Being able to work would help maintain their dignity and also their preparation for resettlement in a third country or place in subsequent years.</p>	
004149 - 004656	Representative of Society for Community Organization	Presentation of views (LC Paper No. CB(2)335/11-12(07))	
004657 - 005237	Chairman of Representatives of Asylum Seekers' and Refugees' Voice	<p>Presentation of views</p> <p>As a torture claimant, one of the representatives had been told that he could choose his duty lawyer during the</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>briefing. Subsequently, he provided the reasons to support his request but his request was not entertained. He commented on the unfairness of the system and called on the Administration to act in accordance with the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT").</p> <p>Another representative said that he did not enjoy human rights in Hong Kong. He applied for extension of visa in 2005 but was rejected. In 2006 he was arrested because of overstaying. He was then released but was given a prisoner number. Being a degree holder, he requested for permission to work so as to make use of his potentials.</p>	
005238 - 005604	Chairman Representative of Hong Kong Construction Industry Employees General Union	Presentation of views (LC Paper No. CB(2)335/11-12(09))	
005605 - 005848	Chairman Representative of Beyond Asylum	Presentation of views (LC Paper No. CB(2)370/11-12(01))	
005849 - 011612	Chairman Admin	<p>Response of the Administration to the views expressed by deputations -</p> <p>Considerations would be given to the views presented by the deputations and individuals, in particular the new recommendation of Beyond Asylum.</p> <p>The 1951 United Nations Convention relating to the Status of Refugees ("Refugee Convention") had not been applied to Hong Kong and this was a very clear standpoint of the government. Given that Hong Kong was relatively affluent in the region and had adopted an open immigration policy, it would be unaffordable if the</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>Refugee Convention was extended to Hong Kong. There were views about the advantages of assessing the torture claims and RSD simultaneously as there were a great number of people making both claims. However, the policy of the government towards RSD remained unchanged. In terms of number, around one-fourth to one-third of torture claimants had also applied for RSD. For the some 900 determined torture cases, about one-tenth of the claimants also applied for RSD subsequently which might be an abuse of the system. The Administration was concerned about this and collaborated with the United Nations High Commissioner for Refugees ("UNHCR") about transferring the personal particulars of claimants of determined cases to the office of UNHCR with the prior consent of the claimants concerned. On average the processing time for RSD application received by the office of UNHCR was around three to six months.</p> <p>The Administration was aware of the divergent views towards whether claimants should be allowed to take up employment.</p> <p>It was stipulated in the relevant proposed section that if the Director of Immigration believed there existed an exceptional circumstance, he might consider each claimant's case on its individual merits in deciding whether to grant a claimant permission to work at his discretion. One of the examples was that a claimant had no choice but been stranded in Hong Kong for a very substantial period of time and had little prospect of departure in the immediate foreseeable future and that the prolonged period of enforced unemployment might be detrimental to the claimant's mental health. There was no intention to make it as a</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>provision to allow all successful claimants to take up employment.</p> <p>In response to members' concern about the responsibility of Hong Kong as a developed region, the Administration pointed out that the obligation of all States Parties of CAT was limited to non-refoulement of the claimants only. There were no requirements of allowing successful claimants to stay or to take up employment which would be subject to the circumstances in each State Party.</p> <p>The present situation in Hong Kong was undesirable in view of the abuse of the system and the great number of outstanding cases. It was hoped that the implementation of the Bill would help set up a sound legal basis on which the screening mechanism could facilitate the identification of the genuine cases.</p> <p>Referring to the proposed section 37ZM, the Administration advised that there should be limitation on subsequent claims; otherwise it would be difficult to implement repatriation in case of continuous subsequent claims. Consideration should be given to the balance with the immigration control.</p> <p>The protection for non-refoulement would be relieved if the torture risk giving rise to the claim had ceased to exist due to changes in circumstances of the claimant or the torture risk State. Still, there were several levels of protection in the provisions. An immigration officer would give the claimant concerned a written notice of a revocation of the decision and reasons for the revocation decision. The claimant would then be given the opportunity to raise objection and state the reasons. After considering the claimant's objection, if the immigration officer decided to make a revocation</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>decision, the claimant had a right to lodge an appeal against the decision.</p> <p>The Administration had made reference to the overseas practices about the timeframe for submission of torture claim form. Claimants in the United Kingdom had to submit the completed torture claim form within ten days and the timeframe for submission was 28 days in Canada. Most claimants would make a data access request ("DAR") to the ImmD in accordance with the Personal Data (Privacy) Ordinance ("PDPO") before completing the form. Priority would be accorded to handle such cases first. The information required in the claim form was mainly known facts to the claimants, including their experience in the country of origin where the torture risk was claimed to have existed. It was questionable whether claimants needed to wait for their DAR results from ImmD before completing the claim form. There were cases that claimants could submit the completed claim form within 28 days.</p> <p>Pursuant to proposed section 37Y, an immigration officer could extend the timeframe for submission of completed claim form subject to his satisfaction of provision of justifications by the claimants under special circumstances. It was believed that the timeframe of 28 days had struck a good balance which enabled the claimants to have sufficient time for provision of relevant information for torture claims and also reasonable time for completing the screening of torture claims.</p> <p>If a claimant's physical or mental condition was relevant to the consideration of the torture claim and was in dispute, medical examination or psychological assessment would be arranged with the forensic pathology</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>service of the Department of Health or the Hospital Authority. The medical appointment was conducted by the medical practitioner in an independent and fair manner. Security Bureau or ImmD would not in any way influence the conduct of the medical examination or the results. The involvement of ImmD was confined to making the referral, notifying the claimants of the arrangement, confirming the claimant's identity for the medical appointment or psychological assessment and arrangement of interpretation if necessary. The immigration officer would not be present during the medical check-up unless requested by the claimants. The medical report would be passed to the claimant or the duty lawyer concerned direct. Only with the consent of the claimant, the medical report would be made available to ImmD for reference in the consideration of the torture claim. The whole process complied with the requirements of PDPO.</p>	
011613 - 013410	<p>Chairman Dr Hon Margaret NG Representative of the BAR Representative of HKHRM Admin</p>	<p>Dr NG asked the following questions -</p> <p>(a) referring to the explanation provided by the Administration that there were only about one-tenth of the claimants or around 90 cases among the determined ones involving both torture claims and refugee claims and the government could collaborate with UNHCR in handling these cases, whether the BAR found the figures acceptable and whether it would still be justifiable to recommend one decision-making process for both claims;</p> <p>(b) whether representative of HKHRM could point out the major difference between the overseas practices and those proposed in the Bill;</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>(c) how the Administration could respond to the claim made by Mr Mark that his request for a specific duty lawyer of DLS was rejected. Apart from the duty lawyer arranged by DLS, whether the claimant could have their own legal representation during the screening interview;</p> <p>(d) regarding the timeframe for submission of completed torture claim form by the claimants within 28 days, why the Administration made reference to the overseas practices instead of the existing practice of DLS which required 54 days to process a claim so that request for extension need not be made every time; and what were the difficulties involved</p> <p>Response of the BAR -</p> <p>(a) the BAR was not in a position to comment on the figures. The principle of non-refoulement was recommended for both torture claims and refugee claims. Given the understaffed situation of UNHCR, the Administration could consider adopting a unified and holistic approach to handle both claims.</p> <p>(b) given the fact that 90% of the torture claim cases were processed by DLS, it was a realistic basis that at least 48 days were required for submission of completed torture claim form. Reference made to the overseas practices was not practical. In the joint position paper of the two legal professional bodies 90 days were requested and it would not need to rely on the discretion and generosity of the immigration officers for approval</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>of the application for extending the timeframe.</p> <p>Response of HKHRM -</p> <p>(a) It was pointed out by many organizations of the United Nations that Hong Kong needed to put in place a comprehensive system to handle both the torture claims and RSD;</p> <p>(b) it was inappropriate to treat the claimants' stay in Hong Kong as illegal and their status as overstayers. Such practices were different from those in the European Union where the claimants' legal stay was confirmed;</p> <p>(c) the Administration should not only consider giving the right to work to the successful claimants but also those claimants whose claims could not be processed within reasonable time and this was not due to the fault of the claimants themselves. Reference could be made to the practices in the United Kingdom and Canada.</p> <p>Response of the Administration -</p> <p>(a) in accordance with the agreement between the Administration and DLS, duty lawyers were arranged by DLS to provide assistance to the claimants. DLS would also take into consideration request of claimants' for specific duty lawyers who had experience in handling their case. Yet, it was confirmed that the claimants had no right to choose the duty lawyer;</p> <p>(b) regarding the presence of an assistant to the duty lawyer at the screening interview, there was</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>understanding with the two legal professional bodies that it was acceptable on the condition that the assistant was in possession of a relevant local legal qualification;</p> <p>(c) it was mainly a policy concern of not extending the Refugee Convention to Hong Kong in view of the overall interest of Hong Kong rather than whether the figure of both claims was great or small;</p> <p>(d) it was understandable that it took longer time in the past for claimants to submit a completed torture claim form. However, with the accumulative experience and shortened time for ImmD to provide response to claimants' DAR, it was deemed appropriate to set 28 days as the timeframe for submission of a completed torture claim form and reference had been made to the overseas practices.</p>	
013411 - 015021	<p>Chairman Hon Emily LAU Admin Representative of HKHRM Representative of the Law Society Representative of FHKKLU</p>	<p>Ms LAU made the following request and enquiries -</p> <p>(a) the Administration to respond to the recommendation of the two legal professional bodies for a one-decision-making process for both torture claims and refugee claims;</p> <p>(b) in respect of only allowing successful claimants under special circumstances to work which was a kind of human rights, what were the views of deputations towards the implementation of international responsibility by Hong Kong in this respect;</p> <p>(c) how the claimants whose claim was substantiated would be treated</p>	<p>Admin to provide response (paragraph 3(a) of the minutes refers)</p>

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>Response of the Administration -</p> <p>States parties of CAT were only required to ensure non-refoulement of claimants and it would not involve confirmation of identity or granting permission to work. So far only one torture claim had been substantiated. With the implementation of the Bill and improved screening mechanism, it was expected that the processing time for torture claims could be substantially reduced and the associated problems could be addressed accordingly.</p> <p>Taking into consideration the special circumstances of Hong Kong and the relative affluent economy, the Administration remained unchanged in the policy of not extending the Refugee Convention to Hong Kong.</p> <p>Response of HKHRM -</p> <p>The protection offered to a person within a state by States Parties under CAT was not confined to non-refoulement but included other human rights as well, including not being subjected to inhuman or degrading treatment or punishment which might involve the permission to take employment. Quoting the United Kingdom as an example, the Administration should consider providing the relevant benefits to claimants, including a legal capacity to stay in Hong Kong and permission to work when the torture claims were being processed.</p> <p>Response of the Law Society -</p> <p>(a) the average processing time of 48 days for submission of completed torture claim form was the record in the past two months. However, the average processing time was close to 80 days in the past two</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>years. The Administration should therefore consider seriously whether 28 days was sufficient for completing a questionnaire;</p> <p>(b) the assignment of duty lawyers to provided assistance to claimants as requested was based on a rotation basis to ensure fairness and the request of claimants for specific duty lawyers would be taken into consideration;</p> <p>(c) duty lawyers should attend a four-day training course jointly offered by the Law Society and the Hong Kong Academy of Law before they could make the registration. Currently, there were about 270 duty lawyers. About half of them were barristers and half of them were lawyers;</p> <p>(d) about 440 torture claimants among the 1 500 cases processed by DLS had also applied for RSD in the past two years;</p> <p>(e) the duty lawyers would obtain medical report on the medical examination of claimants direct from the medical practitioner concerned to ensure data privacy and would decide whether to disclose the content of the report</p> <p>The Law Society was invited to provide further information on the torture claims after the meeting.</p> <p>Response of FHKCLU -</p> <p>Reports had been received from their members about illegal work of claimants at a level below the minimum wage and without insurance coverage. There were concerns of the local workforce about the possible influx of claimants into Hong Kong and the</p>	<p>The Law Society was invited to provide information (paragraph 4 of the minutes refers)</p>

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>increasing abuse of the screening system if claimants were allowed to take up employment.</p> <p>They called for more humanitarian assistance to be provided for the torture claimants before giving consideration to allow the claimants to work.</p>	
015022 - 015805	<p>Chairman Dr Hon Philip WONG Admin Representative of the BAR Representative of RCN Dr Hon Margaret NG</p>	<p>Dr WONG enquired whether there were rejected cases of application for extending the timeframe of submission of completed torture claim form and what were the reasons. Such administrative procedure would be unnecessary if there were no rejected cases.</p> <p>Response of the Administration -</p> <p>Most applications for extension of the timeframe had been approved. It was an administrative procedure that claimants were required to complete the torture claim form. The torture claims would be determined on the basis of all available information and the handling of the claims would not be delayed.</p> <p>View of RCN -</p> <p>It would be appropriate to ask the Department of Health about the special measure that had been put in place to ensure the availability of expertise for medical examinations of CAT claimants.</p> <p>In response, the Administration undertook to confirm with the Department of Health about the availability of the relevant expertise and referral system if necessary.</p>	
015806 - 020155	<p>Chairman Dr Hon Margaret NG Representative of Asylum Seekers' and Refugees' Voice</p>	<p>The Chairman advised that any further views from the deputations could be forwarded to the Secretariat for consideration by the Bills Committee after the meeting.</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>Request for information -</p> <p>(a) information on the case of Mr Mark who had been rejected to choose a duty lawyer of DLS;</p> <p>(b) response to the recommendation for extending the timeframe for submission of completed torture claim form and information on the number of rejected cases on the ground of failure to return completed torture claim form within 28 days;</p>	<p>Admin to provide information (paragraph 3(b) of the minutes refers)</p> <p>Admin to provide response and information (paragraph 3(c) of the minutes refers)</p>
020156 - 020311	Chairman Hon Emily LAU	The two legal professional bodies and DLS were welcome to provide further views on the processing of the claims given the great number of outstanding cases and the limited number of duty lawyers.	
020312 - 020512	Chairman Dr Hon Margaret NG	<p>The Administration was requested to provide response to the following -</p> <p>(a) whether claimants would be allowed to be assisted by their own lawyers and whether legal representatives were allowed to be present during the screening interview;</p> <p>(b) the recommendation of the Law Society and the BAR for one decision - making process for both torture claims and RSD</p> <p>The Law Society and the BAR were invited to advise whether the provisions in the Bill would suffice for implementing the one decision-making process for both torture claim and refugee claim proposed by the two legal professional bodies or they would recommend any necessary amendments.</p>	<p>Admin to provide response</p> <p>(paragraph 3(d) of the minutes refers)</p> <p>(paragraph 3(a) of the minutes refers)</p>