

立法會
Legislative Council

LC Paper No. CB(2)1517/11-12
(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, 16 January 2012, at 10:45 am
in Conference Room 2B of the Legislative Council Complex

Members present : Hon LAU Kong-wah, JP (Chairman)
Dr Hon Margaret NG
Hon James TO Kun-sun
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
Hon Paul TSE Wai-chun, JP

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon Cyd HO Sau-lan

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 Mark WOO
Acting Assistant Secretary for Security D1

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

Clerk in attendance : Mrs Sharon TONG
Principal Council Secretary (2)

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

I. Meeting with the Administration

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

2. The Administration was requested -

- (a) to provide clear guidelines for claimants to include all important facts and events relevant to the making of a torture claim when completing the torture claim form;
- (b) to provide detailed information on the schooling arrangements for minor claimants, in particular the medium of instruction for classes;

Action

- (c) to consider specifying in the Bill that all relevant factors would be taken into consideration in the determination of a torture claim, and a list of factors to be considered;
- (d) to provide detailed information on whether the new mechanism under the Bill could comply with obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment while not undermining immigration control;
- (e) to provide a response to the suggestion of introducing an undertaking of not raising a torture claim in respect of visa application when the proposed section 37ZK was examined;
- (f) to provide detailed information on the 248 torture claimants who raised torture claims after denial of entry into Hong Kong; and
- (g) to provide outstanding information as requested by members at the previous meetings.

II. Date of next meeting

3. Members noted that the next meeting had been scheduled for 6 February 2012.
4. The being no other business, the meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
26 March 2012

**Proceedings of meeting of the
Bills Committee on Immigration (Amendment) Bill 2011
held on Monday, 16 January 2012, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000602	Chairman	Opening remarks	
000603 - 001210	Chairman Admin	LC Paper No. CB(2)803/11-12(01) Briefing by the Administration on expenses on manpower involved in handling torture claims by the Immigration Department and the Security Bureau; schooling arrangements for minor claimants; claimants' credibility (case samples); and information on the mechanism for torture claim screening in specific countries and places	
001211 - 002033	Chairman Mr James TO Admin	Claimants' credibility - concealing information (Case 1); and Guidelines for completing the torture claim form	The Administration to provide clear guidelines for claimants to include all important facts and events relevant to the torture claim when completing the torture claim form
002034 - 003017	Chairman Dr Margaret NG Admin	Determination of torture claims; Whether a claimant being subject to torture treatment was a factor for determining the repatriation of the claimant to his country of origin; and Whether detailed information would be provided to claimants on rejected claims where damage to credibility was involved and whether opportunities would be given to them to provide explanation	

Time marker	Speaker(s)	Subject(s)	Action Required
003018 - 003946	Ms Emily LAU Admin Chairman	LC Paper No. CB(2)517/11-12(01) Whether there were other objective considerations in deciding torture claims apart from those listed in paragraphs 13 and 14 of the above paper; and Whether the grounds provided by the claimant falling within the definition of "torture" should be the determining factor in deciding a torture claim, while credibility of claimants and possibility of internal relocation were secondary factors	
003947 - 004256	Chairman Mr WONG Yung-kan	Concern about possible abuse of torture claims by claimants concealing information; and Appeals by claimants	
004257 - 004357	Chairman Dr PAN Pey-chyou	Responsibility of torture claimants to provide accurate information to justify the claims	
004358 - 005257	Chairman Mr James TO Admin SALA1	Whether the proposed section 37ZI(3) of the Immigration Ordinance (Cap. 115) would be the overriding provision in deciding torture claims; and Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention")	
005258 - 005805	Chairman Ms Emily LAU Admin	Schooling arrangements for minor claimants	The Administration to provide detailed information on the schooling arrangements for minor claimants, in particular the medium of instruction for classes
005806 - 010625	Chairman SALA1 Admin	LC Paper No. CB(2)815/11-12(01) Whether all the factors that would be taken into account in the	

Time marker	Speaker(s)	Subject(s)	Action Required
		determination of a torture claim would be set out in the Bill; and Article 3(2) of the Convention	
010626 - 011154	Chairman Ms Emily LAU Admin	Request for specifying in the Bill that all relevant factors would be taken into consideration in the determination of a torture claim	The Administration to consider specifying in the Bill that all relevant factors would be taken into consideration in the determination of a torture claim, and a list of factors to be considered
011155 - 011451	Chairman Mr Paul TSE Admin	Apart from the long title, whether reference was made to the Convention or any other conventions of the United Nations in other parts of the Bill; and Expression of support to specify in the Bill that all relevant factors (but not the details) would be taken into consideration in the determination of a torture claim	
011452 - 011644	Chairman Ms Emily LAU Admin	LC Paper No. CB(2)803/11-12(01) Case 3 - Clarification on the raising of torture claim following denial of entry into Hong Kong	
011645 - 012141	Chairman Admin	Potential problem of immigration control after passage of the Bill; and Detention pending final determination (proposed section 37ZK) as a deterrent measure	
012142 - 012511	Chairman Ms Emily LAU Admin	Balance between fulfilling the responsibility of being a signatory of an international convention and immigration control	The Administration to provide detailed information on whether the new mechanism under the Bill could comply with obligations under the Convention while not undermining immigration control

Time marker	Speaker(s)	Subject(s)	Action Required
012512 - 013338	Chairman Mr Paul TSE Admin	<p>Concern about using detention pending final determination (proposed section 37ZK) as a deterrent measure; and</p> <p>Case 3 - Reasons for denial of entry; whether an undertaking of not raising a torture claim could be introduced as a requirement for visa application and the number of cases of raising torture claims after denial of entry into Hong Kong; and visa requirements for people of specific countries</p>	The Administration to provide a response to the suggestion of introducing an undertaking of not raising a torture claim in respect of visa application when the proposed section 37ZK was examined
013339 - 013729	Chairman Ms Emily LAU Admin	Whether it was an international practice to request an undertaking of not raising a torture claim as one of the requirements for visa application; and the effectiveness of such undertaking	
013730 - 014014	Chairman Mr Paul TSE Admin	<p>Making reference to the visa waiver program of the United States and entry into the United States based on no intention of emigration;</p> <p>An undertaking of not raising a torture claim as a deterrent measure and consideration of such undertaking by the courts as necessary; and</p> <p>Request for information on torture claimants</p>	The Administration to provide detailed information on the 248 torture claimants who raised torture claims after denial of entry into Hong Kong
014015 - 014400	Chairman Ms Emily LAU Admin	Proposed section 37ZK - Detention pending final determination; clear internal guidelines for execution of the detention policy available at the website of the Immigration Department	

Time marker	Speaker(s)	Subject(s)	Action Required
014401 - 014521	Chairman Dr Margaret NG Admin	LC Paper No. CB(2)847/11-12(01) Clarification on "fall short of" in paragraph 4 of the above paper	
014522 - 014734	Chairman Ms Emily LAU Admin Clerk	Request for outstanding information	The Administration to provide outstanding information as requested by members at the previous meetings
014735 - 015200	Chairman Admin Ms Emily LAU Dr Margaret NG	<u>Clause-by-clause examination of the Bill</u> <i>Long title and Clause 1</i> Briefing by the Administration	
015201 - 015313	Chairman Dr Margaret NG Admin	Implementation date of the Bill and the relevant procedures required	
015314 - 015522	Chairman Ms Emily LAU Admin	Formation of an Appeal Board; whether the notice referred to in clause 1(2) would be subsidiary legislation; outstanding claims being processed under the administrative mechanism; difference between the administrative mechanism and the mechanism under the Bill and implications after the passage of the Bill	
015523 - 015620	Admin	<u>Clause 2</u> Briefing by the Administration	
015621 - 015710	Chairman Ms Emily LAU	Closing remarks	