

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2299/11-12  
(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, 6 February 2012, at 2:30 pm**  
**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  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Emily LAU Wai-hing, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Cyd HO Sau-lan  
Hon CHAN Hak-kan  
Hon WONG Kwok-kin, BBS  
Dr Hon PAN Pey-chyou  
Hon Paul TSE Wai-chun, JP

**Member absent** : Hon WONG Yung-kan, SBS, JP

**Public Officers attending** : Item I

Mr CHOW Wing-hang  
Acting Deputy Secretary for Security 3

Mr FUNG Ming-keung  
Acting 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

**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

Miss Lulu YEUNG  
Clerical Assistant (2) 1

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## **I. Meeting with the Administration**

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

2. The Administration was requested -
  - (a) to consider replacing the term "屆滿" with "失效" in the proposed section 17I(2)(c);
  - (b) to explain its interpretation on "lawful sanctions" referred to in the proposed definition of "torture" when the Second Reading debate on the Bill was resumed;
  - (c) to provide case samples for illustration of "discrimination" referred to in the proposed definition of "torture";
  - (d) to advise whether or not the use of torture means in the process of cross-examination and investigation of crimes

which were lawful acts in a country would fall within the definition of "torture";

- (e) to provide information on the considerations given to defining "torture" as adopted from Article I of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention"), including comparison with the practices of other countries;
- (f) to provide a written response to the suggestion of replacing the word "State" with "place" in the meaning of "torture risk State";
- (g) to consider the suggestion of deleting the proposed definition of "finally determined" from the proposed section 37U (Interpretation of Part VIIC) or improving the drafting of the proposed definition, making reference to that of "surrender";
- (h) to consider the suggestion of making reference to the proposed section 37ZL(1) in respect of "revocation decision" in the proposed section 37V(3); and
- (i) to provide detailed outstanding information as requested by members at previous meetings.

3. The Administration had undertaken to state in its speech during the resumption of the Second Reading debate on the Bill that it had no intention to widen the scope of application of "torture" in Hong Kong.

## **II. Date of next meeting**

4. Members noted that the next meeting had been scheduled for 17 February 2012 at 8:30 am.

5. The being no other business, the meeting ended at 4:30 pm.

**Proceedings of meeting of the  
Bills Committee on Immigration (Amendment) Bill 2011  
held on Monday, 6 February 2012, at 2:30 pm  
in Conference Room 2B of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 - 000558	Chairman	Opening remarks; and  Continuation of clause-by-clause examination of the Bill	
000559 - 000720	Admin	<u>Clause 3</u>  Briefing by the Administration	
000721 - 000905	Admin	<u>Clause 4</u>  Briefing by the Administration	
000906 - 001253	Ms Emily LAU Admin Chairman	Whether an employer had the responsibility to inspect documents of a new employee;  Notification to the employer when the permission for the torture claimant to take employment had been revoked; and  A defence for an employer who was charged with employing a torture claimant to prove that he had no knowledge that the permission for a torture claimant to take employment had expired	
001254 - 001830	Ms Cyd HO Admin Chairman	Whether section 17I(2)(b) could be deleted if there were no more Vietnamese refugees in Hong Kong;  Whether it would be more appropriate for the proposed section 17I(2)(c) be drafted similar to section 17I(2)(b); and  Whether it was appropriate to use the term "屆滿" in the proposed section 17I(2)(c)	The Administration to consider replacing the term "屆滿" with "失效" in the proposed section 17I(2)(c)
001831 - 001924	Admin Chairman	<u>Clause 5</u>  Briefing by the Administration	

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action Required</b>
001925 - 002251	Admin	<u>Clause 6</u>  Briefing by the Administration	
002252 - 002527	Mr James TO Chairman Admin	The circumstances under which an immigration officer or police officer might vary any condition of a recognizance imposed under subsection (1) as referred to in the proposed section 36(1)(1B) and whether the changes to conditions should have been endorsed by the relevant supervisor	
002528 - 002724	Mr James TO Chairman SALA1	Clarification on "such number of sureties" in the proposed section 36(1)	
002725 - 004043	Chairman Mr James TO Admin	<p><u>Section 17I amended (Clause 4) and Section 17J amended (Clause 5)</u></p> <p>Whether an employer would commit the offence of employing a person who was not lawfully employable under section 17I but not the offence of failing to inspect documents of a new employee under section 17J if the employee only presented a valid travel document but had not declared that he was a torture claimant and had not been given permission by the Director of Immigration to take up employment;</p> <p>Whether an employer would commit the offences of employing a person who was not lawfully employable and failing to inspect documents of new employee if the employee only presented a valid travel document and had declared that he was a torture claimant but had not been given permission by the Director of Immigration to take up employment;</p> <p>A torture claimant without permission to work would contravene section 38AA and commit an offence if taking up any</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>employment; and</p> <p>Whether a torture claim could only be raised after the expiry of a valid travel document of a person who was then subject to removal</p>	
004044 - 004744	Admin Chairman Mr James TO	<p><u>Clause 7</u></p> <p>Briefing by the Administration on the proposed section 37U (Interpretation of Part VIIC)</p>	
004745 - 005251	Dr Margaret NG Chairman Admin	<p>Difference between the definition of "torture" in the Bill and that in the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention") as raised by deputations; and</p> <p>Whether it would not fall within the definition of "torture" if severe pain or suffering intentionally inflicted on a person was not because of any purpose or without any reason related to discrimination of any kind</p>	
005252 - 005535	Mr James TO Admin Chairman SALA1	<p>Whether the definition of "torture" in the Bill was the same as that in Article 1 of the Convention;</p> <p>Subject to passage of the Bill, whether it would be necessary to review the definition of "torture" in the Crimes (Torture) Ordinance (Cap. 427) so as to ensure consistency</p>	
005536 - 010246	Mr James TO Admin	<p>Interpretation on "lawful sanctions" under the definition of "torture"; and</p> <p>Given political instability in a torture risk State, whether the non-refoulement protection would be recognized by the government of the torture-risk state and the People's Republic of China</p>	<p>The Administration to explain its interpretation on "lawful sanctions" referred to in the proposed definition of "torture" when the Second Reading debate on the Bill was resumed</p>

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010247 - 011200	Dr PAN Pey-chyou Admin	<p>Whether there was a clear legal definition of "discrimination" as specified in item (b) of the proposed definition of "torture";</p> <p>Given the outsourcing of armies to companies in some countries, whether the officials of such companies would fall within the meaning of "public official" or "person acting in an official capacity"; and</p> <p>Reference to be made to the guidelines provided by the United Nations Committee Against Torture and determined court cases</p>	The Administration to provide case samples for illustration of "discrimination" referred to in the proposed definition of "torture"
011201 - 012002	Mr Paul TSE Admin	<p>Given the wide meaning of "discrimination of any kind" in the Convention, whether consideration would be given to the difficulties of its application in the local context in respect of the implementation of Article 3 of the Convention;</p> <p>Whether a defence for a person charged with an offence under the Crime (Torture) Ordinance in respect of any of his conduct to prove that he had lawful authority, justification or excuse for that conduct would be able to address the issue of exclusion of lawful sanctions in the Convention; and</p> <p>Whether the use of torture means in the process of cross-examination and investigation of crimes which were lawful acts in a country would fall within the definition of "torture"</p>	The Administration to advise whether or not the use of torture means in the process of cross-examination and investigation of crimes which were lawful acts in a country would fall within the definition of "torture"
012003 - 012351	Ms Cyd HO Admin Chairman	Expression of the view that discretion should be exercised on humanitarian grounds in respect of handling torture claims by claimants from certain Muslim countries in view of the lawful implementation of torture in these countries;	

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>Given the complicated international diplomatic relationship and political instabilities in certain countries, care should be exercised in respect of implementing the non-refoulement;</p> <p>Whether the definition of "torture" would apply to situations such as Police's strip search of arrestees in Hong Kong; and</p> <p>Undertaking by the Administration to state in its speech during the resumption of the Second Reading debate on the Bill that it had no intention to widen the scope of application of "torture" in Hong Kong</p>	
012352 - 012822	Dr Margaret NG Admin Chairman Clerk	<p>Referring to paragraph 2 of Article 1 of the Convention (Part I), enquiry about the Administration's consideration given to defining "torture"; and whether reference had been made to the practices in other countries (including difference of definitions and inclusion of more conditions); and</p> <p>Whether all deputations supported the definition of "torture" in the Bill</p>	The Administration to provide information on the considerations given to defining "torture" as adopted from Article I of the Convention, including comparison with the practices of other countries
012823 - 013049	Admin	Continuation of briefing by the Administration on clause 7	
013050 - 013246	Mr James TO Chairman	Possible loophole if the meaning of a torture risk State was only confined to a State but not extended to cover a place which might not be a recognized state	The Administration to provide a written response to the suggestion of replacing the word "State" with "place" in the meaning of "torture risk State"
013247 - 013543	Admin	Briefing by the Administration on the proposed section 37V (When torture claim is finally determined)	



<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action Required</b>
013544 - 014347	Mr James TO Chairman Admin	Drafting of the definition of "finally determined" in the proposed section 37U"; and Concept of "finally determined" and the consequences	
014348 - 014740	Ms Cyd HO Admin Chairman Dr Margaret NG	Suggestions of deleting the proposed definition of "finally determined" from the proposed section 37U in view of its nature as an index only; and  Suggestion of improving the drafting of the definition of "finally determined", making reference to that of "surrender"	The Administration to consider the suggestion of deleting the proposed definition of "finally determined" from the proposed section 37U (Interpretation of Part VIIC) or improving the drafting of the definition of "finally determined", making reference to that of "surrender"
014741 - 015110	Mr James TO Admin Chairman	Whether reference to the proposed section 37ZL(1) should be made in respect of "revocation decision" in the proposed section for 37V(3)	The Administration to consider the suggestion of making reference to the proposed section 37ZL(1) in respect of "revocation decision" in the proposed section 37V(3)
015111 - 015545	Chairman Dr Margaret NG Admin Ms Cyd HO	Meaning of "finally determined" and the consequences that followed, including appeal, revocation, judicial review and removal	
015546 - 015828	Chairman Ms Cyd HO Admin	Request for provision of detailed outstanding information from the Administration; and  Closing remarks	The Administration to provide detailed outstanding information as requested by members at previous meetings