

立法會
Legislative Council

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by the Administration)

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Bills Committee on Immigration (Amendment) Bill 2011

Minutes of meeting
held on Friday, 17 February 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex

Members present : Hon LAU Kong-wah, JP (Chairman)
Dr Hon Margaret NG
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 Cyd HO Sau-lan
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun, JP

Members absent : Hon James TO Kun-sun
Hon CHAN Hak-kan
Dr Hon PAN Pey-chyou

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

Mr CHOW Wing-hang
Principal Assistant Secretary for Security D

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

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

I. Meeting with the Administration

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

2. The Administration was requested -

- (a) to provide information on the arrangement for interviews to be attended by torture claimants, including the number of cases where no arrangement for interviews had been made for torture claimants and the reasons for that when the proposed section 37ZB was examined;
- (b) to advise members on its response to the views from deputations on specific proposed sections when they were examined;
- (c) to provide information on the time taken for return of completed torture claim forms of new cases and further views

Action

on the issue from the Law Society of Hong Kong, the Hong Kong Bar Association and Duty Lawyer Service;

- (d) to consider extending the time for submission of completed torture claim forms;
- (e) to provide information on the some 1 200 determined cases with breakdown on the time taken by the Immigration Department in providing personal data to claimants concerned, including the cases for which extension of the time for submission of completed torture claim forms was rejected;
- (f) to provide details on the trend for the period of time required for return of completed torture claim forms with a breakdown by month;
- (g) to provide an analysis of the reasons for the some 1 000 cases applying for extension of time for submission of completed torture claim forms;
- (h) to provide information on the possible abuse cases among the 1 200 determined cases;
- (i) to provide its views on whether the proposed section 37Y as presently drafted would cover the situation where a torture claimant might be allowed to provide supplementary information after the 28 days;
- (j) to provide information on the number of interviews arranged and number of interviews not attended by torture claimants in 2011 together with the reasons;
- (k) to consider the suggestion of specifying in the Bill the right of a torture claimant to request an interview to substantiate his claim;
- (l) to provide a copy of the Court of Final Appeal's judgment on a case advising that a torture claimant should be given all reasonable opportunities to substantiate his claim; and
- (m) to provide a written response to the suggestion of including a provision in the Bill to the effect that information provided by a torture claimant would not be used against him in any

Action

subsequent criminal proceedings having regard to a similar provision in the Guidelines for completion of Questionnaire for persons who had made torture claims and information on practices of overseas jurisdictions which had implemented the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(Post-meeting note: Relating to paragraph 2(b) above, the Administration was requested to provide a written response to the views from deputations in the letter dated 2 March 2012 from the Clerk to the Administration.)

3. Ms Cyd HO was of the view that -
 - (a) the time limit of 28 days for return of completed torture claim forms was insufficient and needed to be extended; and
 - (b) consideration should be given to special circumstances which would make it impossible for the return of a completed torture claim form within a period of 28 days, including the collection of supporting documents from remote place of origin of claimants and postal delay.

II. Date of next meeting

4. Members noted that the next meeting had been scheduled for 2 March 2012 at 8:30 am.
5. The meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
6 June 2012

**Proceedings of meeting of the
Bills Committee on Immigration (Amendment) Bill 2011
held on Friday, 17 February 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000429	Chairman	Opening remarks	
000430 - 001230	Dr Margaret NG Admin	<p><u>Proposed section 37ZB</u></p> <p>Whether arrangement for an interview would not be made for some torture claimants and they would be repatriated to their place of origin direct;</p> <p>Number of cases where no arrangement for interviews had been made for torture claimants;</p> <p>Legal basis for decision on a torture claim; and</p> <p>Concern that the arrangement for an interview would be subject to the decision of an immigration officer but not as a right of a torture claimant</p>	<p>The Administration to provide information on the arrangement for interviews to be attended by torture claimants, including the number of cases where no arrangement for interviews had been made for torture claimants and the reasons for that when the proposed section 37ZB was examined; and</p> <p>SALA1 to study the issue upon receipt of information from the Administration</p>
001231 - 001446	Admin	<p><u>Division 2 - Procedure relating to torture claims</u></p> <p>Briefing by the Administration on the proposed section 37W (Restrictions on persons claiming non-refoulement protection in Hong Kong)</p>	
001447 - 002040	Ms Emily LAU Admin	Clarification on the raising of a torture claim upon expiry of limit of stay	
002041 - 002214	Admin	Briefing by the Administration on the proposed section 37X (How torture claim is made)	
002215 - 002320	Ms Emily LAU Chairman Admin	Consideration of views from deputations on specific proposed sections	The Administration to advise members on its response to the views from deputations on specific proposed sections when

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			they were examined
002321 - 002804	Dr Margaret NG Admin	<p>Whether a torture claim would be handled in respect of a person's removal to the Mainland and the number of cases concerned; and</p> <p>Whether a torture claim raised by a claimant who travelled via the Mainland to Hong Kong would not be handled but would be repatriated to the Mainland and the number of cases concerned</p>	
002805 - 003112	Ms Cyd HO Ms Emily LAU Admin Chairman	<p>Clarification on the scenario that a person from the Mainland with a travel document would not be repatriated when he raised a torture claim upon entry to Hong Kong; and</p> <p>The Administration explained that non-refoulement protection not applicable to claimants from the Mainland as the Hong Kong Special Administrative Region was part of the People's Republic of China</p>	
003113 - 003250	Admin	Briefing by the Administration on the proposed section 37Y (Submission of torture claim form)	
003251 - 004326	Ms Cyd HO Admin SALA1 Chairman	<p>Suggestion of extending the time limit of 28 days for return of completed torture claim forms;</p> <p>Referring to the proposed section 37Y(3)(b), whether a further period for a claimant to return the completed torture claim form could be decided by an officer of higher rank rather than by the same immigration officer so as to achieve fairness;</p> <p>Enquiry about "special circumstances" in the proposed section 37Y(3)(b) and whether they would be specified in the Bill;</p>	

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		<p>Whether there would be an appeal mechanism against the decision of an immigration officer not to allow an extension of time for return of a completed torture claim form within a period of 28 days; and</p> <p>Giving consideration to special circumstances which would make it impossible for the return of completed torture claim form within a period of 28 days, including the collection of supporting documents from remote place of origin of claimants and postal delay</p>	
004327 - 004640	SALA1 Chairman Admin	Consistency between the Chinese version of the word "allow" in the proposed sections 37Y(3)(b) and 37ZQ(1)	
004641 - 005903	Ms Emily LAU Admin	<p>Extension of the period of 28 days for submission of completed torture claim forms;</p> <p>Request by the Law Society of Hong Kong and the Hong Kong Bar Association to extend the period from 28 days to 56 days;</p> <p>Concern about only 30 cases meeting the requirement to return the completed torture claim forms within 28 days among some 1 200 determined cases; and</p> <p>Discretion for torture claimants to submit supporting documents after the period of 28 days</p>	<p>The Administration to -</p> <p>(a) provide information on the time taken for return of completed torture claim forms of new cases and further views on the issue from the Law Society of Hong Kong, the Hong Kong Bar Association and Duty Lawyer Service ; and</p> <p>(b) consider extending the time for submission of completed torture claim forms</p>
005904 - 010352	Mr WONG Yung-kan Admin	<p>The time taken by claimants to return completed torture claim forms; and</p> <p>Number of cases for which applications for extension of time for submission of completed torture claim forms were rejected and factors considered</p>	

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010353 - 010655	Ms Cyd HO Chairman	<p>Making of data access requests for the torture claimants by their legal representatives ; and</p> <p>Possible delay in returning completed torture claim forms caused by the long lead time taken by the Immigration Department in providing personal data to torture claimants</p>	<p>The Administration to provide information on the some 1 200 determined cases with breakdown on the time taken by the Immigration Department in providing personal data to claimants concerned, including the cases for which extension of the time for submission of completed torture claim forms was rejected</p>
010656 - 011318	Ms Emily LAU Ms Cyd HO Admin	<p>Number of applications for extension of time for submission of completed torture claim forms among the 1 200 determined cases;</p> <p>Cases of possible abuse of the system; and</p> <p>Whether the proposed section 37Y as presently drafted would cover the situation where a torture claimant might be allowed to provide supplementary information after the 28 days</p>	<p>The Administration to provide -</p> <p>(a) details on the trend for the period of time required for return of completed torture claim forms with a breakdown by month;</p> <p>(b) an analysis of the reasons for the some 1 000 cases applying for extension of period for time for submission of completed torture claim forms;</p> <p>(c) information on the possible abuse cases among the 1 200 determined cases; and</p> <p>(d) its views on whether the proposed section 37Y as presently drafted would cover the situation where a torture claimant might be allowed to provide supplementary information after the 28 days</p>
011319 - 011510	Admin	Briefing by the Administration on the proposed section 37Z (Effect of making a torture claim)	

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011511 - 012326	Ms Cyd HO Admin Chairman	<p>For substantiated cases, whether a torture claimant would be removed to a country having diplomatic relation with the torture-risk State where the torture claimant came from or whether the claimant would be allowed to stay in Hong Kong; and</p> <p>For non-substantiated cases, whether a claimant could choose not to be repatriated to his place of origin but to another country, subject to the possession of a relevant valid travel document as necessary</p>	
012327 - 012831	Ms Emily LAU Admin	<p>Clarification on the proposed section 37Z(3)(b)(ii); and</p> <p>Validity of a removal order referred to in the proposed section 37Z(2)(b)</p>	
012832 - 013228	Ms Cyd HO Admin Chairman	<p>Clarification on the use of "遣往" in the proposed section 37Z(1) and 37Z(3)(b); and</p> <p>Whether torture claimants would be repatriated to a torture risk State or to a specified country where the torture claimants possessed the relevant valid travel document, subject to the determination of claims</p>	
013229 - 013348	Admin	Briefing by the Administration on the proposed section 37ZA (Duties of claimant)	
013349 - 013536	Ms Emily LAU Admin	Difference between "residential address" and "correspondence address"	
013537 - 013636	Admin	Briefing by the Administration on the proposed section 37ZB (Power to require information etc.)	

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013637 - 013922	Ms Emily LAU Admin	<p>Whether it was necessary to specify in the proposed section 37ZB the consequences of torture claimants' failure to provide any information or documentary evidence related to the claimant's torture claim or attending an interview to provide information and answer questions relating to the claimant's torture claim; and</p> <p>Impact of claimant's failure to provide information or attend an interview on credibility of claimants (proposed section 37ZD) and decision on torture claim (proposed section 37ZI)</p>	
013923 015334	Ms Emily LAU Ms Cyd HO Admin SALA1 Chairman	<p>Proposed section 37ZI to address cases of torture claimants who refused to attend an interview;</p> <p>Cases not requiring an interview and number of interviews attended and not attended by torture claimants;</p> <p>Right of torture claimants to request an interview; and</p> <p>Ruling of the Court of Final Appeal ("CFA") on a case advising that a torture claimant should be given all reasonable opportunities to substantiate his claim</p>	<p>The Administration to -</p> <p>(a) provide information on the number of interviews arranged and number of interviews not attended by torture claimants in 2011 together with the reasons;</p> <p>(b) consider the suggestion of specifying in the Bill the right of a torture claimant to request an interview to substantiate his claim; and</p> <p>(c) provide a copy of the CFA's judgment on the case</p>
015335 - 015653	SALA1 Ms Emily LAU Admin	Referring to the protection against the use of information provided by torture claimants in subsequent criminal proceedings as stated in paragraph 6 of the Guidelines for completion of Questionnaire for persons who had made torture claims, whether the Administration would consider including such protection in the	The Administration to provide a written response to the suggestion of including a provision in the Bill to the effect that information provided by a torture claimant would not be used against him in any subsequent criminal proceedings having regard

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		Bill	to a similar provision in the Guidelines for completion of Questionnaire for persons who had made torture claims and information on practices of overseas jurisdictions which had implemented the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
015654 - 015731	Chairman Ms Emily LAU Ms Cyd HO	Closing remarks	

Council Business Division 2
Legislative Council Secretariat
6 June 2012