

立法會
Legislative Council

LC Paper No. CB(2)2306/11-12
(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, 12 March 2012, at 10:45 am
in Conference Room 2A 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 Cyd HO Sau-lan
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun, JP

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon Abraham SHEK Lai-him, SBS, JP
Hon CHAN Hak-kan
Hon WONG Kwok-kin, BBS

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

Ms Sally CHEUNG
Principal Immigration Officer (Torture Claim
Assessment) (Acting)
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 Michelle LEE
Legislative Assistant (2) 7

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 arrangements for interviews, including the rationale for not arranging interviews for some claimants, the channel for raising objection and the views of The Law Society of Hong Kong and the Hong Kong Bar Association on such arrangements;
 - (b) to provide a written response to the suggestion that torture claimants be provided with publicly-funded legal assistance

when appealing against revocation of decision on substantiated claims;

- (c) to provide a written response to the query about the appropriateness for an immigration officer to revoke a decision on a substantiated torture claim made by the Torture Claims Appeal Board ("Appeal Board");
- (d) to provide a written response to the suggestion that revocation of a decision to accept a torture claim on the ground of changes in circumstances should be made by the Appeal Board;
- (e) to provide information on how torture claimants would be assured to be provided with specific details on the reasons for revocation of the decision on substantiated claims;
- (f) to consider the suggestion of making reference to the proposed sections 37ZL(3)(b) and 37V(4) in the proposed section 37ZL(5);
- (g) to provide a written response to the suggestion that claimants be allowed to appeal to the Appeal Board against an immigration officer's rejection of making a subsequent claim;
- (h) to provide information on the provision of legal assistance to torture claimants under the Duty Lawyer Scheme during the process of appeal to the Appeal Board, including the decision to provide legal assistance and when seeking a second opinion on the prospect of success for making subsequent claims and appeals;
- (i) to provide a written response to the suggestion of setting out in the Bill torture claimants' right to be represented by a legal representative at interviews or hearings;
- (j) to provide examples to illustrate the use of the phrase "serve a copy of the notice" in section 8 of the proposed Schedule 1A to the Immigration Ordinance;
- (k) to consider the suggestion of setting out in the Bill that the information provided by the Director of Immigration to the Appeal Board under section 9 of the proposed Schedule 1A would also be provided to the torture claimant concerned;

- (l) to consider the suggestions of revising the composition of the Appeal Board (including appeals to be heard by more than one member) and specifying in the Bill the requirement that persons appointed to the Appeal Board should possess relevant experience in handling torture claims; and
- (m) to consider the suggestion of revising the remuneration for members of the Appeal Board so as to make it attractive.

II. Date of next meeting

- 3. Members noted that the next meeting had been scheduled for 16 April 2012 at 10:45 am.
- 4. The meeting ended at 12:42 pm.

Council Business Division 2
Legislative Council Secretariat
7 June 2012

**Proceedings of meeting of the
Bills Committee on Immigration (Amendment) Bill 2011
held on Monday, 12 March 2012, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

| Time marker | Speaker(s) | Subject(s) | Action Required |
|--------------------|-------------------------------------|--|---|
| 000814 - 000827 | Chairman | Opening remarks; and Continuation of clause-by-clause examination of the Bill | |
| 000828 - 000911 | Chairman Admin | Response of the Administration to the views of deputations | |
| 000912 - 001401 | Chairman Dr Margaret NG Admin | Referring to the proposed section 37ZB (Power to require information etc.), concern that the arrangements for an interview would be subject to the decision of an immigration officer but not as a right of a torture claimant; and Number of cases where no arrangement for interviews had been made for torture claimants | The Administration to provide information on the arrangements for interviews, including the rationale for not arranging interviews for some claimants, the channel for raising objection and the views of The Law Society of Hong Kong and the Hong Kong Bar Association on such arrangements |
| 001402 - 001738 | Chairman Admin | Briefing by the Administration on the proposed section 37ZL (Revocation of decision to accept torture claim etc.) | |
| 001739 - 001846 | Chairman Clerk Dr Margaret NG | Views of The Law Society of Hong Kong and the Hong Kong Bar Association on the proposed section 37ZL that no justification to revoke any decision on torture claims by the Immigration Department | |
| 001847 - 002428 | Dr Margaret NG Admin Chairman | Difficulty in substantiating a torture claim by a claimant; and Whether a claimant would be provided with legal assistance to appeal against revocation of decision on a substantiated claim | The Administration to provide a written response to the suggestion that torture claimants be provided with publicly-funded legal assistance when appealing against revocation of decision on substantiated claims |

| Time marker | Speaker(s) | Subject(s) | Action Required |
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| 002429 - 002809 | Chairman SALA1 Admin Dr Margaret NG | <p>Whether it was appropriate for an immigration officer to revoke a decision on a substantiated torture claim made by the Torture Claims Appeal Board ("Appeal Board") as provided in the proposed section 37ZL(1)(b), having regard to the fact that the Appeal Board would be independent of the Government; and</p> <p>Whether revocation of a decision to accept a torture claim on the ground of changes in circumstances should be made by the Appeal Board rather than by an immigration officer</p> | <p>The Administration to provide a written response to -</p> <p>(a) the query about the appropriateness for an immigration officer to revoke a decision on a substantiated torture claim made by the Appeal Board; and</p> <p>(b) the suggestion that revocation of a decision to accept a torture claim on the ground of changes in circumstances be made by the Appeal Board</p> |
| 002810 - 003037 | Chairman Admin Dr Margaret NG | Whether torture claimants would be provided with specific details on the reasons for revocation of decision on substantiated claims so as to facilitate appeals against such revocation | The Administration to provide information on how torture claimants would be assured to be provided with specific details on the reasons for the revocation of decision on substantiated claims |
| 003038 - 004619 | Chairman SALA1 Admin Dr Margaret NG | <p>In relation to a claimant being allowed to appeal against revocation of a decision to accept a torture claim within 14 days after a written notice was given by an immigration officer, clarification on whether the torture claimant would be subject to immediate repatriation under the proposed section 37ZL(5);</p> <p>Concern that reference was not made to the proposed sections 37ZL(3)(b) and 37V(4) in respect of "revocation decision" and "finally determined torture claim" in the proposed section 37ZL(5);</p> <p>Clarification on revocation decision and final determination of a claim; and</p> | The Administration to consider the suggestion of making reference to the proposed sections 37ZL(3)(b) and 37V(4) in the proposed section 37ZL(5) |

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| | | Regular reporting required for torture claimants whose claims were substantiated | |
| 004620 - 005032 | Chairman Admin Dr Margaret NG SALA1 | Briefing by the Administration on the proposed section 37ZM (Limitation on subsequent claim); Whether there was a time limit for raising a subsequent claim; and Absence of appeal mechanism for rejection of making a subsequent claim | |
| 005033 - 010338 | Chairman Admin Ms Emily LAU Dr Margaret NG | Briefing by the Administration on the proposed section 37ZN (Processing of subsequent claim); Difference between the handling of the first claim and a subsequent claim; Reference made to the United Kingdom's practice in respect of the requirement of a realistic prospect of success; and Possible loophole if the decision on whether a claimant could make a subsequent claim was made by an immigration officer | The Administration to provide a written response to the suggestion that claimants be allowed to appeal to the Appeal Board against an immigration officer's rejection of making a subsequent claim |
| 010339 - 010611 | Chairman Ms Cyd HO Admin | Circumstances under which a torture claimant would be allowed to make a subsequent claim apart from political change in the torture risk State concerned; and Number of subsequent claims among the determined cases; number of such claims found unjustified; and number of such claims being processed | |
| 010612 - 011043 | Chairman Admin | <u>Division 3 - Torture Claims Appeal Board</u> Briefing by the Administration on the following proposed sections - section 37ZO (Appeal Board established); section 37ZP (Appeal); | |

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| | | <p>section 37ZQ (Notice of appeal); section 37ZR (Late filing of notice of appeal); and section 37ZS (Practice and procedure of Appeal Board); and</p> <p>Views from deputations on the proposed section 37ZP regarding torture claimants' requests for making subsequent claims to be reviewed by the Appeal Board</p> | |
| <p>011044 - 011406</p> | <p>Chairman Dr Margaret NG Admin</p> | <p>The practice and procedure of hearing of cases under the proposed section 37ZS; and</p> <p>Whether all members of the Appeal Board would be required to be present at the hearing and whether the hearing needed to re-start in the event of change in membership</p> | |
| <p>011407 - 011514</p> | <p>Chairman Ms Emily LAU Admin</p> | <p>Referring to the proposed section 37ZQ, whether 14 days would be sufficient for a claimant to appeal against a decision referred to in the proposed section 37ZP; and</p> <p>Clarification on whether amendments would be made to the proposed section 37ZP if a claimant would be allowed to appeal to the Appeal Board against the decision rejecting the making of a subsequent claim and the decision not to re-open a withdrawn torture claim</p> | |
| <p>011515 - 011850</p> | <p>Chairman Admin Dr Margaret NG</p> | <p>Whether torture claimants would be provided with legal assistance in the process of appeal under the proposed section 37ZP; and</p> <p>Request for information on the provision of legal assistance under the Duty Lawyer Scheme ("DLS"), including the decision on providing legal assistance, and when seeking second opinion on the prospect of success for making subsequent claims and appeals</p> | <p>The Administration to provide information on the provision of legal assistance to torture claimants under DLS during the process of appeal to the Appeal Board, including the decision to provide legal assistance and when seeking second opinion on the prospect of success for making subsequent claims and appeals</p> |

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| 011851 - 012420 | Chairman SALA1 Admin Dr Margaret NG Ms Emily LAU | Whether consideration would be given to setting out in the Bill torture claimants' right to be represented by a legal representative at interviews or hearings | The Administration to provide a written response to the suggestion of setting out in the Bill torture claimants' right to be represented by a legal representative at interviews or hearings |
| 012421 - 013205 | Chairman Admin | <p><u>Proposed Schedule 1A (Torture Claims Appeal Board) to the Immigration Ordinance</u></p> <p>Briefing by the Administration on the following proposed sections -</p> <p>section 1 (Interpretation); section 2 (Appointment of members); section 3 (Resignation and revocation of appointment); section 4 (Role of Chairperson); section 5 (Deputy Chairperson to act in place of Chairperson); section 6 (Composition of Appeal Board for purposes of appeal); section 7 (Order in which appeals are to be heard); section 8 (Notice of Appeal be served on Director); and section 9 (Director to provide facts)</p> | |
| 013206 - 014128 | Chairman Clerk Admin Dr Margaret NG | <p>Comments of Refugee Concern Network on the proposed section 6 of Schedule 1A;</p> <p>Concern that members of the Appeal Board might lack relevant experience in handling torture claims;</p> <p>Circumstances under which appeals would be heard by one member or three members of the Appeal Board; and</p> <p>Whether it was appropriate for only one member of the Appeal Board to hear and determine an appeal</p> | |

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| 014129 - 014655 | Chairman Ms Emily LAU Admin Dr Margaret NG | Possible challenges in the form of judicial review if members of the Appeal Board did not possess the relevant experience in handling torture claims; and Whether a torture claimant could raise objection to the handling of his claim by a specific member of the Appeal Board | |
| 014656 - 015003 | Chairman Dr Margaret NG Admin | Concern about the appointment of qualified persons to be members of the Appeal Board, especially when the Appeal Board might consist of only one member selected by the Chairperson for hearing and determining an appeal as provided in the proposed section 6 of Schedule 1A | |
| 015004 - 015417 | Dr Margaret NG Admin Chairman | Referring to the proposed section 8(1) of Schedule 1A, query about the use of the phrase "serve a copy of the notice on the Director" instead of "notify the Director"; and Referring to the proposed section 9 of Schedule 1A, suggestion of setting out in the Bill that the information provided by the Director of Immigration to the Appeal Board would also be provided to the torture claimant concerned | The Administration to provide examples to illustrate the use of the phrase "serve a copy of the notice"; and The Administration to consider the suggestion of setting out in the Bill that the information provided by the Director of Immigration to the Appeal Board would also be provided to the torture claimant concerned |
| 015418 - 015717 | Chairman Ms Emily LAU Admin Dr Hon Margaret NG | Composition of the Appeal Board and possession of relevant experience by members of the Appeal Board; Whether the remuneration for members of the Appeal Board was attractive; and Importance of appointing qualified and experienced persons to be members of the Appeal Board | The Administration to consider the suggestions of revising the composition of the Appeal Board (including appeals to be heard by more than one member) and specifying in the Bill the requirement that persons appointed to the Appeal Board should possess relevant experience in handling torture claims; and |

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| | | | The Administration to consider the suggestion of revising the remuneration for members of the Appeal Board so as to make it attractive |
| 015718 - 015757 | Chairman | Date of next meeting Closing remarks | |

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Legislative Council Secretariat
7 June 2012