

**Legislative Council Bills Committee on
Immigration (Amendment) Bill 2011
Follow-up to the Fourth Meeting on 9 December 2011**

Purpose

This paper mainly sets out the Administration's response to issues raised by Members at the fourth meeting of the Bills Committee on Immigration (Amendment) Bill 2011 ("the Bill") on 9 December 2011.

Case samples

2. Four determined torture claims with personal information withheld are presented at Annex I for reference by Members as requested.

Timeframe for submission of torture claim forms

3. Sections 37Y(2) and (3) of the Bill provide that a claimant must return the torture claim form within 28 days and may apply for an extension when necessary. Such requirement is relatively lenient comparing to other common law jurisdictions¹.

4. Information that claimants are required to submit mainly includes personal particulars, information of family members and the torture risk that they would face in their place of origin. Since it involves mostly known facts to the claimants, receipt of personal data held by the Immigration Department (ImmD) should not be a prerequisite for completing the form and preparing relevant information. Moreover, claimants may submit supplementary documents and information before the screening interview.

5. That said, the ImmD will complete claimants' requests for access to their personal data within 14 days starting from January 2012.

Screening Interviews

6. In December 2008, the Court of First Instance of the High Court decided in *FB v Director of Immigration* that the screening procedures put in place by the Administration would not meet "high standards of fairness" if claimants' legal representatives were denied access to screening interviews. Under the existing mechanism, claimants may attend the interviews² and

¹ In Canada, the timeframe for submission is 28 days. In the UK, prior to the streamlining of screening procedures in 2007, claimants had to submit the torture claim form within 10 days.

² Amongst determined claims, 994 (95%) were represented by duty lawyers, all of whom had attended the screening interviews.

petition hearings with their lawyers. This arrangement will continue in the light of the above judgment.

7. Questions raised in a screening interview mainly concern personal and family particulars and grounds for making the claim submitted by the claimant. Where necessary, the responsible immigration officer may require written clarifications or supplementary information from the claimant before the interview. The claimant or his legal representative may put up an opposition immediately if it is considered that the interviewing process is unjust and may request to put it on the record.

Time required for processing claims

8. As regards time required for processing claims, the ImmD can in general decide on a claim in about nine weeks³ upon receipt of torture claim form. Adjudicators can decide on petitions in three weeks on average (longer time needed if hearing is conducted). However, the whole process could be delayed by many factors (e.g. claimants' unexplained absence from interviews or even losing contact with the ImmD and duty lawyers, re-opening of withdrawn claims before removal, and raising claims which are completely unrelated to "torture" in some cases).

9. To facilitate the processing of claims in a fair and effective manner, the Bill provides that claims must be related to torture and that claimants have a duty to attend interviews and submit the torture claim forms within the prescribed timeframe.

Other issues

Detention of claimants

10. The Director of Immigration may detain illegal immigrants and overstayers or release them on recognizance under the Immigration Ordinance, having regard to the circumstances of each case, including likelihood of abscondance or committing crimes, prospect of removal within a reasonable time and other personal factors (e.g. medical condition). At present, 98% of torture claimants are released on recognizance.

Claimants subject or liable to removal

³ On average, it takes 6.5 weeks to collect information on claimants' place of origin and other relevant particulars, and to arrange and conduct interviews. It takes another 2.5 weeks to make a decision and prepare the decision write-up (with justifications). The total time needed is therefore nine weeks.

11. As regards Members' concern about whether torture claims raised by people with valid permission to remain should be processed, Article 3 of the Convention Against Torture (CAT) stipulates that no State Party shall return a person who would be in danger of being subjected to torture. It follows that such non-refoulement protection will not apply if a person is not subject to removal. The Court of Appeal of the High Court also confirmed in *BK & CH v the Director of Immigration* (CACV 59 & 60/2010) that such policy complies with the protection requirement of CAT.

Humanitarian Assistance and Schooling Arrangements

12. Details of the humanitarian assistance provided for claimants are set out in Annex II.

13. As for schooling arrangements, the Education Bureau allows claimants under 18 to attend schools on a discretionary basis, taking into consideration the circumstances of each case (including age and whether removal may take place in the near future, etc.). The Student Financial Assistance Agency will also consider applications for tuition fee subsidy on a need basis. As at the end of November 2011, about 130 claimants have applied for schooling and no application was rejected.

**Security Bureau
December 2011**

Determined Torture Claim Cases

Case 1

Background

- Pakistani male. Entered Hong Kong illegally in July 2009. Raised torture claim upon arrest for illegal entry and remaining.
- Arrested for taking illegal employment in August 2010 and sentenced to 6 weeks of imprisonment. Requested by the Immigration Department (ImmD) to complete torture claim form in October 2010. Received assistance through the Duty Lawyer Service (DLS) and made a data access request application.

Grounds of claim

- Would be killed upon return to his home country by his paternal uncle, who wanted to seize ownership of a piece of land in the family.

Decision

- Claim unsubstantiated in January 2011. Major considerations include:
 - Not within the definition of “torture” in the Convention
 - Internal relocation in place of origin possible
- Petition (without assistance by the DLS) rejected in February 2011.

Case 2

Background

- Indonesian female. Foreign domestic helper in Hong Kong since 1995. Did not leave Hong Kong as required after contract terminated in January 2008. Arrested in September 2008 for taking illegal employment and sentenced to 12 weeks of imprisonment. Raised torture claim after the ImmD made a removal order against her after being discharged from imprisonment.
- Arrested again in January 2010 for taking illegal employment and sentenced to 7 months of imprisonment. Requested by ImmD to complete

torture claim form in March 2011. Received assistance through the DLS and made a data access request application.

Grounds of claim

- Orphaned at a young age. Became a street child and was sexually assaulted. Would be looked down upon and cursed by black magic if returned.

Decision

- Claim unsubstantiated in June 2011. Major considerations include:
 - Not within the definition of “torture” in the Convention
- Petition (without assistance by the DLS) rejected in July 2011.

Case 3

Background

- Bangladeshi male. Raised torture claim after being refused entry to Hong Kong in January 2010. Withdrew claim afterwards (citing that “he would not be in danger of being subjected to torture for the time being”).
- Raised another claim subsequently. Requested by ImmD to complete torture claim form in February 2010. Received assistance through the DLS and made a data access request application. Applied for extension of deadline for submitting the form with various reasons, including a need to obtain medical reports from his place of origin. No such report was submitted in the end.

Grounds of claim

- Was ordinary member of a political party in place of origin and was attacked by members of another political party following a dispute (they refused to let him use their chairs).

Decision

- Claim unsubstantiated in September 2010. Major considerations include:
 - Not within the definition of “torture” in the Convention
 - Internal relocation in place of origin possible

- Hearing for petition (assisted by the DLS) conducted in November 2010. Case rejected in January 2011.

Case 4

Background

- Pakistani male. Entered Hong Kong illegally in November 2007 and was arrested for illegal entry and remaining in January 2008. Lodged a refugee claim with the United Nations High Commissioner for Refugees (UNHCR) at the same time and was rejected in August 2008.
- Raised torture claim in March 2009. Requested by ImmD to complete torture claim form in February 2011. Received assistance through the DLS and made a data access request application. Failed to report to the ImmD since March. In May, the DLS indicated that they had lost contact with the claimant.

Grounds of claim

- Stabbed his employer and friends in defense after being sexually assaulted by them in his place of origin. Fled the country afterwards to escape from his employer who wanted to kill him. Became a target of harassment in Hong Kong since changing his religious belief.

Decision

- Claim unsubstantiated in August 2011. Major considerations include:
 - Not within the definition of “torture” in the Convention
- Petition (without assistance by the DLS) rejected in September 2011. [Immediately requested the UNHCR to review his refugee status.]

Provision of Humanitarian Assistance to Claimants

Purpose

On humanitarian grounds, the Administration, in collaboration with non-governmental organisations (NGOs) and on a case-by-case basis, offers assistance-in-kind to torture claimants who are deprived of basic needs during their presence in Hong Kong.

2. The in-kind assistance provided to torture claimants is a form of tide-over support provided on humanitarian grounds. It is not welfare assistance provided to eligible Hong Kong residents. Its aim is to provide support which is considered sufficient to prevent a person from becoming destitute while at the same time not creating a magnet effect which can have serious implications on the sustainability of our current support systems.

Scope

Accommodation

3. Torture claimants in genuine need are provided with temporary accommodation together with the supply of electricity, water and other basic utilities. The types of accommodation assistance offered include –

- (i) private flats in Yuen Long rented by International Social Service Hong Kong Branch (ISS). The flats are equipped with basic furniture, beddings, household utensils and cooking facilities;
- (ii) accommodation self-arranged by the service users. ISS will enter into a direct payment arrangement with the legitimate landlord. The tenancy agreement will be renewable on a monthly basis; and
- (iii) the ISS's Anthony Lawrence International Refuge for Newcomers to Hong Kong. Service users in need of supervised housing, including women or minors, are arranged to stay in this shelter.

Food

4. Service users are provided with a variety of food items, including vegetables, fruit, meat, as well as baby/children food where applicable. Nutritious, cultural, religious and other specific needs of individual service users are catered for as appropriate. Service users collect the food items at six food

suppliers' shops located in different districts on Hong Kong Island, Kowloon and the New Territories.

Clothing and basic necessities

5. Clothing and other basic necessities, including personal toiletries, household cleansing articles, women sanitary items and baby/children items, if applicable, are provided as necessary.

Transport allowance

6. Service users with genuine travelling need for various purposes, including reporting to the Immigration Department, attending medical appointments, attending spiritual worship, meeting with lawyers, collecting food and basic necessities as well as meeting with ISS's workers, etc. are provided with petty cash to meet the travelling expenses by the cheapest means of transportation.

Medical services

7. In accordance with the current practice for waiving of medical charges for non-eligible persons, recommendations for one-off waiver of medical expenses at public clinics or hospitals will be given to torture claimants on a case-by-case basis subject to the assessment by service units of the Social Welfare Department.

Level of assistance

8. The in-kind assistance provided to the individual varies according to the needs and personal situations of the person concerned, including the availability of his own resources and the resources available to him from other sources. There is no monetary-equivalent ceiling on how much an individual service user in genuine need may receive.