

# OFFICIAL RECORD OF PROCEEDINGS

Friday, 13 July 2012

The Council continued to meet at Nine o'clock

## MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, S.B.S., S.B.ST.J.,  
J.P.

THE HONOURABLE LEE CHEUK-YAN

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.M., G.B.S., J.P.

THE HONOURABLE FRED LI WAH-MING, S.B.S., J.P.

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, G.B.S., J.P.

THE HONOURABLE WONG YUNG-KAN, S.B.S., J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE LAU WONG-FAT, G.B.M., G.B.S., J.P.

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE TIMOTHY FOK TSUN-TING, G.B.S., J.P.

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

THE HONOURABLE ABRAHAM SHEK LAI-HIM, S.B.S., J.P.

THE HONOURABLE LI FUNG-YING, S.B.S., J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, S.B.S., J.P.

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE VINCENT FANG KANG, S.B.S., J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

DR THE HONOURABLE JOSEPH LEE KOK-LONG, S.B.S., J.P.

THE HONOURABLE JEFFREY LAM KIN-FUNG, G.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, G.B.S., J.P.

THE HONOURABLE CHEUNG HOK-MING, G.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, S.B.S., J.P.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CHIM PUI-CHUNG

PROF THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING, J.P.

DR THE HONOURABLE LAM TAI-FAI, S.B.S., J.P.

THE HONOURABLE CHAN HAK-KAN, J.P.

THE HONOURABLE PAUL CHAN MO-PO, M.H., J.P.

THE HONOURABLE CHAN KIN-POR, B.B.S., J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN, J.P.

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

THE HONOURABLE WONG KWOK-KIN, B.B.S.

THE HONOURABLE IP WAI-MING, M.H.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN, J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

**MEMBERS ABSENT:**

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE LEUNG YIU-CHUNG

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE ANDREW CHENG KAR-FOO

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.

DR THE HONOURABLE SAMSON TAM WAI-HO, J.P.

THE HONOURABLE LEUNG KWOK-HUNG

**PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE JOHN TSANG CHUN-WAH, G.B.M., J.P.  
THE FINANCIAL SECRETARY, AND  
SECRETARY FOR DEVELOPMENT

THE HONOURABLE LAI TUNG-KWOK, S.B.S., I.D.S.M., J.P.  
SECRETARY FOR SECURITY

**CLERK IN ATTENDANCE:**

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

**BILLS****Second Reading of Bills****Resumption of Second Reading Debate on Bills**

**PRESIDENT** (in Cantonese): Good morning. We now proceed to resume the Second Reading debate on the Immigration (Amendment) Bill 2011.

**(Bills originally scheduled to be dealt with at the last Council meeting)**

**IMMIGRATION (AMENDMENT) BILL 2011****Resumption of debate on Second Reading which was moved on 13 July 2011**

**PRESIDENT** (in Cantonese): Does any Member wish to speak?

**DR MARGARET NG** (in Cantonese): President, this Bill seeks to implement Hong Kong's international obligations in respect of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In other words, it stipulates how claims made by torture claimants should be handled so that claimants can get fair treatment.

President, as a matter of fact, torture claims existed years ago and could be dated back to as early as 1992. Initially, such claims were made informally and screening was conducted by the United Nations High Commissioner for Refugees. Since instances of unfairness had arisen during the whole procedure, some claimants took the cases to court, and during the process of judicial review, the judgment made by the Court prompted the Government to review the procedures concerned, with a view to setting up a set of procedures that enables claimants to be fairly treated and the requirement of the so-called natural justice can be met.

President, in considering the factor of torture, we actually should not have any doubt, even though we understand that most of the claims made by torture claimants are groundless and false. These people come to Hong Kong, as

rightly stated by Dr PAN Pey-chyou, merely for seeking employment, and they have manipulated the system to give them a chance to do so. Nevertheless, President, we should never forget the rationale for formulating the CAT. If the case turns out to be valid, the situation will be really pathetic. As a member of the international community, Hong Kong has to address this problem.

President, behind me hangs a placard carrying the message "return Wangyang to me". In his interview, LI Wangyang recounted how he was treated in prison, like having to crouch in a cell, being subdued by tiny handcuffs, losing his eyesight and having his teeth smashed, and so on. Upon hearing these, we would be touched since we share the same culture and race as LI, as the saying "blood is thicker than water" goes. Yet, all people in the world are human beings. Some people, who are indeed being subjected to political persecution and torture in their own countries, may come to Hong Kong to seek fair treatment and breathe the air of freedom.

President, even though only one person out of 1 000 is subjected to torture, we still have to be fair to that person. If we do not deal their case properly and fairly, the persons concerned may be subjected to abuse when they return to their own country. President, this is unacceptable from the perspective of sentiment, reason or law. Therefore, President, this is the attitude we should adopt in examining the above procedures.

President, we welcome the Bill concerned, since it can actually bring improvement to the current situation. However, when we examined the provisions, we still find out a number of inadequacies in the Bill.

President, since the tabling of the Bill by the Administration, the Panel on Security had held various discussions. The Administration sought to respond to the criticism made by the Court. According to the Court, claimants were not legally represented during the claiming process and they were not offered any legal assistance in this regard, hence the Court ruled that the whole process did not conform to natural justice. In response, the Administration had set up an administrative system, allowing claimants' access to legal representation through the Duty Lawyer Scheme, and duty lawyers might assist claimants in making the claims and attending screening interviews with them.

In implementing this arrangement, the legal sector has directly involved in the whole process in three areas. Firstly, a joint working group was jointly formed by the Hong Kong Bar Association and the Law Society of Hong Kong to monitor the development of the system. Secondly, duty lawyers provide practical assistance. However, the two lawyers' associations in fact do not share the same views. At meetings of the panel concerned or the Bills Committee, we received divergent views from these two bodies.

President, the legal sector is of the view that a procedure should be established to ensure smooth and fair operation, so as to expedite the determination of torture claims. We believe that given the huge number of claims, if the system can deal with false claims expeditiously, the few genuine cases can be fairly handled.

Hence, President, perhaps let me talk about the inadequacies of the Bill, as perceived by the two lawyers' associations and us. Firstly, it is the issue of principle. We are of the view that torture claims should not be dealt with separately from refugee claims. We consider the two claims identical as the same idea and objectives prevail, that is, we should not return a victim to a place where he would continue to be subjected to torture. Since these two types of claims are identical, is it not more time-saving and more in line with international practice to deal with them together? This is the first point. We hope this can be done in the long run.

We see several imperfections in the Bill *per se*. First, the prerequisite for making a claim is that the claimant has to be a so-called overstayer. Under the laws of Hong Kong, only those who have committed a crime may make such a claim. If that is the case, the person concerned is rather passive. He is already under threats from many fronts. If he is charged with overstaying, it is almost certain that he will be convicted, and then end up in jail. The torture claimant will then be constrained to various restrictions. Second, regarding the whole process, the torture claimant should take the first step to complete the form, and he only has 28 days to submit his claim.

President, I will propose an amendment in this respect in the Committee stage later on, for the legal sector opines that it is impossible to complete the form in 28 days. Of course, the Administration claims that the period can be extended if justifications are provided, but this entails that extension may only be granted

on discretion. That is unreasonable, given that the making of a proper claim requires a lot of information. If the information is fake, that would be simple; but if the information is true, it may not be possible to complete the torture claim form in 28 days. Hence, that is a big problem.

Third, the legal sector also has some views on medical examination. The Bill provides that medical examination has to be determined and arranged by the Administration and carried out by government doctors. However, claimants think that given the different stances of the two opposing parties, arrangements made by the Administration might violate the principle of justice. In addition, what kind of doctor would have the specialty in this respect? General practitioners may not be competent for this work, since a simple check on whether there is any physical or mental harm is not enough. People who have been tortured and suffered from physical or mental abuse have some traits that can only be easily identified by experts.

Fourth, I disagree with the newly added clause 37ZB. Availability of legal representation depends wholly on whether one has a chance for an interview. During the interview, a lawyer may accompany the claimant and complete the claim form on his behalf. Nevertheless, the present provision provides that lawyer may meet with claimant, but he is not obliged to do so. Hence, if lawyer does not meet with claimant, the claimant cannot get legal assistance.

Fifth, while lawyers can, through the Duty Lawyer Scheme, provide assistance to claimants, there is a set of so-called protocol, or rules. This set of rules may give rise to disputes, and that is also undesirable.

Sixth, we have also observed some problems in the newly added clause 43A, which provides that disturbing the appeal proceedings is a criminal offence. Yet, what is meant by "disturbing"? The current provision has not provided a clear definition. Suppose a person who has really been subjected to torture and makes a claim, and if he feels aggrieved during the interview and displays strong emotions in the appeal process, should he be regarded as having committed an offence? In my opinion, in principle, provisions on criminal offence have to be unequivocal, such that people may have a clear idea of the kind of actions and intentions that constitute an offence. Hence, we consider the provision far from satisfactory.



Next, I think the transitional provisions (Schedule 4) have given rise to concern. As currently worded, there seems to be a grandfather provision, like the controversial one in the Competition Bill. That is, for the screening carried out under the administrative scheme before the passage of the Bill, even though the practice of the Administration does not conform to what the Court has ruled in respect of natural justice, the action concerned is still regarded as being carried out in a legitimate manner. In other words, actions which are apparently wrong will be considered right after the passage of the Bill. Hence, while claimants being unfairly treated should be able to apply for judicial review, such transitional provisions will deny them a chance to appeal against the wrong procedures. This is why the legal sector is highly concerned about this provision.

President, during the scrutiny of the Bill, it was gratifying that Government officials were very sincere to discuss with Members and the legal sector over the issues we queried. Hence, in many areas where we have concerns, as I mentioned earlier, the Government will propose amendments to the relevant clauses. Even though we are not fully satisfied, we still regard them acceptable in general. The only exception is the 28-day period for claimants to complete the claim form, an area that the Government has refused to make any concession. President, I do not intend to dwell on the relevant provisions at this stage. Perhaps during the discussion on amendments, I will give a clear account of why the Government's current provision on the 28-day period is unfair, and the rationale behind my amendment, which proposes a 90-day period. President, is there any point of compromise between 28 and 90 days? The legal sector is actually willing to consider a period lesser than 90 days, but the Government does not even consent to extend the deadline for one day, so we have no choice but to propose an amendment, as this is related to the first step to be taken in a torture claim process. If the first step is not taken rightly by providing comprehensive information and supplementary information is later required, the responsible officer may consider the claimant dishonest and unreliable, and then turn down his application.

If a claimant fills in incorrect information in a rush, even though he is allowed to provide new information later, there is still a major setback to his credibility. Hence, in our view, the first step is very important, it matters greatly whether it is done correctly and properly. That is why we cannot easily accept the provision concerned. One may say despite the Government stands firm in this regard, it has made concessions for other provisions, hence we should not

raise any objections. President, I have to explain clearly why we find that provision unacceptable. Nevertheless, in terms of the intent and direction of the Bill, we generally consider the Bill an improvement, so we support the resumption of its Second Reading. Thank you, President.

**MS CYD HO** (in Cantonese): We support the Immigration (Amendment) Bill 2011, which seeks to set out a fair and proper mechanism in accordance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) for people who apply for staying in Hong Kong.

Before 2007, the Administration handled torture claims in accordance with a set of administrative procedures. Unfairness existed in respect of medical examination or the production of evidence, and claimants might not have access to legal representation. There are also language barrier problems. It seemed that language services available from the Hong Kong Government only covered Cantonese, English and Mandarin. Interpretation services for other languages, especially those of the Third World, were hardly available.

In response to a case in 2007, the Government seeks to amend the legislation to establish a set of procedures that is fairer. We welcome the move. There are some general principles. First, we have to be fair in undertaking the international humanitarian duty; second, we need to efficiently screen out unsubstantiated claims. For instance, from the cases provided to us by the Government, we can see that there are claimants who, intentionally or out of misunderstanding, do not meet the requirements for making a claim as specified in the CAT. With a fair mechanism in place, we can ensure fair treatment to those in a dire need for asylum, and also expedite the process for unsubstantiated claimants to learn of their status and give up making claims.

President, in examining the Bill, we had raised the question of how this group of people came to Hong Kong, since it is provided in the legislation that if claimants have been to another place (that is, another country) before coming to Hong Kong, and if they do not make a claim in that place in time, their claim made in Hong Kong will not be accepted.

According to the information the Government provided to us, some claimants come from Southeast Asia, as it might be nearer for them to come to

Hong Kong by sea. Yet, those from the Mainland took up the greatest percentage (86%). Thus, the question is, regarding claimants from the Mainland, does the Government consider the Mainland their first stop under the present legislation? Are claimants required to prove that they have made claims in the Mainland in time, before the Administration can decide on whether or not to accept the claims they make in Hong Kong? We raised this question as early as the first or second meeting of the Bills Committee, but the Administration only gave a reply at the last of the committee's 14 meetings. I am not sure why this question is so sensitive. In addition, the Government has only vaguely stated that it would consult the Mainland counterpart about the claimants' background and the route they took in travelling to Hong Kong from the country where they were subjected to abuse.

Finally, a clearer reply had been provided. Under the principle of "one country", the claim made by a claimant for the first time in Hong Kong will be accepted. Yet, the scope remains very vague under "one country, two systems", even though the number of people so affected is minimal. Under the principle of "one country", we assume that a claimant makes his claim for the first time in the People's Republic of China, and hence his claim will be accepted. However, given that there is a border between the two places, the claimant may be an illegal immigrant or an overstayer. So, we need to ask the Mainland authorities how he managed to sneak into Hong Kong.

As I understand, for issues such as law enforcement and collaboration of legal systems under the concept of "one country, two systems", this single piece of legislation may not be able to address them, but still a clearer answer has been provided. Concerning administrative arrangement, I hope that the Government may, upon consultation with its Mainland counterpart, devise a set of clear procedures and report to this Council. In my view, to achieve the above objectives, the Government may have to adopt some soft tactics in "internal negotiation", but I hope that claimants will receive fair treatment through such soft tactics.

An Honourable colleague remarked earlier that torture claims should be handled at the same time with refugee claims. Putting the humanitarian cause aside, from an administrative perspective solely, there are practical needs to do so. The reason is, a claimant may, after his torture claim has been rejected and appeal denied, seek refugee status from the United Nations High Commissioner

for Refugees (UNHCR) for staying in Hong Kong. At present, there are no rules on handling this group of claimants. As the Hong Kong Sub-Office of the UNHCR is not subject to local legislation (in terms of a set of proper procedures), the applications concerned may take a long time to process. Therefore, if efficiency is the key, we really should negotiate with the relevant parties to establish a system that is fair and complete.

Just now, Honourable colleagues from the Hong Kong Federation of Trade Unions pointed out that applications from claimants should be processed expeditiously, or else they may seek to work illegally in Hong Kong to the detriment of the employment opportunities available for local workers. To a certain extent, I share with their view, but I have to point out that the living conditions of these claimants in Hong Kong are by no means good. Their situation is worse than those Hong Kong people who live on Comprehensive Social Security Assistance (CSSA), and the disparity is not just 10% or 20%. Let me use the amount of food subsidy given to a child as an example. Under the CSSA system, the previous amount of food subsidy was \$760 a month. Nevertheless, Secretary, we were told upon request that the food subsidy received by claimants' children was around \$450 a month. If that is not enough, what can they do? They may have to fill up their stomach with the canned food distributed by food banks, or rely on money raised by social workers and voluntary organizations. Therefore, do not think that claimants live in heaven after their arrival in Hong Kong. In Hong Kong, it is hardly enough to feed a child with only \$450. Recently we learnt of a case where a single mother was brought to justice for feeding her baby with diluted formula milk. Yet, under our public system, the food subsidy for children is so meager that hardly meets the humanitarian standard.

Therefore, for those people who make claims out of misunderstanding or wrong expectations, their lives are by no means good. If there is a system to expedite the screening procedure, such that these people will not have wrong expectation and will leave Hong Kong, that would be desirable. However, fairness is paramount, so that those who return to their countries ..... In particular, people who come from turbulent places like North Africa, Eastern Europe, the Middle East and so on will be subjected to abuse should they return. I am of the view that Hong Kong has to undertake its international obligations in this regard.

Speaking of international convention, that is what we all along have to take into account during the legislative process. While we have to undertake international obligations, does it mean we have to adopt indiscriminately international conventions every time, to the extent that local legislation is affected? That is a present case in point which involves the definition of "torture". I would not dwell on this issue, since the definition of "torture" has been mentioned in the Bill and in other documents. The definition involves two elements. The first refers to suffering, whether physical or mental, that is inflicted on a person out of discrimination of any kind, but the term "discrimination" is not clearly defined. We then put this question to the Government, and in response, it has stated in a document that the definition of "discrimination" is pretty much the same as those in other international human right conventions, encompassing race, gender, age, political views (which is the most important aspect), religious faith, and so on.

Our legal advisor had written to the Government to express fears that by adopting the definition of "torture" in international conventions, the definition of "torture" in Hong Kong would be affected. Secretary, I believe you should have heard of how suspected criminals were beaten in local police stations. Sneakers were stuffed to their mouths, and their upper bodies were then pushed out of the window. I have also mentioned cases like this to the Hong Kong Human Rights Monitor. In a children's home in Hong Kong, a child has committed suicide after being subjected to solitary confinement for a long time, which is, in a sense, a kind of torture. Therefore, if we are to indiscriminately adopt a definition used internationally, would there be any implication on the definition of "torture" as adopted by other regulatory or law enforcement bodies in Hong Kong? Yet, to our relief, the Government pointed out in reply that "discrimination" included targeting political views. However, in future, we really have to be very cautious as to whether any indiscriminate adoption of wordings in international conventions would create implications on local legislation.

In addition, President, I would like to talk about figures. According to the Legislative Council Brief provided by the Government on 7 July 2011, there were 6 700 outstanding cases before the introduction of the Bill. Yet, even before the enactment of the Bill, the Government has already started providing legal services and claimants can get the assistance from duty lawyers. Therefore, the processing of cases has already been expedited. After a short period of time, the number of outstanding cases has reduced to 5 900 as of 30 April 2012.

I very much hope that after the passage of the Bill, a complete and all-inclusive system would be put in place in terms of the Duty Lawyer Service and other services, such that cases will be processed expeditiously. Apart from speed, fairness should also be upheld. Over the course of discussion, Dr Margaret NG and other members of the Bills Committee shared the view that the period allowed for claimants to complete and return the claim form should exceed 28 days. Therefore, I support Dr Margaret NG's amendment to extend the period concerned, and I would elaborate further when the amendment is proposed later on. Thank you, President.

**MS EMILY LAU** (in Cantonese): President, I speak in support of the resumption of the Second Reading of the Immigration (Amendment) Bill 2011.

President, the legislation has in fact been enacted for a long time, as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was extended from the United Kingdom to Hong Kong, its colony, in 1992 and has been put into effect since then. However, we have not devised a mechanism to process the claims made by those who say that they may be subjected to torture or inhuman treatment once they are repatriated to their country or area. This Bill is long overdue for years.

President, according to the information provided by the Administration, Hong Kong has received a total of 11 000 or so torture claims since 1992. As the Director of Bureau is still new to his post, he can give us a clear figure later on. Ms HO mentioned earlier that there were more than 6 000 outstanding cases by the end of last year, whereas the number of cases screened or withdrawn amounted to 4 000 or so. As a matter of fact, the workload involved is really huge. When the Bills Committee started its deliberation, we had repeatedly told the Administration that should a new mechanism be devised, the Administration must provide sufficient resources for the smooth implementation of work by the Immigration Department or in other areas (such as legal aid).

As of today, if the information I have in hand is accurate, only one claim has been substantiated. Nevertheless, the problem is that people do not have much confidence in the screening process. Just now, Members kept asking why Hong Kong did not sign another international convention on refugees after signing the CAT. While the Central Government and Macao had signed the

convention on refugees, Hong Kong was still reluctant to do so. Even the United Nations ..... human rights groups and political parties in Hong Kong have shared the view that we should sign the convention on refugees.

After a hearing conducted in November 2008, the United Nations' Committee Against Torture also queried why Hong Kong had not established a system to process claims made by people who came to the territory to seek political asylum. According to a research conducted by the Legislative Council Secretariat, most countries and places had set up mechanisms to process torture claims or claims seeking for political asylum. As these countries and places are signatories of the two conventions, they have to uphold them. However, relevant authorities in Hong Kong are still reluctant to do so. President, I think you may have heard of the repeated explanations given by the Administration. The most cited reason is that the system will likely be abused. As Hong Kong is an affluent place, signing the refugee convention will open the door for an influx of political asylum seekers. In fact, many places, cities or countries more affluent than Hong Kong have already signed the convention on refugees. That is a commitment to uphold justice in an international level.

President, Hong Kong is a society of refugees. Parents, grandparents or ancestors of many Hong Kong people fled to Hong Kong out of political or economic reasons, like refugees in other places. Hence, they were grateful to the colonial government for accepting them. Yet, with the mentality of refugees, they just wanted to go elsewhere as soon as possible and settled there.

President, I have to quote your words again. You once said that the land had been returned to the Mainland since the reunification, but not public support. Given our refugee background, should we also sign the refugee convention, such that those who need to seek political asylum may come to Hong Kong? I am not saying that Hong Kong is required to receive all incoming refugees. Screening is still necessary. The Director of Bureau may argue that the United Nations High Commissioner for Refugees has set up an office in Hong Kong. President, if you have been to that office, you would know how pathetic the situation is, there is an acute shortage of money or resources.

Even with the passage of the Bill today, the issue involving the refugee convention will remain unresolved. It is my hope that the new Director of Bureau will bring in some new thoughts. The United Nations as well as various

groups, lawyers and stakeholders in Hong Kong opine that the Government should start the work concerned. Unless there is strong opposition from the royalists, many people are actually of the view that Hong Kong should start the work. As that is what Macao and the Mainland have done, why do we not do so? President, this historical issue has yet to be solved.

The CAT was extended to the colony of Hong Kong in 1992. Yet, between 1992 and 2004, Hong Kong had not set up an independent mechanism to process the torture claims. What should be done then? Should the work be handed over to that United Nations agency, which had neither money nor resources and owed Hong Kong a debt amounting to hundreds of millions of dollars? Of course, it could not get the work done. So, who was going to offer help? That was the last thing Beijing would like to do. The answer was the judges. The Court had played a role in this respect. The Court of Final Appeal ruled in 2005 that the arrangement was unsatisfactory and that the SAR should establish its own mechanism to process and verify the torture claims made, as the decision might put the claimant's life and limb in jeopardy and take away from him his fundamental human right not to be subjected to torture. President, at that time, the Court ruled that the Administration had to set up a mechanism on its own, and that any decision must be made to meet the high standards of fairness. If that is what the Court required from the Government, and the latter had to act accordingly. On the contrary, if we are the one to make the request, the Government would not care a dime. President, the Government's approach is tantamount to encouraging people to seek justice from the Court; that is really bad.

Anyway, President, the Government had devised a set of administrative means for screening from 2004 to 2008. However, such administrative means were still regarded as not meeting the standards as required by the Court of Final Appeal, that is, the high standards of fairness. In 2008, judges acted again, and ruled that the relevant arrangement was unfair and illegal. For instance, when claimants made a claim, the Government would ask them to complete a form, which, as mentioned before, had to be returned in 28 days. However, claimants had no access to legal assistance in completing the form, nor were they being accompanied by a lawyer when being "interrogated". Of course, the Government would not provide claimants with publicly-funded legal aid. President, apart from not having an independent appeal channel in Hong Kong,



people responsible for making such important decisions had not been adequately trained.

At that time, the Administration claimed that a trial scheme would be put in place until February 2009, but the two lawyers' associations, namely the Hong Kong Bar Association and The Law Society of Hong Kong, had not been consulted. They had strong views of that scheme, which were implemented unilaterally by the Administration. President, why were the two lawyers' associations so concerned about the scheme? The reason was that they considered that the arrangement as a whole was related to basic human rights, rule of law, procedural justice and lawyers' professional obligations, so they were highly concerned about the measures implemented by the Administration. In their views, lawyers commissioned by the Government to handle the task were not specially trained, and procedural fairness might not be guaranteed on a continuous basis. However, the Government still paid no heed to such views. Instead, it delegated the task to the Duty Lawyer Service. A service contract was signed in December 2009 and renewed for another two years in 2010. On the other hand, the Government totally ignored the views of The Law Society of Hong Kong.

President, there are various types of lawyers — even though I do not belong to the legal sector. The Government has completely turned a deaf ear to the views put forward by the two lawyers' associations. Therefore, even for this Bill to be passed today, the two associations have remained critical. In my opinion, while the Administration may sometimes attach great importance to the views of the two lawyers' associations on certain issues, it has completely shut its ears to their views on this issue and approach the Duty Lawyer Service instead. Nevertheless, at the end of the day, the Duty Lawyer Service also found that the Government's approach was inappropriate.

President, it was not until July 2011 that the Administration tabled this Bill. The CAT was applied to Hong Kong in 1992, but it was not until July 2011 that enactment of legislation was initiated. We do not know when the United Nations will hold a hearing. President, the legislative process is really long. You or I may be the lucky ones, since we are not claimants who come to Hong Kong to seek ..... not to say political asylum, since the Government has yet to sign the related convention. But on this matter, how can a government, which prides itself in the rule of law, procedural justice and human rights, procrastinate

the enactment of legislation for so many years? Worse still, at this final moment, it has still argued with lawyers' associations and human rights groups over some points of concern.

As I said earlier, I support the resumption of the Second Reading of the Bill, which can be regarded as a small step forward. As a matter of fact, the Administration should have taken this step long ago. Starting from 1992, 2002 and then 2012, 20 years have lapsed. Now the Government takes the initiative to do something overdue for 20 years, we certainly render our support, but we really have to ask, why is the work so arduous that it takes so much force to compel the Government to take actions?

Furthermore, the Government has remained reluctant to deal with matters concerning the refugee convention. Ten years ago, we had to deal with Vietnamese refugees and boat migrants. Despite strong opposition from many fronts, some people were of the view that those people were genuine refugees and we had provided great assistance. Some refugees were grateful to us. Of course, the United Nations still owes us money. Even though we have asked them to write off the amount, they are reluctant to do so, since doing so means they had mishandled the matter at that time. They would not want to admit that they were wrong.

We believe the SAR Government should give an account to the international community, it should not just say that the law has been enacted. The Administration has taken 20 years to enact the legislation, and we certainly do not support its attitude. I hope that the Government can act more proactively and allocate additional funds to ensure the provision of sufficient manpower and resources and offer adequate training to lawyers. Frankly speaking, given the highly complicated nature of handling claims, how can we expect that an ordinary lawyer can handle the task competently? Therefore, the two lawyers' associations hope that the Administration can take a further step in various aspects and allow sufficient time for screening. President, regarding the issue of medical examination mentioned earlier, claimants hope they can be examined by their selected doctors rather than government appointed doctors, as they ..... As they may have been greatly traumatized both mentally and physically, as in the case of rape victims, they are reluctant to be examined by government appointed doctors.

Can we show some respect to their preference? Of course, the doctors concerned have to be qualified and they should respect patients as well as their privacy. Doctors have to seek approval from patients before passing their information to the Government. The Government should not just appoint someone to conduct an investigation and submit the information collected to the Government. President, that is not the right way to handle the issue.

In addition, as regards employment, I understand Members' worries about the problem of illegal worker, as Dr PAN suggested last evening. However, the Court ruled that they would only be allowed to work on very exceptional occasions. As stated by the Director of Bureau, at present, around 98% of claimants waiting to be screened are not detained. President, claimants have to make a living, and most of them are able-bodied. I hope the Director of Bureau will give a clear account of the situation. Of course, it is not our hope that employment of local workers will be affected. But for refugees staying in Hong Kong, we have to undertake our international obligations. Therefore, the Government has to put in efforts in this respect.

President, as for education, information from the Government shows that as of the end of last year, only 130 children have submitted an application. The Government claimed that no application had been rejected, but children were required to receive education in their mother tongue and in a meaningful manner. If a city as affluent as Hong Kong cannot entertain a request as humble as this, we should really feel ashamed.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MR WONG YUK-MAN** (in Cantonese): President, the Immigration (Amendment) Bill 2011 (the Bill) was formulated for the effective implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in Hong Kong. It is also for bringing Hong Kong in line with the international practice with regard to what is called the universal values. However, some people have made every attempt and tried every means to obstruct Hong Kong from becoming an open and civilized society. They are not even willing to comply with the universal values which are applicable in every corner of the world.

Just now I heard an unpleasant remark, that is, "It has already been done on the Mainland, why not in Hong Kong?" What has been done on the Mainland is the infliction of torture, torturing their own fellow compatriots. Regarding LI Wangyang's case, someone said he accepted the investigation result. Buddy, the investigation on the Mainland was done by their own peers. Everyone in the world thinks that LI Wangyang's suicide was staged, right? The so-called universal values were brought up by Members with such brains in the Council. What a waste of time!

Hence, let us look at section 37X(5) in the Bill. This section provides that "A torture claim may be made only in respect of a person's removal or surrender to a place outside China.". Frankly speaking, in view of this section alone, I will not give my support. Of course, this concerns some technical issues. On account of humanitarianism, international standards and universal values, we have to resolve the problem of torture claimants who are presently stranded in Hong Kong. However, there is such a section in the Bill. Some people will refute me and say, this is the standard of the United Nations, and Hong Kong is part of China. As the saying goes, "Under the wide heaven, All is the king's land."<sup>1</sup> What difference does it make for being a part of China? When the highest state leader came to Hong Kong, the Police Force had to put up water-filled crowd control barriers and treat peaceful demonstrators with pepper spray of extra large size. Is that right? I suspect the state leader could not watch television in Grand Hyatt Hotel, or he could only access to some "false television programmes" or could only watch the programmes of China Central Television. Otherwise he would definitely be able to see a lot of people protesting outside. Even when the highest state leader came to the Hong Kong Special Administrative Region of the People's Republic of China, the Government had to hide the truth and did not let him see that there were so many water-filled barriers. The Commissioner of Police is indeed nonsensical, allowing the teaching materials of the Police College to create hatred and teach the police cadets to hate demonstrators and reporters.

President, what is meant by torture? Had LI Wangyang been subjected to torture? You may regard me as digressing from the subject and stop me from going on because now we are not discussing the LI Wangyang incident. Yet section 37X in the Bill is about people who cannot be sent back to the Mainland.

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<sup>1</sup> <<http://etext.virginia.edu/chinese/shijing/AnoShih.html>>

Of course, if they are sent back to the Mainland, they will be dead for sure, but the question is, what is your view of the Mainland? Just now someone said, "It has already been done on the Mainland, why not in Hong Kong?" No wonder he chose to turn to the Communist Party or go into the Liaison Office of the Central People's Government (LOCPG). What actually had the Mainland done? This is double standard. Not only is it good at shouting slogans but also skilled in spreading hearsay and smearing people with rumours that they have turned to the Communist Party. Nevertheless, that he has turned to the Communist Party is an irrefutable truth, though he said he objected to the rule of Hong Kong by the LOCPG when he came out from the LOCPG. He is really shameless.

All along, the Government has passed the cases which involve people who came to Hong Kong to escape torture to the Immigration Department (the ImmD), and the ImmD has adopted a set of administrative procedures which does not have any legal basis to deal with such cases. Administrative measures always override everything in Hong Kong, right? As you can see, that is also the case for the legislation on wiretapping, since Hong Kong adopts an executive-led system which can treat the law as nothing. Will that be more effective or efficient? If there is a legal basis, will it be less efficient? We have no idea. Does it want a higher or lower efficiency after all? Perhaps the Government itself is not sure about it, right?

The way legislation is formulated and torture claims are handled reflect the general mentality of the Government. To solve the problem, it is necessary to enact this Bill now. Although this Bill can provide a basis for the ImmD's long-standing enforcement approach, there are many parts which are rather controversial.

First of all, the definition of torture in section 37U under the Bill reads: "obtaining from that person or a third person information or a confession; punishing that person for an act which that person or a third person has committed or is suspected of having committed; or intimidating or coercing that person or a third person; or for any reason based on discrimination of any kind". If this standard applies, today the Chinese Communist Party, which exercises one-party dictatorship in Mainland China, is "torturing" the dissidents every day, and what it does goes far beyond that. President, the provision also points out "such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity".

Such presentation is really heart-rending to me. What does the provision refer to? These kind of activities happen in Mainland China every day. As the United Nations has also pointed out, the questioning of a suspect or punishment of a criminal under the law may also constitute "torture" as referred to in the CAT if the examination and punishment do not comply with the requirements for human rights protection in international law.

I find this definition not exhaustive enough. It has indeed covered the vast majority of situations which have taken place or which may take place, but it is difficult to define such situations. Members of the Bills Committee had mentioned the situation where the Hong Kong police requested the arrestees to undergo strip searches. If we go by the aforesaid definition, strip search does not meet the conditions of torture. However, strip searches may cause immense humiliation and mental torture. Furthermore, the police, equipped with so many modern scientific and technological devices, can carry out thorough and detailed body searches of the suspects without humiliating them. Are strip searches still necessary?

I remember bringing up this issue after I joined a subcommittee under the Panel on Security shortly after I entered the Legislative Council. Why is there the need for strip searches in police station? That is a kind of intimidating and humiliating approach. Are other measures not available apart from such an approach? This is similar to rectum search before entry to prison, which is also a humiliating practice.

Section 37W of the Bill is a puzzling provision. The provision provides that "the person is subject or liable to removal; and apart from a torture risk State, the person does not have a right of abode or right to land in, or right to return to, any other State in which the person would be entitled to non-refoulement protection." Actually is this what members of the Bills Committee, The Law Society of Hong Kong and the Bar Association are concerned about, that the claimant has to overstay in Hong Kong before he is eligible for lodging a torture claim and seeking legal assistance? In its response, the Administration indicated that among the 1 717 cases which were held as unsubstantiated from March 2007 to April 2012, only 100 claimants were convicted. However, does the small number of people who were convicted mean that the ambiguity in the provision can be ignored? The existence of the power of prosecution can prevent

swindlers from lodging unreasonable claims at will, but still the Government should make more efforts in prosecution and screening.

Section 37Y of the Bill provides that the claimant must return the completed torture claim form within 28 days after a written request is given to the claimant by the ImmD, or within the period that an immigration officer allows. Various organizations have queried whether the period of 28 days is too short. Such a concern is certainly justified. In the first three months of 2012, it took 40 days on average for claimants to return the form, which was some 10 days longer than the required period. The Government stressed that this requirement was set after taking reference from other countries, but the purpose in formulating legislation is, of course, to map out provisions which are suitable for operation in Hong Kong. Obviously, the requirement of 28 days is not suitable for application in Hong Kong. Some Members may think that if such a situation arises, the immigration officer may extend the period for the claimant's submission of the form under section 37Y(3) of the Bill, but such an act will increase the workload of the department. As for the amendment proposed by Dr Margaret NG to change 28 days to 90 days, I opine that the period is too long. Why not take a middle-of-the-road approach?

Regarding section 37X of the Bill mentioned by me earlier, I do not know the Government's attitude in formulating this section. I find this section quite ridiculous. Speaking on the so-called torture claims, as we often read from the newspaper, scenes and stories where human life is treated like trash only occur in dictatorial and autocratic countries or places where there are fierce ethnic conflicts. Let us not forget, and as we can see, in the 21st century, most autocrats and dictators suffered their own retribution in their lives. Retribution does not come to impact their next generation or 30 years after their death. Rather, they had to suffer their own retribution before they died. The President of Egypt had a disastrous ending of his life, right? So was KADDAFI. We could see what happened to these people in the end.

Some places handle torture claims in a more lenient way, allowing claimants to take a long time to submit the form because they have a genuine tradition of humanitarianism. Otherwise, it would have been impossible for LAI Changxing to stay in Canada for some 10 years. The reason is very simple. Did anyone in Canada talk about how much money had been wasted during LAI Changxing's stay for some 10 years in the country? Did anyone say that the

administrative burden had consequently increased and thus LAI Changxing should not be allowed to stay there? The case had dragged on for more than a decade until ZHU Rongji had stepped down, not to mention that it involved power struggles at the top level of the Communist Party, but Canada would not discuss these things with you. It would only talk about humanitarianism. Most importantly, Canada knew that it was very likely for LAI Changxing to be subjected to torture after he was sent back to China, unless Canada received an explicit guarantee that LAI Changxing would receive a fair trial.

In LAI Changxing's case, the Communist Party — to put it bluntly — had to yield. It could not but give LAI Changxing a so-called relatively and comparatively fair trial. He would not vanish for no reason and disappear without a trace after he returned to the country.

Thank you, President.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If not, I now call upon the Secretary for Security to reply. This debate will come to a close after the Secretary has replied.

**SECRETARY FOR SECURITY** (in Cantonese): President, first of all, may I extend my heartfelt thanks to Mr LAU Kong-wah, Chairman of the Bills Committee, and all the members for their scrutiny on the Immigration (Amendment) Bill 2011 (the Bill) during the 15 meetings held in the past seven months or so.

The Special Administrative Region Government attaches great importance to the implementation of international obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of the United Nations. In December 2009, following the Court's ruling, we improved the screening mechanism for torture claims to provide a publicly-funded legal assistance scheme, thereby enhancing the fairness of the



screening process. The purpose of the Bill is to establish a statutory screening mechanism which provides the legal basis for the improved screening mechanism.

We have included the definition of torture under the CAT in the Bill, and all torture claims must conform to the definition. The definition under the CAT specifies that "torture" does not include pain or suffering arising only from lawful sanctions. However, the relevant committee of the United Nations has pointed out that the questioning of a suspect or punishment of a criminal under the law may also constitute "torture" as referred to in the CAT if the examination and punishment do not comply with the requirements for human rights protection in international law. Here I would also like to make it clear that apart from the Immigration Ordinance, we have no plan to extend the definition of torture to other ordinances.

The Bill provides for an important part in the statutory procedures for lodging and screening the claims, which includes the necessity for claimants to submit a claim form and the Immigration Department to arrange a screening interview. Any claimant who is dissatisfied with the department's decision may lodge an appeal, and the final decision will be made by members of the Appeal Board who have a legal background.

Besides, the Bill has provided for other related matters, which include empowering the Director of Immigration to exercise discretion under exceptional circumstances to permit claimants of substantiated claims to work in Hong Kong; a claimant who is an illegal immigrant or overstayer will not be treated as ordinarily resident in Hong Kong; any claimant who makes a false statement or misrepresentation or uses a forged document during the screening process commits an offence.

We have also made consequential amendments to the Fugitives Offenders Ordinance to ensure that torture claims made by fugitives shall also be handled by the statutory mechanism under the Bill.

The Bills Committee has put forward various invaluable views on the Bill. After careful consideration, we have accepted a number of proposals of the Bills Committee. I will propose the relevant amendments in the Committee stage in a while.

Regarding the remark raised by a Member that the statutory body should handle the screening of refugees together, the Government must reiterate that the United Nations Convention Relating to The Status of Refugees has never applied in Hong Kong. If there is a sudden change in the policy on refugees and even the provision of asylum, the risk of having the system abused will be quite high. Moreover, it may bring forth heavy social and financial burdens to Hong Kong. For this reason, we will not change this system.

Some Members are worried that allowing claimants of substantiated claims to work will affect the employment of local workers. At present, only one claim has been substantiated. Even if a certain claim has been substantiated, it does not mean that the claimant has the right to work in Hong Kong. The Bill empowers the Director of Immigration to exercise discretion under exceptional circumstances to permit claimants of substantiated claims to work in Hong Kong. Such an approach will allow the Director to consider other factors, including the impact on the local labour market, in processing the relevant applications.

The amendment proposed by Dr Margaret NG will unnecessarily extend the screening process and increase the public expenditure. I will explain the Government's objection in detail in the Committee stage.

President, at present, about 5 700 claimants are waiting for screening, and new claims keep coming up. All sectors of society are highly concerned with this issue as how the claims can be screened in a fair manner while effective immigration control is maintained. The total expenditure on processing torture claims is over \$300 million every year. Apart from the only one claim which was substantiated in 2008, so far there has not been any other substantiated case. This also shows the possibility that the mechanism will be abused. With the critical scrutiny and support of the Bills Committee, we are confident that the Government's amendments will perfect the Bill and strike a proper balance between fair screening and prevention of abuse.

President, with these remarks, I implore Members to support the Second Reading of the Bill as well as the various amendments which I am going to propose in a while.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Immigration (Amendment) Bill 2011 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Immigration (Amendment) Bill 2011.

Council went into Committee.

### **Committee Stage**

**CHAIRMAN** (in Cantonese): Committee stage. Council is now in committee.

### **IMMIGRATION (AMENDMENT) BILL 2011**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Immigration (Amendment) Bill 2011.

**CLERK** (in Cantonese): Clauses 1, 2, 3, 5, 6, 8, 9, 11 and 15 to 18.

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 1, 2, 3, 5, 6, 8, 9, 11 and 15 to 18 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Clauses 4, 10, 12, 13 and 14.

**SECRETARY FOR SECURITY** (in Cantonese): Chairman, I move that clauses 4, 10, 12, 13 and 14 be amended. The texts of the amendments have been distributed to Members earlier.

Clause 10 of the Bill provides that a person who "disturbs or otherwise interferes with" the proceedings of the Appeal Board commits an offence. We accept the proposal of the Bills Committee to state that it is only when a person "disrupts" the proceedings of the Board "without reasonable excuse" that he commits an offence.

Clause 12 of the Bill concerns the terms of reference and procedures of the Appeal Board. Apart from certain amendments to the procedures, we accept the major proposals of the Bills Committee, including:

- (a) a claimant who reopened his claim after withdrawing the claim on his own but was rejected by the Immigration Department may lodge an appeal, which will be handled by the Appeal Board; and

- (b) with regard to a claim which has been accepted by the Appeal Board as substantiated, if certain specific circumstances arise afterwards and the substantiated claim needs to be withdrawn, the relevant decision must be made by the Appeal Board rather than the Immigration Department.

We also concur with the proposal of the Committee to amend the transitional provisions in clause 13 to provide that the transitional provisions shall not be construed as giving validity to anything done otherwise than in the lawful exercise of a power or performance of a duty.

As for clause 4 (section 17I of the Immigration Ordinance amended — Offence to be employer of a person who is not lawfully employable) and clause 14 (recognizance amended), we have made technical amendments to these two clauses.

Chairman, all the above proposed amendments have been endorsed by the Bills Committee. I implore Members to support and pass the amendments.

*Proposed amendments*

**Clause 4 (See Annex III)**

**Clause 10 (See Annex III)**

**Clause 12 (See Annex III)**

**Clause 13 (See Annex III)**

**Clause 14 (See Annex III)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

**DR MARGARET NG** (in Cantonese): Chairman, I would like to speak on clauses 10 and 13 of the Bill. Clause 10 of the Bill is "Section 43A added".

Chairman, section 43A is about "Disturbing proceedings of Torture Claims Appeal Board", which is to create a criminal offence. The section provides that "A person who disturbs or otherwise interferes with the proceedings of the Torture Claims Appeal Board established by section 37ZO commits an offence". Chairman, what is meant by disturbing or otherwise interfering with the proceedings of the Appeal Board? Suppose I have lodged a torture claim and I consider that the discussion of the Appeal Board or members of the Appeal Board do not understand me. As a result, I become agitated. Does such an act amount to an offence?

Chairman, criminal provisions should be absolutely clear and specific, but this provision is neither clear nor specific. Hence, the Administration has accepted our concern. Now the newly proposed section 43A, which is more explicit, reads "任何人無合理辯解而干擾.....上訴委員會的法律程序使其無法進行" ("A person who, without reasonable excuse, disrupts the proceedings of the Torture Claims Appeal Board" .....), specifying that the proceedings "無法進行" (unable to proceed). We think such an amendment may be able to resolve most of the problems.

However, Chairman, there is actually ambiguity between the Chinese and English texts. The English text reads "A person who, without reasonable excuse, disrupts the proceedings of the Torture Claims Appeal Board". That means the *actus reus* required is "disrupt". There is no mention of the proceedings being unable to proceed. According to the Administration's explanation, the word "disrupts" already carries the meaning of making something unable to proceed.

Chairman, frankly speaking, being a lawyer, I am not satisfied with such explanation, but we have already come to the stage when we do not have any more time. So we can only hope that if the word "disrupt" is found not clear enough in the future, the relevant authorities or the Court will refer to the Chinese text. Legislation concerning laws drafted in Chinese has clearly indicated that if there is ambiguity between the Chinese and English texts, there should be a proper explanation to make the meaning of the Chinese and English texts consistent. Hence, we have to rely on these provisions indirectly. However, Chairman, this is really not the best solution.

When I pointed out the obscurity of section 43A, having no idea what *actus reus* and *mens rea* it referred to, the Administration advised that a number of ordinances had adopted such a provision which was written in the same way. No one had ever raised any objection. The Administration said that consistency was very important. In my view, however, although no one has paid any attention before, once someone finds that there is really a problem, the Administration should in the first instance amend the provisions in other ordinances which are written in the same way as section 43A of this Bill.

Chairman, regarding clause 13, the most crucial part is the transitional provisions in Schedule 4. Chairman, during the resumption of Second Reading debate on the Bill, I have already raised the question as to whether the transitional provisions in Schedule 4 mean that upon the passage of the Bill, procedures or behaviour conducted under the existing administrative arrangements will be treated as having been formulated under this Bill, and thus unlawful behaviour or anything that was illegal in the past will be legalized. In this connection, the Administration has made some amendments to Schedule 4.

However, Chairman, our prime concern is actually section 6 in Schedule 4. The heading in the Chinese text is "根據行政機制作出的事情" ("Things done under the administrative scheme"). It provides, "On and after the commencement date, anything that has been done under the administrative scheme in the hearing and determination of a non-refoulement claim (including anything that has been done in relation to a petition), in so far as such a thing may be done under Part VIIC in respect of a torture claim (including anything that may be done in respect of an appeal), is taken to have been done under that Part." In short, anything done under the administrative scheme is taken to have been done under this piece of legislation.

Hence, the legal sector is quite worried that this is a provision for legalization, but the Administration has clarified to us that there will be no such situation. For anything that is illegal, if a judicial review can previously be lodged against it under the administrative procedure, section 6 will not have the effect of legalizing such unlawful behaviour or anything illegal upon the passage of the Bill. The Administration has made it abundantly clear. I hope the Secretary will also expound on it openly during the official proceedings of the Legislative Council in a while.

The Administration has proposed an amendment to section 1 in Schedule 4 to add a provision which is meant to avoid doubt. Chairman, the Administration proposes to add subsection (4) to section 1 in Schedule 4, which provides that "To avoid doubt, nothing in this Schedule is to be construed as giving validity to anything done otherwise than in the lawful exercise of a power or performance of a duty", so that we will not get the idea that the provision has legalized such things. However, Chairman, the crux is not about the inclusion of the intent. Rather, it is about whether all the provisions will produce such an effect. Therefore, the legal sector finds it undesirable not to amend section 6.

As for the other proposed amendment to section 2(4)(a) in Schedule 4, it has just slightly amended the Chinese text so as to dissipate misunderstanding. However, Chairman, we find it more regrettable that section 6 is not amended. As I have said earlier, at that time we did not have the time to work out a more detailed and effective way to amend section 6. We can only count on the Administration to spell out the purpose explicitly and include in section 1 of Schedule 4 the provision that things which are illegal should not be treated as having been legalized. Although this is not quite desirable, we have accepted it. Yet we think we must make it clear that we still have doubts, so that the Administration has to clarify the intent of this provision. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak?

**MR JAMES TO** (in Cantonese): Chairman, having listened to Dr Margaret NG's speech, I concur with her, but I am not going to repeat her arguments.

I hope the Government will also pay attention to the viewpoints on some minor details. A simple example is the taking of fingerprints and photographs set out in clause 13(7) of the Bill. I am not saying that it should not be done. It should be done, and there are many similar provisions in the Bill which require the authorities to do certain things.

I hope the Government will understand that in reality, it turns out that claimants cannot even afford the transport cost for travelling from Yuen Long to the Immigration Department. They do not have a refugee card or something like that which allows them to take the transport free of charge. We may doubt how



it will be possible that they cannot even afford the transport cost, but that is the fact. If members of the public regard the transport cost for travelling from Tin Shui Wai or Yuen Long to the urban area as very high, in that case, compared with the general public or even recipients of the Comprehensive Social Security Assistance, the transport cost will be even higher for claimants because they do not have any money. We will not say that it is wrong for the provision to be written this way, but I hope that during the actual implementation, the Government will pay attention to whether claimants will have this kind of difficulty and whether the Administration needs to offer any assistance. For example, it may need to provide a travelling allowance so that claimants can meet or comply with the relevant conditions.

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Security, would you like to speak again?

**SECRETARY FOR SECURITY** (in Cantonese): Chairman, regarding the views raised by Members on making the disturbance of the proceedings of Appeal Board an offence, I would like to point out that apart from the precedents already available in the laws of Hong Kong, we had drawn reference from other common law jurisdictions in drafting the legislation, including similar appeal boards in the United Kingdom and New Zealand, and learnt that they had made similar arrangements. We consider that the relevant requirements will not affect the claimants' right to make statements to the Appeal Board. The amended provisions will define more clearly what behaviour constitutes an offence.

Any decision made in an unreasonable manner under the existing claim screening mechanism is always subject to judicial review. Section 6 in Schedule 4 will not affect the relevant rights of claimants.

Thank you, Chairman.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendments passed.

**CLERK** (in Cantonese): Clauses 4, 10, 12, 13 and 14 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 4, 10, 12, 13 and 14 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Clause 7.

**CHAIRMAN** (in Cantonese): The Secretary for Security and Dr Margaret NG have separately given notice to move amendments to clause 7.

Irrespective of whether the Secretary for Security's amendments are passed, Dr Margaret NG may move her amendment.

Members may now proceed to a joint debate on the original provisions of clause 7 and the proposed amendments to the clause. I will first call upon the Secretary for Security to speak, followed by Dr Margaret NG, but she may not move her amendment at this stage.

**SECRETARY FOR SECURITY** (in Cantonese): Chairman, I move the amendments to clause 7, the texts of which have been distributed to Members earlier.

Clause 7 of the Bill mainly provides for the scope of torture claims, the specific approach of making and screening such claims, the establishment of the Appeal Board and other relevant requirements. We accept the suggestions of the Bills Committee and propose the following amendments.

We consent to the proposal of the Bills Committee to provide that the immigration officer must require the claimant to attend an interview so as to ensure that an interview will be arranged for all claimants.

We also agree to include in the Bill the requirement under Article 3(2) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. That is, all factors must be taken into account during the screening process, including the existence in the state concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

As the two amendments in relation to the scope of appeals which have been passed by the Committee earlier also involve certain provisions in clause 7, it is necessary to make the consequential technical amendments.

The above amendments proposed by the Government have been endorsed by the Bills Committee.

The amendment put forward by Dr Margaret NG proposes to largely extend the period within which the claimant must return the completed torture claim form from 28 days to 90 days. We consider the amendment unnecessary. Moreover, it will affect the progress of screening the claims and increase the public expenditure. As a result, we object to the amendment.

Chairman, with these remarks, I implore Members to support and pass the amendments proposed by the Government, and object to the amendment proposed by Dr Margaret NG.

### *Proposed amendments*

#### **Clause 7 (See Annex III)**

**DR MARGARET NG** (in Cantonese): Chairman, the Civic Party supports all the amendments proposed by the Secretary because they can improve the procedures. Despite the inadequacy which remains in the procedures, we are still willing to accept the Secretary's amendments.

Chairman, the main difference between my proposal and that of the Administration lies in the new provisions in clause 7 of the Bill, which is section 37Y(2)(a). In short, that section requires the claimant to return the torture claim form in accordance with subsection (1)(b) within a certain period, that is, "(a) within the period of 28 days after a written request under subsection (1) is given to the claimant; or (b) within any further period that an immigration officer allows under subsection (3)". Therefore, Chairman, the purpose of that section is to require the claimant to submit the form within 28 days unless the claimant is granted a further period by an immigration officer under subsection (3). Chairman, we consider 28 days insufficient.

First of all, in a nutshell, what yardstick and principle should we adopt to determine whether the relevant period is sufficient? The simplest way, as held by the Court, is to have a high standard of fairness. That means the whole procedure should be measured by strictly fair standards. We fully understand that the Immigration Department (ImmD) is worried that most of the claims are false and the claimants just want to abuse the procedures unreasonably to extend their stay in Hong Kong. Thus the ImmD wishes to resolve most of the claims

as early as possible. The legal sector understands that. Nevertheless, we consider that no matter how many claimants there are, every claimant must be treated in a fair manner. Chairman, whether fairness has been achieved is not determined by whether fairness has on the whole been attained with respect to all claimants or all the procedures being conducted. Rather, it depends on whether each and every claimant has been treated with a high standard of fairness during the process. Only then will the Court's requirement be satisfied.

Chairman, regarding the justifications for setting the figure between 28 days and 90 days, I have asked the ImmD actually how much time is needed at present, whether any claimant has requested extension and how much time is needed to submit the form. According to the ImmD, in 2001, the fastest one took 26 days to submit the form and the slowest one, 149 days. So they calculated that the time needed was 70 days on average. On 21 May this year, the ImmD wrote to us explaining why it had taken a longer time before. It was because in the past, claimants had to spend some time searching for their personal information. In one of the steps to be taken by the claimant, he had to ask the authorities for his personal information and then complete the application form based on such information. According to the letter sent to us by the ImmD, in some of the 1 160 cases, the information could be provided by the authorities within 14 days, but in some other cases, the provision of information took 40 days. According to the ImmD's explanation, the time taken for processing the claims was longer in the past because some of the time was spent on waiting for the authorities to provide information. However, the ImmD has now adopted new measures by providing the claimant with his personal information right at the beginning, without waiting for the claimant to make such application. In this way, 14 days can be saved. Hence, according to the computation of the ImmD, the time taken for processing a claim was 40 days on the average, and it took 14 days in the past to wait for the authorities to provide the information. Now these 14 days can be saved. 40 days minus 14 days gives 26 days. Thus 28 days is quite enough. This is the ImmD's justification.

However, actually apart from personal information, usually the claimant has to provide a lot of supplementary information as well. As mentioned in the ImmD's letter, the claimant might need to write to his hometown to seek advice from his family members or relatives, or request for the local police's report, medical reports, as well as news reports about situations in his place of origin or other documents. A lot of supplementary information might be involved. The

ImmD told us in its letter that on average, the provision of supplementary documents took two to three months, that means 60 to 90 days. In their view, the provision of supplementary documents would take such a long time. Despite this, the ImmD considered that the claimant could apply for an application when there was such a need. That was not a problem. As a result, they considered that the form could be returned in 28 days.

However, in response to the information provided by the ImmD, a working group of the two lawyers' associations mentioned by me just now, known as the Joint Working Group of the Law Society and Bar Association in English, sent us a letter on 30 May. Chairman, first of all, in principle, the average number of days derived should not be taken as the upper limit. The average number of days is not very much related to the time needed by the claimant. Chairman, some complicated cases require a large number of documents. The letter from the two lawyers' associations told us about the "clinical experience", that means practical experience, of lawyers. According to lawyers who have rich experience in dealing with this kind of claims, they need to do a lot of work. Chairman, since the original text of the letter was written in English, I will read out the relevant content in English: "CAT claims are not as simple as that, and require the following action by the assigned lawyer who is conscientiously carrying out his work". That is to say, if the lawyer concerned is serious at work, he will have to do the following tasks. Let me read them out: "A close examination of the entire Immigration record; The obtaining, if possible, of specific and up-to-date information and evidence from the country of origin, including witness statements or affirmations of support; The collation of up to date general country information from reliable sources; The obtaining, if possible, of information from the UNHCR, in cases where a claim for recognition of refugee status has been made ....." — there is a court ruling on this — "..... The obtaining of medical reports on physical/mental sequelae (if applicable). Once this information is obtained, then the Questionnaire can be completed and lodged." That is to say, it will take so much work to complete the claim form. Chairman, please think about it. This is merely for the purpose of scrutinizing information on the claimant's country of origin, which is taken as the country that has inflicted abuse or torture. Furthermore, generally speaking, such information is not readily available in Hong Kong and a special search is needed. It may be necessary to seek help from local organizations to do a search in order to complete the claim form.

When Hong Kong officials see the list of work, they may find the situation incredible. How would anyone do something like that? Their common sense may not be able to appreciate that, and they will not easily believe everything the claimant says. Hence, it is by no means an easy task to make a genuinely forceful claim.

Regarding the extension of the period, the letter from the two lawyers' associations points out that actually very often, the ImmD officials will not approve the application for extension. Even if there are compelling reasons, they still will not give approval. Thus, Chairman, I sense that the whole torture claim system depends on whether the officials will permit extension of the period.

Chairman, let us look back at the Bill. Officials cannot decide at will whether or not to extend the period. The key point is that "An immigration officer may, on being satisfied that, by reason of special circumstances, it would be unjust not to allow a further period for the claimant to return the completed form, allow a further period that the immigration officer considers appropriate for the claimant to return the completed form.". Hence, it also entails a very big subjective element. If the official considers that the claimant is making an unreasonable demand, he may refuse to permit the extension.

Under such circumstances, what will happen? Chairman, the only thing that the claimant can do ..... If the claim form is not completed properly, of course he will not be determined as a refugee. In that case, the claimant can only file for judicial review. Chairman, the reason why I propose the amendment is that 28 days is not enough. For major, genuine cases, this period of time is not enough. One will know immediately that the time cannot possibly be enough and extension is definitely needed. As regards whether extension will be allowed, although the Bill has provided for the conditions, it will depend on the official's subjective judgment, thereby giving rise to a lot of unnecessary lawsuits. Therefore I find it necessary to extend the relevant period.

Mr WONG Yuk-man has indicated earlier during the Second Reading debate that he considered 90 days to be a bit too long. Of course, the Administration is welcome to propose a shorter period with a middle-of-the-road approach. Yet regrettably, the Administration is absolutely unwilling to hold any discussion. The only thing I can say is, according to the lawyers' associations, how long will it take to deal with such matters? Thus, considering

those tasks which have to be done as I read out just now, 90 days is indeed not an unreasonable request.

Just now the Administration pointed out the need to spend money to support claimants' living. This is not a reason at all. At present, how much money does the Government have to spend in this respect? Moreover, these refugees are in Hong Kong. Even if, for one reason or another, they have stayed in Hong Kong for a longer period, it may not necessarily because they have made a claim. Rather, it is because the Government has taken a longer time to process their claims, or their appeals have taken a longer time, or more time has been spent on administrative work, which will also lead to such problems.

Therefore, weighing the situation, on the one hand, the Administration has to undertake the human rights obligations, and on the other hand, it needs to provide the most basic foodstuffs. Is this a justifiable reason to substitute for or override humanitarianism? Chairman, if the Administration uses this as a pretext, it is really short of a reason.

Chairman, the conclusion of this letter points out that if the design of the whole procedure will pose unnecessary pressure on the claimant's lawyer in looking for sufficient justifications to complete the form, this cannot possibly be a fair procedure. During the scrutiny process, some Members thought that some lawyers would apply for extension no matter how long the period was. Chairman, we cannot use this as a justification. In fact, telling from our experience, lawyers who deal with these torture claims are highly professional and have very strict requirements on themselves. We should not make such an assumption against them. Hence, I hope Members will support my amendment. Thank you.

**MS CYD HO** (in Cantonese): Chairman, I support Dr Margaret NG's amendment to extend the 28-day period for the submission of supplementary information. Dr Margaret NG has talked about the views and operations of the legal sector. I wish to talk about some actual situations which are also my personal experience, that is, the postal problem.

Chairman, recently, I have ordered some gifts from a big city, Los Angeles in the United States, for my friends. Previously, I ordered for the first time — I



must emphasize that Los Angeles is a big city, and so is Hong Kong. The seller sent the commodities by express air mail. As stated on its website, I would receive the parcel in six to 10 working days. After I placed my first order, the delivery eventually took as long as 24 days. Of course, during the course of the postal delivery, the parcel might have been intercepted. As the packaging for the first order was different from that for the second order, maybe the parcel delivered for the second order had not been intercepted, but the delivery still took 13 days. Fortunately, the gifts could be given in time.

In such a big, civilized city with a sound postal system, it still took 13 days and 24 days for the mail to reach Hong Kong. Those claimants who seek to avert torture mostly came from war-torn third world countries and probably lived in remote impoverished villages. If they have to send a letter back to their hometown requiring for documents, the local people will have to conduct a search and then send the information to the claimant in Hong Kong by mail. Twenty eight days will definitely not be enough. Drawing from my personal experience, even though I ordered something from Los Angeles on the West Coast of the United States, it turned out that the order and delivery took more than 28 days.

The Government has provided some figures and dates in the letter previously issued to us. According to past practice, when the claim procedure commenced, for the sake of fairness to himself, the claimant needed to know exactly what information on him was held by the Immigration Department (ImmD). So he needed to ask the ImmD for his personal file. How long did it take for the ImmD to provide such information to the claimant? The table provided to us by the Government reads as follows: less than 14 days: 47%. As mentioned by Dr Margaret NG just now, among the 1 160 cases in which the ImmD was requested to provide information, although there was the computer system and a lot of manpower and civil servants are deployed to handle the matter, cases for which information could be provided within 14 days accounted for only 47%. How many cases were involved where information was provided in more than 14 days? Fifteen to 28 days: 27%; 29 to 40 days: 26%. With an abundant supply of manpower, it still took such a long time to provide the information. If the claimant is requested to write to an unknown village in the third world to seek documents to prove that he may be subjected to torture, and he is given a period of only 28 days to complete the task, it can hardly be accomplished.

Why is it necessary for the claimant to submit supplementary documents? The reason is that the Government requires the claimant to complete a form which inquires whether he has been abused in his place of origin; whether he has once joined any revolutionary party, armed forces, underground party or something like that; whether there is any proof of identity, and so on. If the claimant finds it hard to retrieve such information, he dares not fill in such information in the form, for fear that he cannot provide the supplementary information. If he dares not fill in such information, his application may be affected. If he has filled in such information, he will have to write to his relatives, friends or contacts in his country, asking them to provide such information to him. This is a difficult process. It is also a very hard decision to make. After he has decided to fill in the form, what information must he provide? The Government told us that he must provide five types of documents, such as letters from family members, relatives or friends, reports issued by the local police, medical reports, local news clippings or information on the country, or other documents like proof of marital status or land leases.

Let me just bring up medical reports as an example, Chairman. After dealing with the epidemic during the SARS period in Hong Kong, Prof Sydney Chung went to Papua New Guinea to practise as a barefoot doctor and wrote a book entitled *The Kindest Cut* to record his experience. Doctors were highly respected in the community, but the place was so impoverished that even the shoes which he had placed outside the door were stolen. As a result, when he later returned to Hong Kong, he wore flip-flops, not bothering to wear shoes. Secretary, there is no photocopier at that place. Even basic medical equipment is in short supply, and shoes would be stolen. There is no photocopier.

Hence, if a claimant who seeks to avert torture is requested to submit a medical report, first of all, his local family will have to look for the doctor concerned, and that doctor will have to copy a report by hand in order to provide such proof. That will take time. Furthermore, the claimant's local relatives and friends who help him to search for the documents may incur danger to themselves and have to be watchful. So, firstly, there is postal delay. Secondly, there are difficulties in searching for these reports, which may also entail danger. People who are in real danger can hardly obtain the necessary documents and submit them to the authorities within the period of 28 days.

According to the figures provided to us by the Government, among the 386 cases pending for the provision of supplementary documents, only 35% of the cases ended up with the provision of the documents, while 50% of the cases failed to provide such documents. You may allege that claimants had made excessive false declarations and were thus unable to submit these documents. However, is it possible that the situation mentioned by me just now was involved, that is, the search for these documents would put their local friends and relatives in danger, so they were unable to provide the documents, and therefore a longer period was required for the provision of such information?

Chairman, of course, we do not wish to see a lot of people cherish false expectations and abuse the asylum application mechanism. However, for people who are truly in need, we should undertake the international humanitarian duty. We should perfect the system and provide those who are genuinely seeking asylum with ample opportunities. Dr Margaret NG's amendment is actually very simple. It merely extends 28 days by two more months to 90 days. If the Government considers that the two additional months will substantially increase public expenditure, Secretary, as I have mentioned earlier, only \$450 has been provided as food subsidy for children. As for adults, the Government has not yet provided us with any information. Secretary, please do the calculation yourself.

Besides, according to the Government's document, the annual expenditure on humanitarian, goods and materials and food assistance was \$159 million. Nevertheless, we should have a reasonable expectation of this system. If the relevant procedure can be made more reasonable and faster, the expenditure in this regard will be reduced, and thus a longer timeframe can be granted. I have already refrained from mentioning the abundant financial surplus in Hong Kong. I am only discussing with you the expenditure in this regard. Moreover, we really should undertake this international duty.

However, Chairman, the Administration, as usual, would rather hold on to its power. The timeframe is 28 days, and no more. It ignores the actual figures and disregards the actual situation. We have told the Government repeatedly that 28 days will not do, yet the Government would rather hold on to its power. If claimants find that 28 days is not enough, they will apply to the Administration for extension, and then the Administration will examine the cases on an individual basis. However, during the individual examination, are the relevant

guidelines and procedures clear enough? Are they sufficient to protect those who genuinely need asylum? Now all these are not clear yet. Hence, Chairman, all along, I do not quite agree to centralize all powers in the executive authorities and tighten the rules. Consequently, we have to implore the Administration from time to time. Rather than working in such a way, we should take the present actual circumstances into account, consider the postal situation in the third world and also understand the claimants' difficulties in searching for information in their places of origin; and the personal experience of the legal sector should also be considered. Between 90 days and 28 days, I prefer leniency to wrongdoing. Thank you, Chairman.

**MR JAMES TO** (in Cantonese): Chairman, we are now talking about clause 37Y. After the passage of the Bill, a claimant will have to follow the requirement of this clause and submit a torture claim form within a specific time period. Yet, this form is not the only thing which has to be returned. Under clause 37Y(1)(b), the claimant is required to return the form together with all documents which support his claim. Theoretically, the claimant must have all these documents ready within 28 days. This period will not be extended unless the authorities satisfy that, by reason of special circumstances, it would be unjust not to allow a further period for the claimant. We should note that the period of 28 days is the normal timeframe for making a claim. Exception is made when the claimant has made an application to an immigration officer to prove that there are special circumstances in his case, and the Immigration Department (ImmD) satisfies that it would be unjust not to allow him a further period.

Chairman, the threshold for this exception is very high. While many may argue that some claimants are not genuinely subjected to torture, we must not forget that we are now talking about a situation where a claimant may be facing a matter of life and death, and if he really ..... if, under this harsh and inappropriate procedure, a claimant fails to submit the required documents within 28 days and the ImmD does not consider his case so special that it will be unjust not to allow a further period, the claimant will have to be deported after his claim is rejected. He may die subsequently.

As we all know, the successful claims among the relevant international cases are mostly related to third world countries. As *coups d'etat* are frequent in these countries, a claimant may, at one time be regarded as a rebel, a

revolutionist, an opposition member, an armed element or an enemy of the current government regime, yet when situation changes, he may turn and become the Prime Minister of his country.

I really come to know some of these people. Today, they may be ministers attending international conferences, telling me half-jokingly how a political prisoner should maintain his spirit; but, tomorrow, they may become prisoners themselves. To put it more vulgarly, these people may have to flee the country at anytime. They may then seek asylum in Hong Kong since they would be subjected to terrible tortures in their countries. However, someday, they can return to their countries with honours and immediately become the Minister of Justice. Things like that may happen.

The period of 28 days is the timeframe set out in the Bill for normal situation. What should a claimant do in this period? Being labeled as a rebel or a revolutionist, he has to ask government officials of his country — who are his enemy — to provide him with information. As the legal system of his country may not be well-developed, will government officials help him or delay in handling his request? The officials may not be willing to provide him with documents to prove that something bad is happening in their country, and this situation is by no means rare. The claimant may have to try by other means to contact his fellow rebels or revolutionists to get the required information. But how should he contact them? Although nowadays it is easy to make contact with others, say, through email, how can they circumvent the censorship? How can his fellows contact him? Should the claimant have to consider the safety of his fellows? Do they have to make a detour to communicate with each other?

Chairman, as I have been Chairman or Deputy Chairman of the Panel on Security for many years, I have received information from many people, telling me about the crimes of others, the corruption in government, misconduct of officials, and so on. Sometimes, when I contact these people, dubbed as "sources", I have to take a detour to reach them. I had once tried to contact a source for a big issue, and it took me three months to get into contact with him. To elaborate a bit further, as the law-enforcement authorities found that the information provided by me was quite useful, they asked me to keep in touch with the source through indirect means, hoping that it could help make a breakthrough in their investigation. Since the claimant may have a sympathizer in the government, his "sympathizer", which is quite a new term, may be willing

to provide him with some required information. However, the sympathizer can only be reached by making a detour, otherwise, he may get killed. While the claimant is safe when he is in Hong Kong, he will be in danger if he is deported back to his home country. On the other hand, if the sympathizer is found to have contacted the claimant, he will be killed right away in his country. There have been such cases before.

In addition, these so-called "revolutionists" or "rebels" are armed elements who may hide themselves as their operation is covert. Even the Chinese Communist Party was once a covert organization with different modes of operation in the so-called red zone and white zone of the country. How could others contact them?

Perhaps, some may say that this problem can easily be solved because the claimant may inform the immigration officer of his situation under clause 37Y(3)(b). However, we should note that, in order to satisfy the officer, the claimant has to tell the officer some information, such as his contact person is an underground party member who can be reached by a specified email address, so on and so forth. Yet, if the contact person does not give any response within, say, three days or 20 days, the officer will query whether the email address is real. In this situation, if the claimant can prove that last time when he tried to reach the contact person, he could only get a response three months later, he will have a stronger case. Nevertheless, sometimes, it may be hard to prove to the officer that the source does exist. This case is what we call "special circumstances" as mentioned above. Should we assume that there is a special circumstance whenever the claimant does not receive any response for his letter or email seeking the required information? The claimant may have exhausted all means, official or otherwise, to reach his contact person. Sometimes, he may even ask a non-governmental organization to help him collect the information required but they have to be very careful as well. It stands to reason that the contact person will help the claimant, but why does he not reply? From the above, we can see that it is quite difficult for the claimant to give proof.

Chairman, I know that some claimants ..... in more vulgar terms, they are indeed bluffing, tricking, cheating or lying when making claims. However, the authorities are well aware that not many of them will actually make up stories. The problem right now is, in order to obtain the required information ..... I had handled this kind of cases before, though only limited to a few. To be honest, I

think Dr Margaret NG and lawyers whom she or I know may have dealt with many more such cases. Should the timeframe be set as 28 days or 90 days for general cases? Or should it be 28 days plus the extension granted by reason of special circumstances under clause 37Y(3)(b)? In fact, this is the core of our discussion today.

I somewhat share the view of Mr WONG Yuk-man. If a period of 90 days is set across the board, some may query if it is necessary for all claimants to have 90 days to submit their claims. If a 90-day period applied to all cases, claimants who do not need 90 days to submit their claim will have to wait for 90 days, and subsequently, the whole process will be procrastinated. In fact, no time will be wasted as these claims are processed one by one. Why do I say so? This is because, while a period of 90 days is allowed, some of the cases are actually long overdue and the authorities have to decide whether or not to accept these claims. In other words, taking into account the large number of cases at present, with thousands of cases outstanding, I do not think allowing a period of 90 days will likely slow down the process and cause a huge backlog due to the abuse of the extension of timeframe from 28 days to 90 days.

Assuming that these several thousand cases have all been processed and with the incoming of new cases — there will certainly be new cases — with a timeframe of 90 days, the additional time required will at most be 90 days minus 28 days. After balancing the two, I do not think that the provision of a more relaxed timeframe for these cases will bring much inconvenience to the Government. Why? This is because the Government has already set out many ..... for cases in which the claimant refuses, on various pretexts, to attend the interview with officials of the ImmD to discuss his claim, the revised handling procedure has actually become more practicable than the existing administrative measure. As the Government has already drawn on the experiences of many different countries and places and incorporated them into this Bill, the likelihood of claimants taking advantage, abusing or stalling has been reduced. Generally speaking, the pan-democrats support the setting up of an appropriate procedure to deal with these cases reasonably, so that eligible cases can be identified. Ineligible claimants can have a better picture about their situation and decide their way forward in advance.

Before the passage of the Bill, many people who originally intended to make a claim had voluntarily given up this plan and returned to their country.

This well supports the fact that having a mechanism in line with the international standard can have considerable effect. As for details of the mechanism, I think the Government needs not be too rigid since it is unlikely that the system will be abused, giving rise to various problems and delays.

Regarding the amendment proposed by Dr Margaret NG, I am not too confident that it can get passed. However, I must warn the Government: if the Bill is passed with the original timeframe of 28 days, and someone later applies to the Government for extension under clause 37Y(3)(b) but is rejected even though he has a reasonable reason or at least a reason that appears to be reasonable because the Government adopts an extremely high threshold, that is, the existence of "special circumstances", this may trigger even more judicial reviews.

In my view, the Government tried hard to tighten the law in the past, as Ms Emily LAU had spoken on this point in the Second Reading debate, I am not going to repeat. The mentality of the Government was that no arrangement would be made to provide a claimant with a lawyer if he did not have one; and without a lawyer, his claim was doomed to fail. However, this practice is definitely not acceptable. If a claimant is represented by a lawyer, to a certain extent, I think he will make ..... Lawyers can act as intermediaries who side with the claimant. If a lawyer can have thorough discussion with the claimant about his situation, and can explain in detail to the claimant, after asking him all the detailed information, as well as give the claimant an relatively objective and reliable advice, the claimant may give up his claims after knowing that he does not have a strong case. I am not saying that lawyers will deliberately convince claimants to give up. What I mean is that legal consultation can achieve an objective effect. At present, the Government prefers making extremely stringent laws and if there are many judicial review cases which can overturn the administrative decisions, it will have to amend the law eventually. To be frank, the Government may have to make repeated legislative amendments, and hundreds or thousands of old cases may have to be examined all over again. I think it will be highly undesirable if the Government has to introduce a new legislation again.

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak?



**MR LAU KONG-WAH** (in Cantonese): Chairman, I think it is very important to have a clear picture of the present situation before proceeding to discuss this amendment. As a matter of fact, in recent years, quite a number of people from different African countries have come to Hong Kong with various reasons. There are also people coming from South Asian countries such as Sri Lanka, India and Pakistan. They came under the reason of torture claims. There is even a recent trend that some Filipino domestic helpers, who had completed their employment contract, claimed that they would be subjected to torture if they returned to the Philippines. Under the present mechanism of the Government, once they apply for torture claims, their applications will be accepted and they will then be provided with lawyer service. Hence, we, as Legislative Council Members, should consider this matter not only from the perspective of lawyers or claimants, but also from the interests of the public and the general interests of Hong Kong.

As a matter of fact, of the 1 700 torture claim applications screened in the past few years, only one application was substantiated. Only one out of the 1 700 claims was established, all other claims could not be substantiated. So, this is the present status. We have to review the mechanism. Given that the mechanism and the power authorized by the law are new, a rigorous and just procedure and mechanism should be established, but caution should also be exercised to prevent abuse of the procedure and mechanism. In my opinion, any mechanism of the Government should include these two elements.

Regarding the 28-day timeframe, how much time is needed for a claimant to complete a torture claim form? Chairman, during the scrutiny of the Bill, members have studied the form. It is actually not that complicated, mainly involving filling in the personal particulars of the claimant. Of course, if more information is needed ..... There are two types of information. One is the personal data of the claimant which the Government might have. In the past, it took 10-odd days for the Government to provide the personal data for a claimant after the torture claim form is served. Hence it was too rush for claimants to return the completed form within the 28-day timeframe and this arrangement is not very reasonable. The other type of information is not kept by the Government. Claimants may really need to retrieve such information by writing to people in their country of origin, such as Africa or other countries in South Asia, and this takes time.

However, under the mechanism prescribed in the Bill ..... the Government has now enhanced its internal procedure ..... Claimants will be provided with their personal data on the same day when the torture claim form is served, saving claimants from waiting for another 10-odd days. To me, this is an enhancement. Besides, I think the 28-day timeframe is basically enough for claimants to complete the torture claim form because all they need to do is to fill in their personal data. If some information takes a long time to retrieve, claimants can cite this as a reason for extending the timeframe. Such request is permitted. In the past, it took on average 40 days for claimants to return the torture claim form. Now, the Government has reduced the time by 14 days, and claimants no longer need to spend extra time on waiting for information. Thus, claimants will have 26 days, should be 28 days to complete the form, which, I believe, is comparable to the present situation.

Certainly, a few Members, particularly Mr James TO, have just raised one point. Mr TO cited a number of torture claim cases, in which the claimant is a tribal chief or a member of a revolution army or an underground army. As a matter of fact, such cases do exist, and it may be very difficult for these claimants to retrieve the information they need. I do understand. But if 28 days are not enough, or if a claimant, who is a member of an underground army, needs to retrieve a lot of information and it is very difficult for him to locate other members of the army or it takes time to have the information sent back, why are 90 days sufficient for him? Member may say that the claimant can apply for another extension, but this is exactly what the Government has now proposed; that is, claimants can apply for an extension under special circumstances.

Chairman, it is in fact unnecessary to argue over the issue of timeframe. From a practical point of view, it now takes on average 40 days for claimants to return the torture claim form, of which 14 days are spent on retrieving information from the Government, but it is now unnecessary for claimants to wait for their personal data. Hence, it is basically feasible for claimants to return the torture claim form within 28 days. I thus find it rather hard to accept extending the timeframe to 90 days.

Dr Margaret NG had put forth many pragmatic and constructive views during the scrutiny of the Bill, but in respect of the timeframe, I vividly remember that she had proposed 48 days or 50 days time and again. Our original idea was to set the timeframe between 50 days and 28 days. However, at the final stage

of the scrutiny ..... Members who are also members of the Bar Association have also mentioned this point ..... At the final stage, we consulted the views of the two lawyers' associations. We pointed to them that the Government would now make some enhancement to provide the information in tandem with the time the torture claim form is served, and with regard to the 28-day timeframe originally proposed in the Bill, while some Members considered the timeframe inadequate, some considered otherwise, hence we had to seek their advice. Their final view is that the minimum timeframe should at least be 48 days, or more realistically, 90 days. There is a change in their views, which are quite extreme.

Certainly, we have different views. I do not think that claimants are inhumanely treated or their human rights are being deprived of if the timeframe is set at 28 days and claimants are allowed to apply for extension. I do not think it is a matter as serious as they have described.

As a matter of fact, the present record shows that of the 1 700 cases of torture claims, only one case is substantiated. Certainly, claimants have the right to make torture claims, and it does not mean that the few thousand cases to be submitted later will all be unsubstantiated. I do not mean that. However, Hong Kong is a small place. We have to consider the use of public funds. If claimants are allowed to stay in Hong Kong for three months ..... They may say they have to stay here for getting more information ..... In fact, according to past records of the Immigration Department, many claimants were found working as illegal workers during their stay in Hong Kong, which have dealt a great blow to the local labour market. During the scrutiny of the Bill, we had repeatedly reminded the Government of the fact that the tens of thousands of African people now staying in Guangzhou can come to Hong Kong at anytime and make a torture claim. There is simply no way for the Government to know where they come from and a lot of time will have to be spent on investigating their place of origin.

In attending a ceremony recently held in Tai O, I met a marine police officer. I asked him, "What cases are you working on lately?" He told me that there were recently many illegal immigrants. "Are there still many illegal immigrants? They should be fewer now," I said, thinking that he was talking about Chinese illegal immigrants. "No," he said, "those caught recently mostly come from Africa."

It is thus evident that ..... Although only a few thousand people are now stranded in Hong Kong, which seems to be a small group of people, we should not forget that the number can increase substantially in the future, which will then deal a great blow to Hong Kong. We cannot rule out this possibility. Hence, the mechanism should be just and rigorous, and a lawyer should be provided to claimants by the Government with public funds. This is also the present practice which, I think, is up to par.

On the other hand, however, we do not want to convey a message that anyone who makes a torture claim can stay in Hong Kong for three more months to wait for the result of his claim while looking for employment in the meantime. This also applies to Filipino domestic helpers who make a claim immediately upon their completion of employment contract that they will be subjected to torture if they return to Southern Philippines. We do not wish to see such scenario.

Should the timeframe be 28 days or 90 days? Personally, I think a decision can easily be made. The Bill has gone through our scrutiny and deliberation; the Government has also proposed amendments to the Bill and made internal adjustments to the effect that the time for personal data retrieval has been reduced by 14 days, thus facilitating claimants to expeditiously submit their torture claim form. What is the benefit of expeditiously submitting the form? Lawyer service will be provided for claimants to enable them to enter the relevant procedure as soon as possible. In fact, the present practice is in line with international conventions. We have asked the Government the number of days claimants in other countries (such as the United Kingdom) take to make torture claims, and some of them also take 28 days. For applications presently made under other legislations of Hong Kong, the timeframe is also 28 days for some cases.

Hence, I do not see any special reason that the timeframe must be extended to 90 days. The extension itself may not be desirable and it may have negative impact on Hong Kong. I do not want to see such a situation. Hence, Chairman, the Democratic Alliance for the Betterment and Progress of Hong Kong opposes the amendment to extend the timeframe to 90 days.

Thank you, Chairman.

**MR WONG YUNG-KAN** (in Cantonese): Chairman, I have been listening to Mr LAU Kong-wah and Mr James TO in my car when I am on my way back from work outside. I remember that during the scrutiny of the Bill and when this subject was discussed at the Panel on Security, we were very worried, for we were afraid to see boats of South Asian people smuggling into Hong Kong. When their lives are under threat, we show great concern because, after all, we are all human beings. Should we allow them to come to Hong Kong? And what should be done after they have come to Hong Kong?

With the implementation of some measures by the Government in collaboration with the Mainland government, many problems have been resolved and the number of illegal immigrants entering Hong Kong by sea has substantially decreased. The problem was successfully stemmed at that time and the public were relieved. However, when I carried out district work, many people were still very concerned about how the Government would handle those people who sneaked into Hong Kong. Members of this Council were also very concerned about this issue and we had held several discussions on the issue of torture claims at the Panel on Security. When the Bill was tabled to this Council by the Administration, we scrutinized the Bill together, in the hope that people who claimed to be suppressed or affected by torture could be legitimately handled.

Hence, I echo Mr LAU Kong-wah just now in saying that from the perspective of the Government and based on the figures ..... We are aware that not only South Asians, but also Filipino domestic helpers have claimed that they could not go back to their country of origin after completion of their employment contracts. They wished to stay here for another three months or even longer. Three months are not a long period, but they can at least stay in the territory. As a result, some people would ..... At that time, we also asked the Administration whether the procedure would be abused. The Administration replied that the cases would be handled in consideration of the actual situation; and since the Government could not deny people who had made torture claims from staying in Hong Kong, it was essential to ascertain the facts. In this connection, we agree that we have to verify the facts first.

However, while it is essential to verify the facts, if the Government keeps delaying in tackling this issue, public grievances will intensify. At present, there

are still a few thousand people waiting to be assessed. I hope the Government can speed up processing the applications.

Besides, I wish to raise one more point. Given that some South Asians have entered the territory from the Mainland through the sea route, I hope the Government can step up its interception efforts; otherwise, illegal immigrants will continue to enter the territory. That said, it is indeed quite impossible to intercept them all. In this regard, I hope the Government can do a better job and tighten its patrol, so that people affected by ..... When they enter Hong Kong by other routes, they can be properly handled in accordance with the law and the procedure.

**CHAIRMAN** (in Cantonese): Mr WONG, you should focus on clause 7 and the amendments.

**MR WONG YUNG-KAN** (in Cantonese): Yes, Chairman. What I wish to say is, be it clause 7 or other clauses, I hope the Government can do a better job in this respect. As for the amendment which seeks to extend the timeframe to 90 days, I beg to differ. I was also against the extension of time when the issue was discussed at the Bills Committee. Hence, I echo Mr LAU Kong-wah's view just now. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak?

**MS EMILY LAU** (in Cantonese): Chairman, I rise to speak in support of Dr Margaret NG's amendment. I understand that Members worry that the system may be abused, but the system itself must be fair to claimants. As I have just said, Hong Kong is a community of refugees. I believe many people would understand and agree that the Administration should deploy resources to help people in distress.

It has been said just now that so far, one case was substantiated, but we do not know what will happen in the future. As this convention is applied to Hong Kong, we have to be fair to claimants. That is why The Law Society of Hong

Kong (Law Society) has requested in their submission for a longer timeframe. Ms Margaret NG has just read out its letter dated 30 May. At that time, I proposed at the Bills Committee to consult the legal practitioners given the divergent views between the Administration, which said that only 28 days were needed, and Members who asked for a longer timeframe. Chairman, in the joint submission from the Law Society and the Hong Kong Bar Association, they pointed out that based on information collected from practitioners who had handled torture claims, the Director of Immigration had, in some cases, rejected requests for extension, even when compelling reasons had been put forward. In some instances, the Director just made a decision without giving due consideration to all the information. Chairman, according to the legal practitioners, this is the practice of the Administration.

Chairman, what is the Administration's response? After submitting the letter to the Administration, the Secretary for Security issued a reply on 12 June, pointing out that according to the records of the Immigration Department (ImmD), claimants who were in genuine need for more time to complete their claim forms would be approved if they had justifications to support their application. Furthermore, the ImmD has made it clear that approval will continue to be granted to cases with justifications.

Chairman, whom do you believe in? Could it be that the legal practitioners have lied? They stated clearly that even with "compelling reasons", the application would be rejected. Yet, the Secretary has presented another story. Chairman, whom should we believe in? It is worrying to see such divergent views. Claimants request for an extension of time because they do not have enough time to complete the torture claim form, but their requests are rejected, and if consequently, they fail to provide the information required, they would feel even more anxious. Chairman, I am not sure if the Secretary is aware of their situation.

Legal practitioners also said that if the situation remains unchanged, they would rather leave the entire matter to the discretion of the Director of Immigration. But what will be the consequence? The matter will then be taken to court, as we have just said. Frankly, the reason for proposing the amendment is due to the fact that many legal proceedings had been initiated. Do not be mistaken that the Administration is kind. It is a waste of our effort. In fact, we had raised this point several times at the Bills Committee. Even Mr

LAU Kong-wah, Chairman of the Bills Committee, had reminded the Administration that they should do a better job in order to avoid judicial reviews in the future. We are all afraid of lawsuits. Chairman, it is fortunate that there is still something that we are afraid of.

Why do we have an argument now? Some people said that the 28-day timeframe is not long enough, but the Administration remained adamant about it. The Bill will be passed, and Dr Margaret NG's amendment will be negated. However, when the Legislative Council starts a new term, the issue will be brought up again at panel meetings. Panel members will again ask the Administration how many claimants can return the completed torture claim form within 28 days, how many cases have applied for extension of time, what the reasons are, and how many cases have been granted approval. Perhaps, by then, the Administration will tell us that discussion is not needed because many cases are undergoing legal procedures, or judicial reviews are in progress.

Secretary, I believe you cannot dodge providing us these data. I do not hope that the data provided will reflect that you have dishonoured your promise by not granting discretion to torture claim cases, making a mess and turning the application screening process into an unfair and unjust one.

Chairman, I support Dr Margaret NG's amendment.

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Dr Margaret NG, do you wish to speak again?

**DR MARGARET NG** (in Cantonese): Chairman, I thank the Members who have spoken on the subject, particularly those who have spoken in support of my amendment. However, I also welcome Mr LAU Kong-wah and Mr WONG Yung-kan for sharing with us their different views.



Chairman, I understand that issues such as illegal entry and torture claim are controversial in all places, but two completely different pictures have now emerged. As I have pointed out just now, lawyers assigned to handle torture claim cases have expressed grave concern that genuine claimants are subject to unfair treatment in the procedure. As a result ..... One torture claim case has been substantiated, we are impressed by the claimant's capability. If the procedure becomes more and more unfair, less torture claims will be substantiated. But the problem is, these claimants will genuinely be in danger of torture after they have been repatriated to their country of origin. Hence, we should not infer the appropriateness of the present procedure from the number of substantiated torture claims.

Chairman, I know Mr James TO supports my views because he has handled many such cases and is aware of the time needed to complete the torture claim form. On the other hand, Mr LAU Kong-wah and Mr WONG Yung-kan are of the view that the system of torture claims can easily be abused because any person can easily make a torture claim without the need to provide any proofs, and after making such claim, he can stay in Hong Kong for a period of time. If the claimant says that he does not have enough time to complete the form, he can again asks for an extension and his wish will again be granted. And, during his stay in Hong Kong, he can easily be an illegal worker and get good pay. The longer the timeframe for lodging torture claim, the longer he can work illegally.

Chairman, this is absolutely not the case provided in the Bill. The Administration has laid down stringent requirements on the production of evidence by claimants for every stage. Moreover, the most important measure is that claimants are prohibited from taking employment on the day they lodge a torture claim. It is an offence if they do so and will be arrested and imprisoned. Employers who employ claimants will also constitute an offence. Hence, it is absolutely not that easy for claimants to stay in Hong Kong and work illegally, as Members have claimed.

As a matter of fact, even if a torture claim is substantiated, pursuant to the Bill, the claimant will only be allowed to take employment under very exceptional circumstances, that is, not allowing them to work will lead to serious humanitarian problem. Hence, if Members are concerned that claimants will be induced to work as illegal labour, they should tackle the problem of illegal labour, rather than undermining the fairness of the entire torture claim procedure. In

particular, if Members are concerned that illegal immigrants cannot be intercepted, efforts should be made to intercept illegal immigrants, rather than compressing the timeframe for making torture claims.

Chairman, Mr LAU Kong-wah asked how many days are an optimum timeframe for making torture claims. According to the final submission from the two lawyers' associations, it should be at least 48 days, but more realistically ..... to use their words, "a more realistic period" should be 90 days. It is clearly reflected in the submission that the two lawyers' associations were aware that the Administration was unwilling to adopt a longer timeframe, but given that the actual time needed is 90 days, they hope the Administration would at least consider a 48-day timeframe if a 90-day timeframe is out of the question. However, the Administration did not even consider the 48-day timeframe.

Chairman, as the amendment is proposed by me, I have certainly considered the actual number of days needed to complete the torture claim form. That said, we are aware of the concerns that the torture claim procedure may be abused and we aspire to fully prevent such abuse. In fact, if Members presume right from the start that all torture claims are unfounded, then even the 28-day timeframe will be too long to them. Why do they not simply set the timeframe to one day? Hence, we should not consider the timeframe from this perspective.

Chairman, what yardstick should be adopted in deciding the optimum number of days for submitting the torture claim form? In my opinion, we should start from a principle. What is the intent of the Bill? It mainly serves to protect human rights. Torture is a rather special issue in the covenant on human rights. Articles on human rights and freedom are usually subject to a provision saying that "such a right is not absolute and a balance should be struck among the rights and interests of different parties". Only torture is absolute, that is, absolutely no one should be subjected to torture. It is thus of particular importance to protect a person from torture.

Chairman, let me reiterate once again that in setting the timeframe, the emphasis should not be placed on the average number of days for making torture claims or the number of people who have lodged torture claims. Instead, we should consider how many days are considered fair in the context of human rights for claimants to submit their torture claim form in Hong Kong.

A Member has cited that in some countries (such as the United Kingdom), a 28-day timeframe is also applied, and he questioned why we need a longer timeframe in Hong Kong. This is because the situation in the United Kingdom is different from that in Hong Kong. Hong Kong is such a small place. In retrieving the relevant data, claimants often need the assistance of voluntary agencies. But, are the Hong Kong offices of these voluntary agencies of a large scale? Has the Hong Kong Government deployed a lot of manpower or established a system resourceful enough to assist claimants in retrieving the data they need? These are important factors to be considered. Hence, we are unique in the way that claimants have to make a lot of effort to retrieve their data.

Chairman, we are not bargaining the price of vegetables at the wet market now. Setting the timeframe is not like one party offering the vegetables at \$28 and the other party returning the price at \$90. Chairman, we do not set the timeframe like that. After all, we have to consider the number of days claimants need to make preparation in order to render a fair procedure for claimants to make torture claims. The two lawyers' associations did not randomly say that the timeframe should be 90 days. They have told us the steps involved in making torture claims, and from their professional point of view, what needs to be done in each of these steps. Their professional advice is that it takes 90 days to accomplish all those different tasks. We know that it does take 90 days to finish those tasks.

Hence, Chairman, I urge for Members' support of my amendment to adopt a 90-day timeframe for submitting the torture claim form. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Secretary for Security, do you wish to speak again?

**SECRETARY FOR SECURITY** (in Cantonese): Chairman, I wish to make a few points in respond to Members .....

(Mr LAU Kong-wah raised his hand to indicate his wish to speak)

**CHAIRMAN** (in Cantonese): Secretary, please wait. Mr LAU Kong-wah, what is your point?

**MR LAU KONG-WAH** (in Cantonese): Chairman, as Dr Margaret NG has mentioned my name and raised a few points, I wish to respond briefly and clarify some points.

First of all, Dr Margaret NG mentioned the data I cited earlier. That is, of the 1 700 claimants, only one claimant was substantiated and all other claims were not. By citing the data, I did not mean that claimants whose torture claims were not substantiated have abused the system. I only stated the fact. When I spoke just now, I emphasized that fact that I do not rule out the possibility that more torture claims will be substantiated in the future. We never know.

Second, whether the timeframe is 28 days or 90 days, I do not think the fairness of the procedure would be undermined. A 28-day timeframe is not necessarily unfair and similarly, a 90-day timeframe is not necessarily fair either. I have raised a question on this point, but both Dr Margaret NG and Mr James TO have not responded to it. My question is, if they are of the view that 28 days are insufficient for claimants to retrieve all the data, why do they think that 90 days will be sufficient for claimants to do so? Their point of view is unscientific. Of course, we respect the views of the two lawyers' association, but sometimes we need to seek truth from facts. And I have provided the facts when I spoke just now.

Last but not least, the issue of illegal labour. Claimants are prohibited from taking employment under the present legislation. But, if you ask any residents living in Yuen Long, Tuen Mun or Sham Shui Po, you can get the latest information about working as illegal labour. I hope the authorities concerned can attach greater importance to this subject because people of Hong Kong cannot tolerate claimants working as illegal workers.

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak?

**DR MARGARET NG** (in Cantonese): Chairman, I wish to respond to Mr LAU Kong-wah's question on why 90 days are sufficient but not 28 days.

The view of the two lawyers' associations is that 28 days are "clearly insufficient for average claims", and "the minimum should be at least 48 days". Furthermore, "given the complexities of many claims a more realistic period should be allocated, namely 90 days". This is their professional advice. Besides, they have also listed out a series of tasks, I will not repeat again, which lawyers have to accomplish to justify the need of a 90-day timeframe.

Is a 90-day timeframe definitely sufficient? Not necessarily, Chairman. According to the newly added clause 37Y(3), by reason of special circumstances, a claimant can apply for an extension of time to return the completed torture claim form. I have not proposed any amendment on this provision.

Chairman, this provision is very important. We must first set a realistic timeframe that is practicable and can generally provide ample time for claimants to complete the form, before they, by reason of special circumstances, apply for an extension of time when necessary.

If the timeframe is set at 28 days, which is generally insufficient for claimants to return the form in the first place, how are they going to apply for an extension of time by reason of special circumstances? If general claimants cannot return the form within this timeframe, and only those with unfounded claims can easily complete the form ..... Mr LAU Kong-wah has also looked at the form just now. It looks simple, but if a claimant can casually complete the form and his claim can be immediately substantiated, that would be miraculous indeed.

Chairman, the newly added clauses 37Y(2) and 37Y(3) are closely linked. There must first be a realistically possible timeframe before special circumstances can be cited as the reason for an extension of time. Of course, claimants must provide proof of their special circumstances. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak?

**MR LAU KONG-WAH** (in Cantonese): Chairman, this is a simple exchange of views. I am glad to learn that Dr Margaret NG admitted that if 28 days are insufficient, 90 days may also be insufficient. Then, how should the timeframe be set? Be it 28 days or 90 days, there is an important provision in the Bill which allows claimants to apply for an extension of time for information retrieval. This is a fact. Is the 28-day timeframe definitely insufficient? Not exactly. According to practical experience, the authorities concerned only took 14 days or 15 days to process some torture claim applications. It does not necessarily take 90 days.

Regarding the two professional bodies, that is, The Law Society of Hong Kong and the Hong Kong Bar Association, I have great respect for them. I also understand that Dr Margaret NG has to follow their views. However, as a Member of the Legislative Council, one not only has to listen to professional views, but also has to exercise independent judgment, seek truth from facts and make judgment from a realistic point of view. I made a point clear when I first spoke just now. That is, despite the opinion of the professional bodies, I come to the view after analysis that the 28-day timeframe is in line with the government data, the actual situation, the rights and interests of society as a whole and the balance of the system. In other words, the 28-day timeframe can uphold the justice and rigour of the procedure and prevent it from being abused.

**DR MARGARET NG** (in Cantonese): Chairman, Mr LAU Kong-wah said that I have to abide by the view of the two lawyers' association and that I do not exercise independent judgment, I must protest against his remark.

Each and every Member should be independent. Each and everyone of us expresses our views not because we are the mouthpiece of anyone. I cited the view of the two lawyers' association because, in my opinion, their view is correct. I find their views justified because they have indeed put massive effort into these cases. To me, it is a very important principle that Members act independently and exercise their independent judgment. I thus do not wish this principle of mine is called into question.

Mr LAU Kong-wah certainly has the right to express his view, but I have to clarify his remark. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Security, please.

**SECRETARY FOR SECURITY** (in Cantonese): Chairman, I wish to respond in a few points to what Members have just said.

First of all, claimants are required to state in the torture claim form information on their personal background as well as the reason for their concern of torture, both of which are existing facts. Besides, assistance such as interpretation and duty lawyer services are provided to claimants. Thus, generally speaking, 28 days are sufficient for claimants to complete the form. Furthermore, under the Immigration (Amendment) Bill 2011 (the Bill), claimants can apply with reason for an extension of the deadline if they need more time to complete the form. The Immigration Department (ImmD), under the principle of fairness, will grant such extensions. The provision ensures that claimants are given sufficient time to complete the form and provide justifications for their torture claims, thus preventing any unjust circumstances.

In view of the fact that when duty lawyers assist claimants in completing the torture claim form at the outset, he would request the ImmD to provide the claimants' personal data in its custody, the ImmD has enhanced the procedures for handling personal data requests. In the past, 14 days were needed to provide the data to claimants, and now the data are provided to claimants on the same day when the torture claim form is served. Claimants and their duty lawyers can thus make full use of the 28 days to complete the form.

As a matter of fact, with reference to other common law jurisdictions, a 28-day timeframe is considered sufficient for returning the form.

We object in principle to categorically granting a 90-day timeframe without reason to all claimants for submitting the form; and we are concerned that Dr NG's amendment will affect the screening progress, undermine immigration control and increase public expenditures.

At present, almost 5 700 torture claims await screening, with new claims adding onto the list, and it takes about four to six months to screen a claim. Dr Margaret NG's amendment will further increase the screening time, thereby undermining immigration control and preventing the ImmD from efficiently completing the screening process so as to repatriate or deport claimants with unsubstantiated torture claims.

Moreover, at present, over 80% of the torture claimants are receiving various kinds of humanitarian assistance provided by the Government. If Dr Margaret NG's amendment is passed, it is estimated that additional expenditures will reach \$25 million to \$30 million.

In view of the fact that the 28-day timeframe has already provided sufficient time for claimants to complete the form, together with the arrangement for claimants to apply for an extension of time, the rights and interests of claimants are already fully protected under the original provisions of the Bill.

With these remarks, Chairman, I once again call on Members to support the passage of the amendments proposed by the Government, and oppose the amendment proposed by Dr Margaret NG.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendments passed.



**CHAIRMAN** (in Cantonese): Dr Margaret NG, you may now move your amendment.

**DR MARGARET NG** (in Cantonese): Chairman, I move that clause 7 be further amended.

*Proposed amendment*

**Clause 7 (see Annex III)**

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Dr Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Dr Margaret NG rose to claim a division.

**CHAIRMAN** (in Cantonese): Dr Margaret NG has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG and Mr CHEUNG Kwok-che voted for the amendment.

Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Mr Paul TSE voted against the amendment.

Ms LI Fung-ying and Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Ms Emily LAU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr Alan LEONG, Miss Tanya CHAN and Mr Albert CHAN voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Ms Starry LEE, Mr CHAN Hak-kan and Mr WONG Kwok-kin voted against the amendment.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 19 were present, two were in favour of the amendment, 15 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 18 were present, 11 were in favour of the amendment and six against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

**CLERK** (in Cantonese): Clause 7 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 7 as amended stands part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

### **IMMIGRATION (AMENDMENT) BILL 2011**

**SECRETARY FOR SECURITY** (in Cantonese): President, the

Immigration (Amendment) Bill 2011

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Immigration (Amendment) Bill 2011 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): The Immigration (Amendment) Bill 2011.

### **Resumption of Second Reading Debate on Bills**

**PRESIDENT** (in Cantonese): Council now resumes the Second Reading debate on the Buildings Legislation (Amendment) Bill 2011. Please refer to page 123, Part II of the script.

**BUILDINGS LEGISLATION (AMENDMENT) BILL 2011****Resumption of debate on Second Reading which was moved on 7 December 2011**

**PRESIDENT** (in Cantonese): Mr IP Kwok-him, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

**MR IP KWOK-HIM** (in Cantonese): President, in my capacity as Chairman of the Bills Committee on the Buildings Legislation (Amendment) Bill 2011 (the Bills Committee), I report the major deliberations of the Bills Committee.

The objective of the Buildings Legislation (Amendment) Bill 2011 (the Bill) is to bring in five new measures to further enhance building safety. These measures include: surcharge on defaulted works; penalty against persons who refuse to share cost of works by owners' corporation for compliance with statutory orders or notices; court warrants to enter premises; signboard control system; and registered inspectors to comprehensively report exterior unauthorized building works (UBW) under the Mandatory Building Inspection Scheme (MBIS).

In principle, members are in support of the five measures proposed by the Administration. However, members are gravely concerned about the proposal which allows the Building Authority (BA) to apply to the Magistrates' Court for warrants to enter private premises. As this proposal may infringe private property rights and privacy of individual owners, members have discussed this warrant proposal thoroughly.

In response to members' concern about the purposes of entry into premises, the Administration has clarified that the BA or an authorized officer may, under a warrant, enter the premises to carry out inspection and undertake works, such as defaulted works under the MBIS and the Mandatory Window Inspection Scheme (MWIS). These purposes are same as those of the existing section 22(1).

Meanwhile, members are extremely concerned about the possible expansion of the BA's power to enter the premises, as well as the two grounds cited by the BA in applying to the Magistrates' Court for a warrant to enter

private premises. Some members have raised their concern over the extensive coverage of those two grounds, which are: a magistrate may issue a warrant authorizing the BA or any authorized officer to enter and, if necessary, break into the premises, for specified purposes if the magistrate is satisfied that there are reasonable grounds for suspecting that building works have been or are being carried out to the premises or land in contravention of any provision of the Buildings Ordinance (BO); and the use of the premises or land has contravened any provision of the BO. Members are particularly concerned that even some minor works in contravention of the BO may trigger the application for a warrant to enter the premises, thus infringing the private property rights of individual owners.

In response, the Administration has explained that the primary purpose of the warrant proposal is to enable the Buildings Department (BD) to respond to complaints and take enforcement actions against building-related problems more efficiently and effectively in order to preserve the integrity of the building control regime. The Administration holds that the warrant proposal is not an expansion of the existing power of the BA.

The Administration has stated that application for a warrant to enter premises may only be made when there are grounds for reasonable suspicion of circumstances stipulated in the Bill, and that is also subject to other requirements being met at the same time. This has considerably raised the threshold of entry under non-emergency situations. The BA will have to satisfy a magistrate that he has grounds for reasonable suspicion having regard to the circumstances of the case.

Some members have suggested that the grounds for application for warrant should be confined to circumstances relating to building safety. In response, the Administration has explained that, in many circumstances, it is necessary for BD officers to enter the premises to ascertain whether there are UBW which have compromised building standards or caused public safety hazards. Should the grounds for application for warrant be confined to circumstances relating to building safety, in some cases, the BD will not be able to apply for warrant. A case in point is that the UBW are structurally sound, even though they have aroused grave public concern. This suggestion may give rise to a loophole in law enforcement.

To address the concerns and views of members, the Administration has agreed to amend the proposed section 22(1B)(a)(i) and (ii) to narrow its scope.

In respect of authorized officers, at members' request, the Secretary for Development will later state the grades and ranks of BD officers who will be authorized by the BA to enter premises under a warrant.

President, members noted that a magistrate may issue a warrant if the entry into the premises by the BA or an authorized officer was refused or could not be gained despite a visit made to the premises on at least two different days. Yet, members considered that the requirement for a visit on two different days may not be sufficient.

In response, the Administration has stated that there will at least be a total of five visits by staff of the BD and its outsourced consultants before any application for warrant is made to a magistrate. The Secretary for Development will elaborate this point later to give an account of the position of the Government in respect of the issue of visit on two different days.

As for surcharge on defaulted works, the Administration has accepted members' suggestion so that the surcharge for owners who are old, infirm or with disability or mental illness and also have genuine practical difficulties in arranging for the necessary works themselves will be waived completely. The Secretary for Development will later restate the undertaking of the Administration in this respect.

Lastly, members have urged the Administration to minimize the possible disturbance caused to the owners or occupiers concerned in their investigation of building safety complaints.

The following are my personal views and opinions on the Bill. President, the resumption of the Second Reading and Third Reading debates on this Bill were originally scheduled at the meeting on 13 June. Yet, I have been waiting for a whole month and today, I can finally speak on the Bill on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). The DAB supports this Bill and hopes that it can be passed as soon as possible. As a matter of fact, this is the third time that I chair a bills committee or subcommittee on building maintenance issues in this term. It reflects that, during this term, there have been many building safety problems that we do not

want to see; otherwise, I would not have to chair this kind of bills committees or subcommittees for the third time in the same term. These bills and subsidiary legislation all share the same objective, that is, to further improve our building maintenance measures so as to address the worsening problem of ageing buildings in our society.

Over the last six months, the issue related to UBW has aroused widespread public concern. UBW ranging from "the underground palace" to an outdoor laundry rack have become hot discussion topics among the public and the media, and a very sensitive issue for officials and Members. In fact, it is worth considering how to strike a balance between removing dangerous UBW for safety reason and protecting private properties. Building maintenance and building safety have all along been the most important tasks of the Development Bureau and the BD. In order to accomplish these tasks which are related to people's livelihood and public safety, apart from commitment, it is essential to have the backing of the legislation, so as to empower the authorities and law-enforcement agencies concerned to carry out their duties in a reasonable manner.

The Bills Committee has held a total of seven meetings, and the main focus of discussion is the application of court warrants for entry into premises. As a matter of fact, the Buildings (Amendment) Bill 2010 passed last year for the implementation of the MBIS and the MWIS, as well as this Bill have a common key feature, that is, the entry into premises under court warrant for handling UBW, and this issue has aroused much controversy.

President, in handling UBW, staff of the BD are very often refused entry into the premises by unco-operative owners and occupiers. According to the information in hand, as at March this year, about 70% of cases handled by the BD have problems of entering the premises, and the effectiveness of law enforcement was hence undermined. According to the operational experience of other departments, owners tend to be more co-operative when a court warrant has been issued, and it is not necessary to adopt the most extreme measure on every occasion to enter the premises in the presence of police officers for law-enforcement purpose.

While owners will be more co-operative when court warrants are issued, in making the warrant proposal, the authorities must strike a balance between preserving the integrity of the building control regime and protecting private properties. In response, the Government has reiterated that grounds for warrant



application should be confined strictly to circumstances relating to building safety, and the warrant proposal is not an expansion of the existing power of the BA, who is under the BD, the law-enforcement agency. In addition, this power may only be exercised by officers of specified ranks. The DAB agrees to this important principle in the Bill and hopes that the Bill can confer the Court with a relevant power to make owners feel at ease.

President, I would like to talk about another issue. In buildings which have to carry out maintenance works, there will always be some irresponsible owners who refuse to share the inspection and maintenance costs. As the saying goes, "There are all sorts of people in the world." For flat owners of a building, though they live under the same roof, they may not necessarily be co-operative and may be indifferent even when they are facing a big issue which concerns the structural safety of the building they live in. To punish these irresponsible owners, the Bill provides for the imposition of a surcharge of 20% on the cost incurred by the BA to be recovered. The DAB agrees to this proposal.

However, I am aware that, in some dilapidated or single block buildings, some residents may have practical difficulties in arranging for the necessary works due to old age, infirmity, physical disability or mental illness. During our discussion, the Government has thus agreed to the suggestion of making special arrangement for these residents. Their surcharge will be waived after their difficulties are substantiated. As justice must be tempered with mercy, the DAB is happy that the Government has accepted good advice and proposed amendments to grant waivers to those residents.

President, I so submit to support the Bill.

**MR LEE WING-TAT** (in Cantonese): President, I speak in support of this Bill and I also welcome the novel arrangement of having the Financial Secretary taking up the duties of the Secretary for Development. I would like to thank Secretary John TSANG for attending the meeting and listening to our views.

President, the core issue of this Bill is unauthorized building works (UBW). The problems of land and housing have been aggravating, and certainly the most serious problem is high property prices, and as a result, Hong Kong is one of the few places in the world where UBW and extended structures are common sights.

Sometimes I mention to my friends in chatting that for houses in Canada which have an area of 2 000 to 3 000 sq ft and a garden of 1 000 sq ft, nobody will care a dime if the garden is extended by 100 sq ft, as the house may be in the middle of mountains and plains. However, the situation of Hong Kong is different. As many flats in Hong Kong only have a size of 500 sq ft, an extension of 50 sq ft implies an increase of 10% of the area. Of course, not all flats in Hong Kong have been extended by 10%. Yet, even the luxurious houses on the Peak or in Kowloon Tong are often found to have an extended area or an unauthorized basement.

President, during our initial discussion on this Bill, our focus was not on luxurious houses because our prime concern was building safety. The biggest problem, as we all know, lies in old buildings, particularly those which have many "sub-divided units". Even before the emergence of "sub-divided units", the Food and Environmental Hygiene Department (FEHD), the Home Affairs Department and the Buildings Department (BD) had received many complaints each year about water seepage in toilet on the upper flat affecting the flat below. Civil actions and small claims relating to these cases are common and, more importantly, troublesome. In order to prove that the toilet on the upper flat has water seepage problem, or that the construction of an additional unit or sub-divided units on the upper floor have water seepage or structural problem which affect the lower floor, the inspection may take six months to a year the shortest or five to six years the longest. Yet, the problems can still remain unsolved. One of the reasons is that Hong Kong is a place where private property rights and privacy are highly esteemed, hence, officers of the FEHD and the BD often have difficulties in entering the premises concerned to conduct inspection.

Under the existing Buildings Ordinance (BO) and before any amendment is made, the Building Authority (BA) may break into premises in the presence of police officers. However, President, as you also understand, breaking into premises is in all circumstances not allowed, but if the BA breaks into the premises in the presence of police officers just for the purpose of inspecting a toilet, the press will surely condemn this act. Therefore, such action is seldom taken. Personally, I also do not agree to have a team of police officers accompanying staff of the BD to break into premises simply to check if the toilet has water seepage problem which may affect the lower floor. This action is not proportional and reasonable at all.

Therefore, what I care most is whether there will be reasonable arrangements after the legislation has been amended. First of all, the BD must have *prima facie* evidence to prove that there are unauthorized "sub-divided units" in the building concerned. By "subdivision", it does not mean dividing a flat into various independent rooms but into suites with toilet and bath facilities. I have visited these units a few times before. In a unit of 80 sq ft, there are toilet and bath facilities; and in a 600 to 700 sq ft flat originally with only one toilet and one bathtub, there are now four toilets and four bathtubs after subdivision. These facilities have certainly been connected to water pipes but the unknown contractors simply raised the platform and hid the new pipes connected to the main pipe under it.

If these works were done properly, of course, there will be no problem. Yet, if there are any slips, the flat below will suffer, because there is the risk of water seepage from all those four toilets. The risk has increased by 400%. To be frank, Secretary, I do not think you have encountered this kind of problems because you live in an independent house. However, for people like us who live in multi-storey buildings, we have all heard about or met with this kind of problem, that is, if the bathtub or toilet in the upper flat is not properly installed, the lower floor will be affected by water seepage. When a flat is "sub-divided" into four units, this flat will have a 400% risk of water seepage. What is more, contractors of these works usually try to save every penny. Why? That is because they have to meet the requirement of flat owners.

Two years ago, the flat above my office at Siu Wo Street, Tsuen Wan, underwent some construction works. I was not sure whether it is for subdividing the unit or for renovation, but the noise generated during office hours was so loud that my secretary wanted to take leave. When I asked her for the reason, she said that workers in the upper flat kept on drilling the walls with an air drill which was so big that I would not be able to lift it up. I then asked the workers if they had made an application but they did not answer me. I therefore called the BD and it was proven that they had not made any application. Yet, they did not take it as a problem and kept on drilling the walls and floor as the work required. In this case, how can the flat below not be exposed to water seepage and structural problem?

Therefore, the reason why I support this Bill is that I hope the BA would be empowered to carry out monitoring under a reasonable procedure with suitable

notification and warning. Under this reasonable procedure, if an owner refuses to provide information after BD officers' visit to the premises on two occasions, and still ignores the notice posted, the BA will be authorized to inspect the flat to see if there is any safety or seepage problem which may affect other flats. Therefore, I agree to set up this reasonable procedure. However, during our meetings, I found that many colleagues had shifted the focus to luxurious houses and some other issues. I do not know if this is the mentality of rich people. It seems that rich people always worry that the BA has excessive power and will enter their apartments for inspection without any reason, hence infringing their privacy.

First of all, the BA cannot enter premises without a reason. He cannot apply to the Magistrates' Court for a warrant without giving any justification. President, as I understand, the BD is now facing a big problem as most of the independent houses have UBW. Strictly speaking, these UBW may not necessarily pose any danger because the house owners might have hired authorized persons to carry out these works. While an owner may have a large basement in his house, its walls may be sturdy and do not have any structural problems. What is more, an independent house does not have any flat underneath, and its UBW will not affect other people or pedestrians outside the house.

According to the requirements in the Bill, it is indeed difficult for the BA to enter the premises for inspection, and I am not happy about that. I think the BA should have an appropriate power to collect evidence whenever necessary. This year, a number of cases involving UBW on the Peak are related to celebrities, tycoons or even our Chief Executive, Mr LEUNG Chun-ying. I will not talk about the case of Mr LEUNG Chun-ying for the moment. However, when I asked the BD about cases which involved other celebrities, I was repeatedly told that the owners had refused to allow BD officers to gain entry into their houses for inspection. Does the BD have the relevant power? Of course, it does. Yet, it is difficult for the BD to prove that the rooftop structures or basements of those independent houses are posing threats and identify the persons to be affected.

Therefore, the most difficult people to deal with are not those living in partitioned flats, but tycoons or people living in independent houses. This is because, firstly, they know the law; and, secondly, they can hire authorized

persons to handle their cases and hinder the Government from conducting inspection. In view of this, I am a bit worried about this legislative amendment but there is nothing I can do now since it has already been endorsed by the Bills Committee. However, I am afraid that it will be quite difficult for the BD to collect evidence and take necessary action when it deals with cases of UBW relating to independent houses in the future.

Take the houses of Henry TANG and LEUNG Chun-ying as examples. For the case of Henry TANG, evidence had been collection and examinations had been conducted to find out whether the area had been excavated before the application of occupation permit; and if so, when the authorized persons submitted the plan, there was an offence of fraud. Owing to this doubt, the authorities had to collect evidence. As for the case of LEUNG Chun-ying, the authorities dare not collect evidence because they think the justifications to do so are not strong, or they do not have the power to conduct extensive evidence collection work since the existing legislation does not empower them with too much power. After all, the BD has to act according to the law. They cannot simply say to the house owner that they believe there are UBW in the house and thus want to go inside to inspect the relevant UBW as well as the basement, and to collect other evidence.

The authorities must study the legislation very carefully. Otherwise, in case there is any challenge from owners or authorized persons, the Government may then find that their hands are tied unless the owners are willing to co-operate. After the legislative amendment, when the Director of Buildings applies for a warrant, the Judge may say that the independent house in question poses no danger, and as no one lives on the lower floor, even if the house collapses, nobody will be killed, not even the king of the underworld.

Therefore, the Government will have to face great difficulties in collecting evidence and information in the future. In fact, I have some reservations about the consensus that the Bills Committee finally came up with. Of course, I know that various members of the Bills Committee do not agree with my analysis and support the latest amendment to narrow the powers of the BA in dealing with these cases. According to the amendment, the BA must have substantiated evidence or reasonable suspicion before he can apply to the Magistrates' Court for a warrant to enter the premises for inspection. Of course, if it is too easy for the BA to apply for a warrant, private flat owners will live in fear, thinking that the

BD is having excessive power which infringes their privacy. I agree that there should be a balance, but the law should not be tilted towards one side and have the BA's hands tied.

President, on the other hand, I think the existing legislation has not addressed one issue. In many cases involving UBW of luxurious houses, the BA often holds the views that the purpose of taking action is not to institute criminal prosecution, and after the owner has rectified the UBW in his premises, the BA generally will not follow up the cases anymore. This declared policy has indeed encouraged many house owners to carry out UBW boldly. Many of my university schoolmates are now in the construction industry and they told me that most of the houses on the Peak have a basement. This is because owners know that even if their unauthorized basement has been exposed, most probably, they will not be prosecuted for criminal offence, and they can walk away easily so long as they will voluntarily hire authorized persons to fill up the basement.

President, do you know the per-square-foot price of a house on the Peak? If a person builds a basement of 1 000 sq ft illegally after he has bought a house of 2 000 sq ft, the value of his house will be increased by one third. By doing a simple calculation, we can see that its price will jump from \$300 million to \$400 million immediately. It is a big economic incentive. What is more, the developers have made it convenient to build a basement. Almost all developers of houses on the Peak will hint to the buyers that an area has been excavated, but this fact should be concealed in the application for occupation permit; and after the issuance of the permit, they can finish off the remaining works. Therefore, owners need not concern about excavation as the place has already been dredged in advance. All that is required is the renovation work.

President, it is no longer a simple issue of public safety. Instead, it is a problem of having bad precedents which worsen the regulation. Both the legislation and the practice of the BD have indirectly encouraged buyers and developers of independent houses to violate the BO; yet, the authorities have turned a blind eye to it. In the case of LEUNG Chun-ying, at the end of the day, the authorities will not institute any criminal prosecution unless they are confident in proving that he had conspired to defraud when he submitted the plan, or that he cheated the BD with a wrong plan. However, as we all know, it is hard to prove. That explains why when rich people buy a piece of land from developers to build a house, a basement area has already been brazenly developed

for future use. Is that what we want to see? While this issue may not be directly relevant to the Bill under discussion, I would like to express my extreme discontent with the existing law-enforcement policy and follow-up actions of the BD.

I have even thought of the feasibility of asking these occupants to pay a land premium if it has been proved that they have occupied the land for 10 years. Take the house of LEUNG Chun-ying as an example. Let me first assume that the basement was not built by him. For a basement with an area of 400 sq ft, what is the per-square-foot price? If the per-square-foot-price is \$30,000, taxpayers will benefit if this sum of money can be recovered. However, my fellow colleagues, the Government has not asked him to make any payment.

For house owners, the price for brazenly building an unauthorized basement and using it for 10 years is to fill the basement up; they would neither have to face criminal prosecution nor claims of land premium. In contrast, those who occupy Government land in the New Territories will at least have to repay a waiver fee. While LEUNG Fuk-yuen, owner of the Lychee Garden, has at least paid several thousand dollars or tens of thousands of dollars for his unlawful occupancy, LEUNG Chun-ying does not even have to pay a cent. The policy is ridiculous, isn't it? It will just encourage unlawful occupancy as the rich will find it too stupid not to do so. President, if I am fortunate enough to come back to this Council for the next term, I will definitely follow up this issue. Thank you, President.

**MR ABRAHAM SHEK:** President, as Hong Kong prides itself on the rule of law, which as the 17th century writer, Thomas FULLER puts it, "be you ever so high, the law is above you." Hardly is there any place for Buildings Legislation (Amendment) Bill 2011 to be left ungoverned. Packaged with new measures to further enhance building safety, there has been simmering concern over the legal consequence thrust upon the building owners of court warrants to enter their living premises and the ambiguous regulation of the unauthorized signboards. Prior to further discussion, I shall thank Mr IP Kwok-him for his chairmanship of the seven meetings held since late 2011.

One major bone of contention of the Bill pertains to the grounds on which Building Authority could apply to the Magistrates' Court for a warrant for entering private enterprises. The proposed section 22(1B)(a)(i) and (ii) which

provides respectively that "a magistrate may issue a warrant authorizing the Building Authority or an authorized officer to enter and, if necessary, break into the premises ..... if the magistrate is satisfied ..... that there are reasonable grounds for suspecting that building works have been or are being carried out to the premises or land in contravention of any provision of this Ordinance", and that "the use of the premises or land has contravened any provision of this Ordinance" are too wide. It has caught our alarm that even some minor works in contravention of Buildings Ordinance (BO) may trigger the application for a warrant to enter the interior of premises, and thus the property rights of individual owners will be infringed. This cannot be acceptable. Unless the grounds for warrant application were to be narrowed with clearer definitions on key concepts "reasonable grounds" and "any provision of the Buildings Ordinance", there is no-go for such arbitrary provision to be passed that has only sent shockwaves to all the 1.2 million property owners.

While acknowledging that it is the Government's duty to spare no pains to take enforcement actions that may include a break-in to private premises, its duty to reassure the premise owners that the law bears its relevance in implementing the policy objective should not be overlooked. Subsequently, the amendments by Government of section 22(1B)(a)(i)(A) to (C) and (ii) have been proposed in attempt to dispel the clouds on the grounds for warrant proposal. Nevertheless, unlike 22(1B)(a)(i)(B) and (C) which include "material divergence or deviation from any plan" and "not in compliance with standard of structural stability, public health or fire safety" as reasonable grounds for issuance of warrants, the 22(1B)(a)(i)(A) specifying "they are in contravention of section 14(1)" fails to settle the public nerves over its infringement to individuals' privacy and property rights resulted from the law which covers "situations where with no plans were submitted in respect of works for prior approval of plan and consent to commencement of works from Building Authority". Given that many situations that may not be relevant to the building safety may fall within the section, hardly is it justified for the provision to constitute as the "reasonable ground" criterion to be satisfied for warrant being granted to enter individual premises.

In face of strong opposition to the proposed amendment out of concerns of the privacy and property rights issues, it is pleased to learn that the Government has rescinded 22(1B)(a)(i)(A) at the 11th hour. On principle, I have no qualms over the necessity of our Government to invoke the power to break into individual premises out of the building safety concern under specific



circumstance; in reality, it is more important that the Government acting as a gatekeeper of public interest should not set its sight above any laws, especially the Basic Law, in formulating any public policies that may ironically result in our individual rights being eroded. In striking a reasonable balance between public safety and private property rights, the Government is urged to consider that a sufficient degree of severity and imminence should be incorporated as additional criterion for the forthcoming justification for warrant issuance by the Court.

President, another area that warrants our Government to revisit its consideration is its proposal to introduce a statutory control system for signboards under section 39C of the BO. As the enabling provision in section 39C(1A) is so wide that is not restricted to the control of signboards, the uniform regulation of "certain unauthorized buildings or building works" covered in section 39C is next to impossible, considering their different compliance requirements. While it is appreciated that the Government will make an amendment regulation in due to prescribe the technical details of unauthorized signboards, in order to avoid possible disputes that the validation scheme could also be apply to other items, the best way out is that all clauses related to signboard requirements (section 33B for 30 years old building) are to be transferred to the new subsidiary legislation. In this way, not only the control regime of the unauthorized signboards will be clarified, the technical details concerned would be subject to more focused scrutiny by the legislature in the greatest public interest.

Upon the passage of the Bill, it is hoped that the tragic building collapse incident in Ma Tau Wai that has claimed a total of four lives and made many homeless in January 2010 would be consigned to history. Taking the leaf of this bloody painstaking lesson, the collaboration between the flat owners and the Government is largely essential: the flat owners have to make sure and pay heed to the requirement of any building works which are always on par with the standards stipulated in the law; the Government, on the premise of consensus reached upon public consultation, shall ensure the policies relating to building safety legally enforced effectively with a view to the changing times. As an adage goes, "a journey of thousand miles always begins with a step", may our step leapt today will provide homes for our future generations to live peacefully and merrily.

Thank you, President.

**SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): I now suspend the meeting to 9 am on 16 July (next Monday).

*Suspended accordingly at twenty-nine minutes past Twelve o'clock.*

## Annex III

## Immigration (Amendment) Bill 2011

## Committee Stage

Amendments moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
4(3)	In the proposed section 17I(2)(c), in the Chinese text, by deleting “時限屆滿” and substituting “失效”.
7	In the proposed section 37U(1), by deleting the definition of <i>revocation decision</i> and substituting—  <p style="margin-left: 40px;">“<i>revocation decision</i> (撤銷決定) means—</p> <p style="margin-left: 80px;">(a) a decision made by an immigration officer under section 37ZL(1); or</p> <p style="margin-left: 80px;">(b) a decision made by the Appeal Board under section 37ZLA(1);”.</p>
7	In the proposed section 37U(1), in the definition of <i>substantiated claim</i> , in paragraph (a), by adding “and in respect of which no revocation decision has been made by an immigration officer” before “; or”.
7	In the proposed section 37U(1), in the definition of <i>substantiated claim</i> , in paragraph (b)(i), by adding “and no revocation decision has been made by the Appeal Board” before “; or”.
7	In the proposed section 37U(1), in the definition of <i>substantiated claim</i> , in paragraph (b)(ii), by adding “by an immigration officer” after “was made”.

- 7 In the proposed section 37V(1), by deleting “(3) and (4)” and substituting “(3), (4) and (5)”.
- 7 In the proposed section 37V(3), by adding “by an immigration officer” after “is made”.
- 7 In the proposed section 37V, by adding—
- “(5) If a revocation decision is made by the Appeal Board in respect of a substantiated claim, the claim must be treated as finally determined on the making of that decision.”.
- 7 In the proposed section 37ZB(1), by deleting “may”.
- 7 In the proposed section 37ZB(1)(a), by adding “may” before “require”.
- 7 In the proposed section 37ZB(1)(a), by deleting “; or” and substituting “; and”.
- 7 In the proposed section 37ZB(1)(b), by adding “must” before “require”.
- 7 By deleting the proposed section 37ZE(4)(a) and (b) and substituting—
- “(a) the decision;
- (b) the reasons for the decision; and
- (c) the person’s right under section 37ZP to appeal against the decision.”.
- 7 By deleting the proposed section 37ZG(5)(a) and (b) and substituting—

- “(a) the decision;
- (b) the reasons for the decision; and
- (c) the person’s right under section 37ZP to appeal against the decision.”.

7 In the proposed section 37ZG(7), in the Chinese text, by adding “有關” after “適用於”.

7 In the proposed section 37ZG(8), in the Chinese text, by adding “有關” after “如就”.

7 By deleting the proposed section 37ZI(5) and substituting—

- “(5) In determining whether there are substantial grounds for the belief referred to in subsection (3), all relevant considerations are to be taken into account, including, where applicable, the following matters in relation to the conditions in the torture risk State—
  - (a) whether there is a consistent pattern of gross, flagrant or mass violations of human rights in the torture risk State; and
  - (b) whether there is any region within the torture risk State in which the claimant would not be in danger of being subjected to torture.”.

7 In the proposed section 37ZL, in the heading, by deleting “**decision to accept torture claim etc.**” and substituting “**immigration officer’s decision to accept torture claim**”.

7 By deleting the proposed section 37ZL(1) and substituting—

- “(1) An immigration officer may, on a ground for a revocation decision specified in section 37ZLB, revoke a decision made by an immigration officer under section 37ZI(1)(a) accepting a torture claim as substantiated.”.

- 7 By deleting the proposed section 37ZL(2).
- 7 In the proposed section 37ZL(4)(a) and (b), by deleting “(1)(a) or (b)” and substituting “(1)”.
- 7 By deleting the proposed section 37ZL(5).
- 7 By adding—
- “37ZLA. Revocation of Appeal Board’s decision to reverse decision rejecting torture claim**
- (1) On an application made by an immigration officer, the Appeal Board may, on a ground for a revocation decision specified in section 37ZLB, revoke its decision that reversed a decision made by an immigration officer under section 37ZI(1)(b) rejecting a torture claim.
- (2) Before making an application under subsection (1), an immigration officer must give the claimant written notice of the intended application, and the notice must—
- (a) state the reasons for the intended application; and
- (b) state that the claimant may, within 14 days after the notice is given, inform the immigration officer by written notice of the claimant’s objection to the intended application and the reasons for the objection (*objection notice*).
- (3) If—
- (a) the claimant has not given an objection notice in accordance with subsection (2)(b) and an immigration officer decides to make an application under subsection (1); or
- (b) after having considered the claimant’s objection notice, an immigration officer

decides to make an application under subsection (1),

the immigration officer must make the application by filing with the Appeal Board a notice of application in a form specified by the Chairperson of the Appeal Board.

- (4) As soon as practicable after the filing of a notice of application, an immigration officer must serve on the claimant a copy of the notice of application.

### **37ZLB. Grounds for revocation decision**

A ground specified in any of the following paragraphs is a ground for a revocation decision mentioned in section 37ZL(1) or 37ZLA(1)—

- (a) any information or documentary evidence submitted in support of the claim is false or misleading and the false or misleading information or evidence is material to the substantiation of the claim;
- (b) information was not disclosed to an immigration officer or (on an appeal) the Appeal Board and the undisclosed information would undermine, to a material extent, the merits of the claim;
- (c) the torture risk giving rise to the claim has ceased to exist due to changes in circumstances of the claimant or the torture risk State.”.

7

By deleting the proposed section 37ZO(2) and substituting—

- “(2) The function of the Appeal Board is to hear and determine—
- (a) an appeal made under section 37ZP; and
  - (b) an application for a revocation decision under section 37ZLA.”.

- 7 By adding before the proposed section 37ZP(a)—  
“(aa) section 37ZE(4) or 37ZG(5) (decision not to re-open a torture claim);”.
- 7 In the proposed section 37ZP(b), by adding “made by an immigration officer” after “decision”.
- 7 In the proposed section 37ZT(2), in the Chinese text, by deleting “經” and substituting “在以下時間”.
- 7 In the proposed section 37ZW, in the Chinese text, by deleting “為施行本條例，任何人不得只憑藉其酷刑聲請，而視為在該人留在香港的任何期間屬通常居於香港” and substituting “就本條例而言，任何人在只憑藉其酷刑聲請而留在香港的任何期間內，不得被視為通常居於香港”.
- 7 By adding—  
**“37ZX. Savings and transitional arrangements**  
Schedule 4 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of the Immigration (Amendment) Ordinance 2012 ( of 2012).”.
- 10 By deleting the proposed section 43A and substituting—  
**“43A. Disrupting proceedings of Torture Claims Appeal Board**  
A person who, without reasonable excuse, disrupts the proceedings of the Torture Claims Appeal Board established by section 37ZO commits an offence and is liable to a fine at level 3 and to imprisonment for 6 months.”.



- 12 In the proposed Schedule 1A, by deleting “[ss. 37U, 37ZL” and substituting “[ss. 37U”.
- 12 In the proposed Schedule 1A, in section 1(1), by adding—  
“*appeal* (上訴) means—  
(a) an appeal made under section 37ZP; or  
(b) an application for a revocation decision under section 37ZLA;”.
- 12 In the proposed Schedule 1A, in section 2(5), by deleting “under section 37ZP”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 2(5), by deleting “訴。” and substituting “訴，”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 8(1), by deleting “在第(2)款的規限下” and substituting “除第(2)款另有規定外”.
- 12 In the proposed Schedule 1A, in section 8(1), by adding “filed under section 37ZQ(1)” after “notice of appeal”.
- 12 In the proposed Schedule 1A, in section 8(2), by adding “under section 37ZQ(1)” after “notice of appeal”.
- 12 In the proposed Schedule 1A, by renumbering section 9 as section 9(1).
- 12 In the proposed Schedule 1A, in section 9(1), by adding “and the person who has lodged the appeal” after “provide to the Appeal

Board”.

- 12 In the proposed Schedule 1A, in section 9(1)(a)(ii), by deleting “or”.
- 12 In the proposed Schedule 1A, in section 9(1)(b), by adding “of an immigration officer under section 37ZL(1)” after “revocation decision”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 9(1)(b)(ii), by adding “該” after “考慮”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 9(1)(b)(iii), by adding “該” after “接納”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 9(1)(b)(iv), by adding “該” after “撤銷”.
- 12 In the proposed Schedule 1A, in section 9(1)(b)(v), by deleting the full stop and substituting a semicolon.
- 12 In the proposed Schedule 1A, in section 9(1), by adding—
- “(c) if the decision being appealed against is a decision under section 37ZE(4) not to re-open a torture claim withdrawn by the person who made the claim—
    - (i) a copy of any completed torture claim form relating to the torture claim;
    - (ii) a copy of the written record of any interview of the person conducted by an immigration officer in considering the torture claim;
    - (iii) a copy of the person’s notice withdrawing the claim; and
    - (iv) a copy of any evidence in writing provided by the person under section 37ZE(2); or

- (d) if the decision being appealed against is a decision under section 37ZG(5) not to re-open a torture claim treated as withdrawn on a person's failure to return a completed torture claim form—
  - (i) a copy of the written notice under section 37ZG(2) informing the person that the claim is treated as withdrawn; and
  - (ii) a copy of any evidence in writing provided by the person under section 37ZG(3).”.

12

In the proposed Schedule 1A, in section 9, by adding—

- “(2) The Director must, as soon as practicable after filing with the Appeal Board a notice of application for a revocation decision under section 37ZLA(3), provide to the Appeal Board and the claimant—
  - (a) a copy of the completed torture claim form relating to the torture claim in respect of which the application is made;
  - (b) a copy of the written record of any interview of the claimant conducted by an immigration officer in considering the torture claim;
  - (c) a copy of the written notice under section 37ZJ(1) informing the claimant of an immigration officer's decision rejecting the torture claim;
  - (d) a copy of the written decision given under section 21(2) of this Schedule reversing an immigration officer's decision rejecting the torture claim;
  - (e) a copy of the written notice under section 37ZLA(2) informing the claimant of an intended application for a revocation decision to be made by the Board; and
  - (f) a copy of the claimant's objection notice (if any) referred to in section 37ZLA(2)(b).”.

- 12 In the proposed Schedule 1A, in the Chinese text, in section 14(1), by deleting everything after “送達” and before “的副本” and substituting “載有處長將會在聆訊中倚據的所有文件的文件冊(包括將會作出的陳述), 且須將該文件冊”.
- 12 In the proposed Schedule 1A, in section 18, in the heading, by adding “**in an appeal under section 37ZP**” after “**Board**”.
- 12 In the proposed Schedule 1A, in section 18(1), by adding “under section 37ZP” after “an appeal”.
- 12 In the proposed Schedule 1A, in section 18(2)(a), by deleting “or”.
- 12 In the proposed Schedule 1A, in the Chinese text, in section 18(2)(b), by deleting “按理並不可” and substituting “並非可在合理情況下”.
- 12 In the proposed Schedule 1A, in section 18(2)(b), by deleting “made.” and substituting “made; or”.
- 12 In the proposed Schedule 1A, in section 18(2), by adding —  
“(c) the Board is satisfied that exceptional circumstances exist that justify the consideration of the evidence.”.
- 12 In the proposed Schedule 1A, by deleting section 18(3).
- 12 In the proposed Schedule 1A, by adding —  
**“19A. Evidence considered by Appeal Board in an application for revocation decision**  
In an application for a revocation decision under section 37ZLA, the Appeal Board—  
(a) has the power to review the merits of the case;  
and

- (b) may consider any evidence that the Board considers relevant.

**19B. Evidence on oath etc.**

For the purposes of sections 18 and 19A of this Schedule, the Appeal Board may—

- (a) administer oaths and affirmations;  
 (b) receive and consider any material by way of oral evidence (on oath or otherwise) or written statements or documents (by affidavit or otherwise).”.

12 In the proposed Schedule 1A, in section 21, by adding—

“(1A) On an application for a revocation decision under section 37ZLA, the Appeal Board may allow or refuse the application.”.

13 In the proposed Schedule 4, by deleting “**Schedule 4**” and substituting—

“**Schedule 4** [s. 37ZX]”.

13 In the proposed Schedule 4, in section 1, by adding—

“(4) To avoid doubt, nothing in this Schedule is to be construed as giving validity to anything done otherwise than in the lawful exercise of a power or performance of a duty.”.

13 In the proposed Schedule 4, in the Chinese text, by deleting section 2(4)(a) and substituting—

“(a) 須視為符合以下說明的酷刑聲請：該酷刑聲請遭根據第37ZI(1)(b)條作出的決定駁回，而該決定獲上訴委員會確認；及”。

- 13 In the proposed Schedule 4, in the Chinese text, in section 7, by deleting “就視為根據本附表提出及繼續的酷刑聲請” and substituting “就根據本附表視為酷刑聲請並得以繼續”.
- 13 In the proposed Schedule 4, in Table of Transitional Provisions, in item 10, by deleting “37ZL” and substituting “37ZLA”.
- 14 In the proposed Form No. 8, by deleting “36(1A)” (wherever appearing) and substituting “36(1)”.

Immigration (Amendment) Bill 2011

**Committee Stage**

Amendment moved by Dr. the Honourable Margaret NG

Clause

Amendment Proposed

7  
[NEGATIVED]

In the proposed section 37Y(2)(a), by deleting “28 days” and substituting “90 days”.