



PANEL ON SECURITY

Unified Screening Mechanism

Background

1. The Law Society has long advocated the Administration should introduce a coherent and comprehensive system for contemporaneous assessment of both torture claims made under the Convention Against Torture (“CAT”) and claims for refugee status filed with the United Nations High Commissioner for Refugees (“UNHCR”) under the 1951 United Nations Convention relating to the Status of Refugees (“Refugee Convention”). As the Refugee Convention does not apply to Hong Kong the Government has stated that it has no obligation to admit persons seeking refugee status or to handle refugee status determination (RSD) applications.
2. The Law Society has also made the following observations:
 - (a) The UNHCR assessment process is not amenable to judicial scrutiny. Having one standard for the screening of a person under the CAT and another for RSD by a body immune from challenge in the Courts is a serious anomaly.
 - (b) There have been many cases where claimants have made refugee and CAT claims, or where claimants have made a CAT claim first, and when this fails launched a refugee claim, or vice versa. The increase in the number of such claims and the UNHCR’s lack of resources increases the burden on the UNHCR. The system gave such claimants “*2 bites at the cherry*”. As a result of this split system, many claimants who failed under the CAT could not be removed from Hong Kong because they immediately put in an application to the UNHCR in order to prolong their presence in Hong Kong.
 - (c) The Law Society noted that as the HKSAR must interview all CAT claimants, it would be sensible if a decision on RSD could also be made during a

comprehensive interview process. The HKSAR could then take control of the entire process and put in place a comprehensive legislative framework.

The legislation should include:

- basic screening, including the establishment of an independent tribunal
 - immigration status pending a decision
 - related issues such as the provision of social assistance during the process.
3. The Administration decided to introduce a scheme for CAT claims only and refused to conduct a complete review of the system to include asylum seekers. There was an obvious weakness between the two systems and some claimants exploited the poor decision-making by making legal challenges.

Unified Screening System

4. The Security Bureau now proposes a unified system to assess all non-refoulement claims to assess claims for non-refoulement protection lodged by claimants under:
- (a) The Convention Against Torture (CAT); and/or
 - (b) Hong Kong Bill of Rights Ordinance – Article 3 (torture and/or cruel, inhuman or degrading treatment or punishment “CIDT”); and/or
 - (c) 1951 Convention relating to the Status of Refugees (persecution claims)

We note the proposal is to base the USM on the statutory CAT screening mechanism and has indicated that it will be an “administrative scheme which will include, inter alia:

- Completion by the claimant of a single form for all non-refoulement claims
- All available documentary evidence to be supplied in “one go”
- Determinations will include consideration of any determination made by the UNHCR
- Decisions will be provided to claimants
- Appeals may be made to the Torture Claims Appeal Board

The Law Society considers the proposal to implement USM by an administrative scheme to be inappropriate and undesirable and is a continuation of the Administration’s reluctance to implement a truly comprehensive policy to deal with non-refoulement cases.

We also note the Security Bureau has indicated that:

- additional training must be provided – this should include the legal profession

- publicly funded assistance is to be provided through the Duty Lawyer Service

Humanitarian Assistance

5. The Law Society notes the Administration is content to maintain its existing policy in relation to “humanitarian assistance” to those individuals who have made *successful claims* under the CAT or the Refugee Convention.
6. The Law Society generally supports the proposal to introduce a USM and supports the introduction of a statutory scheme. The Law Society will provide detailed comments on the operational details when a Bill has been gazetted.

The Law Society of Hong Kong
23 July 2013

1357289