

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

香港添馬添美道 2 號

2 Tim Mei Avenue, Tamar, Hong Kong

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香港中區
立法會道 1 號
立法會綜合大樓
立法會跟進免遣返聲請統一審核機制
有關事宜小組委員會秘書處
(經辦人：馬淑霞女士)

馬女士：

**立法會跟進免遣返聲請統一審核機制
有關事宜小組委員會**

2019 年 1 月 15 日會議跟進事項 — 郭榮鏗議員的提問

關於郭榮鏗議員在上述會議後提出的跟進問題，政府經諮詢相關各方後提供補充資料如下：

試驗計劃

2. 一如當局就上述會議提交的文件（立法會CB(2)581/18-19(01)號文件）所述，為免遣返聲請人提供公費法律支援試驗計劃（試驗計劃）向免遣返聲請人提供公費法律支援，其涵蓋範圍與當值律師服務的免遣返聲請法律支援計劃（當值律師服務計劃）一樣。參與試驗計劃的律師，其資歷亦與當值律師服務計劃名冊上的律師無異。正如當值律師服務的獨立運作，入境事務處（入境處）同樣也不參與試驗計劃的行政工作（包括指派律師和提供法律意見）。根據

試驗計劃下獲指派的律師會按個別個案的事實和案情，向有關聲請人提供獨立意見，不受任何人干預。因此，郭榮鏗議員在問題(1)提出的指控毫無根據。

3. 試驗計劃的檢討工作即將展開，為免遣返聲請人提供公費法律支援試驗計劃諮詢委員會將就檢討工作提供意見。該委員會由已退休的終審法院司法常務官擔任主席，成員包括兩個法律專業團體的代表及其他委員。

當值律師服務

4. 在整個審核過程中，為聲請人提供公費法律支援的律師應對聲請的案情最為熟悉，因此是在根據個別個案的事實和入境處的相關決定後，去評估是否有上訴理據的適當人選。我們亦相信，這些律師受過兩個法律專業團體所安排或認可的專門訓練，能夠獨立、妥善及專業地考慮每宗個案的案情；如認為理據充分，便會繼續向聲請人提供所需的法律援助。當值律師服務就郭榮鏗議員來信中問題(2)作出的回應載於附件（只備英文版本），以供參考。

上訴

5. 一如上文重申，聲請人在上訴階段會否繼續在公費法律支援下獲提供法律代表，視乎律師的案情評估。至今，我們看不到有任何證據顯示這項安排有損上訴程序的效率或公正。

6. 至於公布酷刑聲請上訴委員會（上訴委員會）的裁決方面，由於現時尚待處理的上訴約有 6 400 宗，預料需用兩至三年方可清理積壓個案，上訴委員會短期內仍要集中加快處理上訴，同時確保過程符合高度公平標準。然而，政府和上訴委員會在顧及相關法律、人手和資源的因素後，繼續考慮相關建議。

立法建議

7. 儘管在打擊非法入境和加快審核聲請方面取得進

展，但未來仍然挑戰重重，特別是在處理上訴和遣返聲請被拒者方面。在有關立法建議中，鑑於入境處為加快審核聲請而採取的各項行政措施成效顯著，政府認為有必要把這些有效措施適當地納入法例，藉以訂明法定程序，為統一審核機制提供法律基礎，以及防止程序再被濫用。在法例中清楚訂明相關規定，日後遇到任何蓄意妨礙或阻延的情況時便可更有效地應對，並避免不必要的爭議。此外，加快審核聲請和處理上訴的程序不一定損及法律要求的高度公平標準。聲請人無需長時間等待當局作出決定，應能符合聲請人和社會大眾的利益。

8. 此外，有意見指較早前積壓的聲請是「過往審核機制失去合法性」所致，這個說法實屬錯誤。事實上，需由入境處根據統一審核機制審核的大約 23 000 宗聲請當中，約有 70%（16 000 宗）是終審法院於 2012 年和 2013 年作出相關判決後首次提出的聲請，而非根據先前程序提出或決定的聲請。尚待審核的聲請自 2014 年起增多，主要因為非法入境者和逾期逗留者人數急增，以及在統一審核機制實施初期，部份聲請人濫用機制以拖延審核程序所致。2014 年和 2015 年期間，新聲請宗數的增幅超逾四倍（即由 2010 年至 2013 年期間每月平均 102 宗，增加至 2014 年 3 月至 2015 年 12 月期間每月平均約 440 宗）。

入學安排

9. 免遣返聲請人如為學齡兒童，而且不可能在短期內被遣返，政府會按每宗個案的情況，考慮准許他們接受教育。當這些兒童的父母要求協助子女入學，教育局會徵詢入境處的意見。如入境處不反對這些兒童就讀本港學校，教育局便會提供入學協助。視乎個別個案中兒童的年齡和教育背景等因素，合資格的兒童會在短期內獲安排入學。教育局沒有備存入學安排服務平均所需時間的統計數字。

10. 在 2017 年，教育局共收到 193 宗免遣返聲請人要求入學協助的申請。入境處不反對其中 189 宗（98%）申請。教育局會根據申請獲批者的居住地區及學習程度，安排他們入讀合適的學校。

11. 除了短期內須被遣返的兒童外，教育局一直能為屬於合資格學齡兒童的免遣返聲請人安排入學。因此，教育局認為暫時無需與非政府機構合作，為這些學童提供入學安排服務。

保安局局長

(張浩智  代行)

2019 年 2 月 20 日

總幹事
王姬麗



Grace S. Wong
Administrator

Ref: CAT1/Adm 1/19 XXII
F1A/CSO

By email & By Post

18 January 2019

Director of Administration,
Administration Wing,
Chief Secretary for Administration's Office,
26/F, West Wing, Central Government Offices,
2 Tim Mei Avenue,
Tamar, Hong Kong.

For the Attention of Ms. Queenie Lee

Dear Queenie,

Letter dated 16 January 2019 from Hon. Dennis Kwok

1. We refer to your email in the afternoon of 16 January 2019 to our Mr. Anthony Ma for our urgent input on Q2 of Hon. Dennis Kwok's letter to the Government dated 15 January 2019.

2. As a matter of maintaining a "high degree of fairness" as requested by the law, the Duty Lawyer Service as the provider of legal representation to these claimants are striving hard to provide all our claimants with the best legal service so far as our human and financial resources can afford to provide. Based on this principle it has always been the policy and practice of the Duty Lawyer Service that second opinion will be provided as set out hereinunder.

3. Whenever a decision of non-refoulement claim has been determined by the Immigration Department after the screening interview dismissing the claim; the said decision will be immediately sent to the handling duty lawyer for his/her urgent advice and for his/her considering whether there is any arguable ground and/or merit in appealing against the said decision by way of an appeal/petition to the Torture Claim Appeal Board.

4. Arrangement will be made for the handling duty lawyer to have a conference with the unsuccessful claimant after the duty lawyer has studied and considered the same. The contents of the Decision will be fully explained to the claimant with the assistance of an interpreter (where appropriate) including

香港灣仔告士打道三十九號夏慤大廈八〇八至八〇九室
Suites 808-809 Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong.
Tel : (852) 2526 5969 Fax : (852) 2868 1754 Home Page : www.dutylawyer.org.hk



whether there is merit and/or arguable ground for appealing against the Decision by way of appeal/petition to the Torture Claim Appeal Board, if any.

5. If the handling duty lawyer is of the firm view that there is no arguable ground or merit in bringing any appeal/petition against the Decision, a fresh and/or second duty lawyer will be brought in and/or assigned to give a second opinion and to examine carefully if there is indeed no arguable ground of appeal/petition when there are:

(a) If the claimants do not accept the advice of the handling duty lawyer and requested for a second opinion, in our past experience such requests were made by various routes including:

(i) Making expressed request of such to the handling duty lawyer and/or DLS' Case Officer.

(ii) Seeking assistance through a Third Party via other NGO or Pressure Group or human rights lawyers who would make requests on their behalves. Please also see (d) below.

(b) The original assigned handling duty lawyer who despite advising that there is no arguable ground or merit for appeal and/or petition, is of the opinion that it is in the interest of the claimant, the claim should be reassigned to another duty lawyer for giving a second opinion of the same to the claimant afresh (such as in some “marginal cases”);

(c) In other justified circumstances, including that the originally assigned handling duty lawyer, for any reasons, was unavailable to have a conference with the claimant within the 14-day deadline but has given advice to us that there is no arguable ground for appeal/petition.

(d) For those cases where a claimant has approached another private lawyer on his own (without first notifying the Duty Lawyer Service) and that lawyer which the claimant approached subsequently informs the Duty Lawyer Service that he/she is of the view that there are grounds for appeal and/or petition, the Duty Lawyer Service will consider firstly whether or not those grounds mentioned by the claimant and/or the lawyer whom the



claimant approached have or have not been raised or considered by the original assigned handling duty lawyer before and secondly also to consider whether or not there has been any new piece of evidence provided by the claimant since the Notice of Decision was issued by the Immigration Department.

6. When assigning a fresh duty lawyer to give a second opinion to the claimant, it is our practice to consider:-

(a) The gender of the claimant (e.g. a female duty lawyer will normally be assigned to a female claimant);

(b) The complexity of the case in question;

(c) The seniority and experience of the original handling duty lawyer, that is, the duty lawyer giving a second opinion will normally be more senior and experienced than the original handling duty lawyer or at the very least in similar standing.

7. After we have assigned the second duty lawyer for giving a second opinion, a whole set of case papers will be dispatched to the second assigned duty lawyer, and thereafter, conference will be arranged as soon as possible so that the 14-day deadline could be met.

8. The original handling duty lawyer will be informed that a second opinion will be sought and provided to the claimant and his/her comment on that will be welcomed.

9. During the conference, the claimant will be further advised by the second duty lawyer that according to his/her legal expertise whether there is any arguable ground for appeal/petition. If the second duty lawyer considered that there are grounds for appeal, we will immediately assist the claimant to file the "Notice of Appeal" within the 14 days deadline or apply for late filing of appeal.

10. If the second duty lawyer confirms the opinion of the original handling duty lawyer that there is no arguable ground or merit for appeal/petition and is also of the view that there is no ground for appeal/petition, the Duty Lawyer Service



will cease to represent the claimant in any appeal, the claimant will be informed of our decision and be reminded once again about the dead-line and procedure for filing appeal by himself/herself.

11. It must be noted that a duty lawyer like any competent counsel can only be as good as his/her case. All lawyers must always bear in mind the Bar Code of Conduct which also applies to Solicitors acting as Advocates (i.e. duty lawyers) which states very clearly in Code 10.24 that “a practising Barrister should not (in criminal cases) settle grounds of appeal unless he considers that the proposed appeal is reasonably arguable”. The Duty Lawyer Service follows the same principle after providing all the necessary legal advice to these claimants.

12. The above have fully set out the Duty Lawyer Service’s principle, practice and guidelines on the “Review Mechanism” (for cases in which the original handling Duty Lawyer does not hold the view and advise that there is any arguable ground or merit for appeal/petition to the Torture Claim Appeal Board) and also the guideline on whether a claimant should be continued to be represented in any subsequent appeal/petition to the Torture Claim Appeal Board in the screening process in full response to the 2nd question posed by Hon. Dennis Kwok.

13. Please do not hesitate to contact us in case of any enquiry and/or information that you may wish from us.

Yours sincerely,

Grace S. Wong
Administrator