

**Written Submission for the Panel on Welfare Services**

**“Ways to Improve Situation of Refugees, Torture Claimants  
and Asylum Seekers in Hong Kong”**

**Special meeting on Monday, 22 July 2013, at 3:00 pm**

As is the case for most policies and legislation concerning asylum seekers / torture claimants / claimants for non-refoulement protection, the administration seemed to have taken a reactive approach when formulating policies.

All the way back in 2004, the Court of Final Appeal has determined in the case of *Secretary of Security v Sakthevel Prabakar* (2004) 7 HKCFAR 187 that the administration has a duty to assess torture claims. At that point, the Government should have considered a comprehensive policy to handle the population of torture claimants who are in Hong Kong waiting for their cases to be assessed, including e.g. the need to provide adequate welfare, a clear detention policy etc. The Government did no such thing. It took several judicial reviews (which our firm took) and criticisms from the Court to force the Government to set up the welfare system managed by International Social Services. That system was set up in 2006.

In a paper submitted to LegCo in July 2006 jointly by the Security Bureau, the Health, Welfare and Food Bureau and the Education and Manpower Bureau (LC Paper No. CB(2)2747/05-06(01), the administration made a statement which is telling of the approach towards welfare support of asylum seekers and highlights the root of the present problem, which is that the welfare support system for asylum seekers / torture claimants / claimants for non-refoulement protection is inefficient, designed as a band-aid solution, and does not meet or satisfy the Government’s responsibilities towards the population: -

*“In formulating the policy regarding the nature, level and form of support to be given... The aim is to provide support which is considered sufficient to prevent a person from becoming destitute while at the same time not creating a magnet effect which could have serious implications to the sustainability of our current support systems.”*

What amounts to “destitution” of claimants for non-refoulement protection depends on various factors, including their gender, their age, the trauma that they have gone through prior to entering Hong Kong, the length of time they have spent/ or are expected to spend in Hong Kong, etc. The length of time that claimants are spending in Hong Kong are in many ways caused by the fact that since 2004 until now, the administration has been required, due to challenges to their assessment systems and failed judicial reviews, to revise/reform the screening mechanisms for these persons’ claims. This has led to the reality that a large population of claimants have been in Hong Kong, living in dire welfare condition, for extended periods of time, in some cases to well over 10 years. For such persons, what may have been sufficient support for the first 2 years that they were here, may no longer be adequate, as the possibilities to seek help/support/charity from private parties may have dried up, and the continued existence as beggars and bottom-feeders have caused them to live without dignity (a right enshrined by Art.6 of Bill of Rights) and have caused/exacerbated their mental health.

By continuing their welfare policy formulated in 2006, which was a band-aid solution to dispose of judicial reviews, and which has not substantively developed since, the government is turning a blind eye to the problem of claimants falling into destitution, both physically and mentally. This breaches their obligations to claimants.

The government is aware of the length of time claimants are spending in Hong Kong and the lack of adequate welfare to the population. In spite of their knowledge, no efforts have been made to resolve the problem. The government is in effect allowing the problem to fester, which of course will evolve into a worsening social problem (see instances of thefts, robberies, illegal work).

Other organizations providing emergency assistances to claimants may already have alerted this Counsel to the specific faults of the system set up by the Social Welfare Department and the lack of assistance to claimants. We will not repeat them here, but we do wish to highlight the following areas which require particular attention: -

Although the Social Welfare System pledges to provide medical welfare to claimants, there are serious faults in the system. Presently, we regularly

receive multiple requests for assistance from claimants who are refused medical waivers by the medical social service officers at various hospitals because their torture claims were refused by the Director of Immigration. Although the medical waivers are generally restored upon further information being provided, i.e. that the claimant has an outstanding appeal to TCAB and/or have outstanding claims for protection which have yet to be screened under the USM, the revocation of the waiver and delay in restoring it causes unnecessary but serious stress and, sometimes, trauma to claimants, particularly those with severe/chronic illnesses such as diabetes, heart disease etc. The fact that waivers are only restored with legal assistance and after major delays add to the general picture that claimants are constantly left helpless and unprotected unless they are able to find advocates or lawyers to fend for their rights. It is imperative that the SWD and the ImmD coordinate more closely with the medical social service units of the Hospital Authority to ensure proper service.

We also note that the existing infrastructure for claimants to seek interpretation services when seeking medical care is insufficient. Hospitals are rarely able to obtain interpretation services for emergency cases, and often discourage claimants from asking for the service in practice. Not only can this undermine the effective treatment of claimants, this can also have a deterrent effect on claimants seeking appropriate treatment and/or referrals.

We lastly note that there are insufficient psychological services in place to address the needs specific to persons claiming protection. As mentioned in the above, many claimants are suffering from various mental conditions, such as post-traumatic stress disorder, depression etc. As their lengths of stay in Hong Kong increases, these conditions often deteriorate. Very few of them are able to obtain any psychological support, and usually are only able to if doctors in public hospitals are willing to refer them to such experts (assuming the doctors can communicate with the claimant). Further, we understand from local experts in private practice that psychologists/psychiatrists in the public sector do not receive training specific to conditions common to torture victims. This shows that there is simply an absence of the proper service to claimants.

Specific proposals on how to improve upon the current system have been made by other bodies and we will not attempt the same in this paper. We nonetheless do strongly urge the administration to design welfare policies that are in place not to deter claimants from entering Hong Kong (while

acknowledging the need to maintain effective immigration control), but to ensure, at a minimum, compliance with legal obligations, better still, to ensure effective protection of basic rights of claimants.

Daly & Associates  
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