

Policy for detention
pending final determination of the claimant's torture claim

Under section 37ZK of the Immigration Ordinance (“the Ordinance”), Chapter 115 of the Laws of Hong Kong, a claimant may be detained under the authority of the Director of Immigration, the Deputy Director of Immigration and any assistant director of immigration (collectively referred to as the “Director”) pending final determination of the claimant’s torture claim, including any appeal. Detention must be justified with sufficient reasons and for a period which is reasonable in all circumstances. Reasonable alternatives will be considered before detention is authorized. No one shall be subject to arbitrary detention. The power to detain must only be used for the specific purpose for which it is authorized and its exercise must be justified on proper grounds. Each case is to be considered on its own facts and merits. Detention will be kept under regular review and will be reviewed when there is a material change of circumstances. The factors listed below are factors which the Director will generally take into account in determining whether a person should be detained or released, and are not meant to be exhaustive (in that each case will be considered on its individual merits and there may be other facts and circumstances relevant to any particular individual case) or in any order of priority / weight. The mere presence of a particular factor does not automatically lead to detention or release. The factors will be considered in the context of all the circumstances of the case. The Director will give due consideration to any representation made against detention.

In determining whether a person should be released or detained, the Director will take into consideration all the relevant circumstances of the case, including: (i) whether the person’s torture claim may be decided within a reasonable time in the foreseeable future; (ii) whether the process of the person’s torture claim is likely to be delayed on ground of non-cooperation of the person; (iii) whether that person poses, or is likely to pose, a threat or security risk to the community; (iv) whether there is any risk of that person absconding and/or (re)committing an offence which is punishable with a term of imprisonment; (v) whether that person’s identity is resolved or satisfied to be genuine; (vi) whether the person has expressed that he / she is not able to take care of himself / herself if released from detention; and (vii) whether there are other justifying circumstances in favour of release.

It should be noted that the detention of a person pending final determination of his / her torture claim shall not be unlawful by reason of the period of the detention if that period is reasonable having regard to all the circumstances that justify its length, including circumstances stipulated in Section 37ZK(2) of the Ordinance¹.

Within the above criteria, the following matters are or may be relevant in deciding if a person should be detained or released in the particular circumstances of the case:

For detention

- (a) On preliminary vetting of available information, it appears that the person's torture claim may be one which can be decided within a reasonable time in the foreseeable future.
- (b) The person, without reasonable excuse, had failed to notify the Director the change of his / her correspondence address or residential address in Hong Kong.
- (c) The person, without reasonable excuse, had failed to comply with the prescribed procedures and time limits in relation to determination of the claim.
- (d) The person, without reasonable excuse, had failed to attend scheduled interview(s) for the purpose of assessing the person's torture claim.

¹ The circumstances stipulated in Section 37ZK(2) of the Ordinance include:

- (a) whether the number of other torture claims pending final determination is such that it is reasonable to take the time it is taking, or has taken, to have the claimant's torture claim finally determined;
- (b) whether the manpower and financial resources allocated for carrying out the work involved in making such final determinations are such that it is reasonable to take the time it is taking, or has taken, to have the claimant's torture claim finally determined;
- (c) whether the making of —
 - (i) a decision by an immigration officer under section 37ZI;
 - (ii) a revocation decision; or
 - (iii) a decision by the Appeal Board in relation to an appeal made under section 37ZR, is directly or indirectly prevented or delayed by any action or lack of action of the claimant;
- (d) whether the claimant poses, or is likely to pose, a threat or security risk to the community; and
- (e) factors that are not within the control of the Director.

(e) The person poses, or is likely to pose, a threat or security risk to the community.

(f) The person has conviction(s) associated with crime(s) of serious or violent nature.

(g) The person has records of violent behaviour during previous detention / imprisonment.

(h) The person had previously absconded, escaped from custody or has a record of jumping bail.

(i) The person had failed to comply with the terms / conditions of recognizance previously entered into by the person.

(j) The person failed to attend appointment(s) / scheduled interview(s) without reasonable excuse, in response to call-up by the immigration offices / sections e.g. investigation sections / Extension Section etc. in relation to immigration matter or decision on previous occasion(s).

(k) The person has a record of repeatedly breaching the immigration law or any condition of stay (including limit of stay) imposed on the person on previous occasions.

(l) The person has previous conviction(s) of immigration and / or other criminal offence(s) or re-committed the same offence in respect of which he had previously been convicted.

(m) The person, without reasonable excuse, has not produced satisfactory evidence or any proof of identity and relevant documents to establish his / her identity / nationality.

(n) The person is non-cooperative or has failed to give satisfactory or reliable answers to an immigration officer's enquiries / investigation on his / her identity.

(o) The person does not have fixed abode or close connection (e.g. family or friends) in Hong Kong to make it likely that he / she will be easily located if released.

Against detention

(p) The person is under the age of 18 and whose claimed age is accepted by the Director.

(q) The person is an elderly person requiring close supervision / medical care.

(r) The person is a pregnant woman and there is no clear prospect for her torture claim to be finally determined in the near future.

(s) The person has children who are substantially dependant on him / her for care and supervision.

(t) The person is in serious medical / mentally ill-health condition.

(u) The person is physically disabled requiring constant nursing care.

(v) There is satisfactory evidence that the person had been subjected to serious harm, physical or mental, inflicted by a third party in the past.

_____ Interviewing officer's signature	_____ Detainee's signature	_____ Interpreter's signature
_____ Interviewing officer's name	_____ Detainee's name	_____ Interpreter's name
_____ Place	_____ Time	_____ Date

等候酷刑聲請獲最終裁定期間的羈留政策

根據香港法例第115章《入境條例》第37ZK條，可根據入境事務處處長、入境事務處副處長或入境事務處任何助理處長（統稱“處長”）的權限羈留聲請人，以等候其酷刑聲請的最終裁定，當中包括任何上訴。在所有情況下，羈留的決定必須基於充分的理由及羈留的時間必須合理。在考慮是否有其他合理的選擇後，才授權作出羈留。任何人士不得無理被羈留。羈留權力只可在有合理理由下用於獲授權的指定目的。每一個案會就其事實和情況作出考慮。羈留個案會定期覆檢，及當個案的情況有具體的轉變時予以覆檢。處長一般會就下述所列因素作出考慮該人應否被羈留或釋放，但下述因素並非詳盡無遺（即按每一個案的個別情況予以考慮，並視乎有否其他相關的事實和情況可供考慮），各項因素亦非既有任何優先次序或比重。每宗個案不會因某項個別因素而自動導致被羈留或釋放，各項有關因素均會因應個案的所有情況予以考慮。處長會就任何反對羈留的陳述作出適當考慮。

在考慮羈留個別人士或准許該人士以擔保代替羈留，處長會就該個案的所有有關情況作出考慮，當中包括（一）是否可在可見未來的合理時間內決定有關人士的酷刑聲請；（二）有關人士的酷刑聲請處理程序是否會因其採取不合作態度而被拖延；（三）有關人士是否對(或相當可能對)社會造成威脅或安全風險；（四）有關人士是否有機會潛逃及／或（再）犯可判處監禁的罪行；（五）有關人士的身分是否已獲確定或獲信納為真實；（六）有關人士是否曾表示若獲准擔保，他／她未能照顧自己的生活；和（七）是否有其他足以支持釋放有關人士的情況。

就被羈留以等候酷刑聲請的最終裁定的人，在顧及包括《香港法例》第115章《入境條例》第37ZK(2)條所列¹，令該項羈留為期的長短屬有理可據的

¹ 《香港法例》第115章《入境條例》第37ZK(2)條所列的情況包括：

- (a) 其他有待最終裁定的酷刑聲請的數目，是否令為最終裁定該聲請人的酷刑聲請而正在或已經耗用的時間屬合理；
- (b) 調撥用於辦理作出上述最終裁定所涉工作的人力及財政資源，是否令為最終裁定該聲請人的酷刑聲請而正在或已經耗用的時間屬合理；
- (c) 作出以下決定，有否(不論直接或間接)受該聲請人的作為或不作為所阻礙或拖延——

所有情況下，該項羈留的為期屬合理，則該項羈留並不因為其為期的長短而屬不合法。

在上述情況下，以下因素是或可能與決定有關人士就個案的情況而言應否被羈留或釋放有關：

可考慮羈留的因素

- (a) 初步審核現存資料時，有關人士的酷刑聲請似乎能在可見未來的合理時間內獲決定。
- (b) 有關人士在沒有合理辯解下，未能通知處長有關其香港通訊地址或住宅地址的更改。
- (c) 有關人士在沒有合理辯解下，未能遵守有關裁定聲請所訂明的程序和時限。
- (d) 有關人士在沒有合理辯解下，未有如期出席為審核其酷刑聲請而安排的會面。
- (e) 有關人士對(或相當可能對)社會造成威脅或安全風險。
- (f) 有關人士以往或現時因涉及嚴重或暴力罪行而被定罪。
- (g) 有關人士在先前羈留／監禁期間有暴力行為的記錄。
- (h) 有關人士先前曾潛逃、從羈押中逃走或有棄保潛逃的記錄。
- (i) 有關人士未能遵守其先前作出擔保的條款／條件。
- (j) 有關人士在沒有合理辯解下，不出席由入境事務處的組別／辦

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- (i) 入境事務主任根據第 37ZI 條作出的決定；
 - (ii) 撤銷決定；或
 - (iii) 上訴委員會對根據第 37ZR 條提出的上訴作出的決定；
 - (d) 該聲請人是否對(或相當可能對)社會造成威脅或安全風險；及
 - (e) 處長無法控制的元素。

事處（如調查組／延期逗留組等）就入境事務或先前所作決定而安排的預約／預定的會面。

(k) 有關人士有多次違反入境法例或先前對其施加的任何逗留條件（包括逗留期限）的記錄。

(l) 有關人士多次涉及違反入境法例及／或其他刑事罪行而被定罪，或被定罪後再犯同一罪行。

(m) 有關人士在沒有合理辯解下，未能出示令人信納的證據或任何身分證明文件及相關文件，以證明其身分／國籍。

(n) 有關人士採取不合作態度，或未能在入境事務主任查問／調查其身分時，提供令人信納或可靠的答覆。

(o) 有關人士在香港沒有固定的住處或密切的聯繫（如家人或朋友），以便獲釋後易於與他／她聯絡。

可考慮不予羈留的因素

(p) 有關人士未滿十八歲，而其聲稱的年齡獲處長信納。

(q) 有關人士是一名長者，需要密切的看護／醫療的照顧。

(r) 有關人士是懷孕的婦女，並且其酷刑聲請在短期內獲最終裁定的可能性不明確。

(s) 有關人士育有子女，而子女甚為依賴其照顧和看管。

(t) 有關人士正處於嚴重醫療／精神不健康的情況。

(u) 有關人士是傷殘人士，需要持續的看護。

(v) 有充分的證據顯示第三者過往曾在身體上或精神上對有關人士造成嚴重損害。

會見人員的簽署

羈留人士的簽署

傳譯員的簽署

會見人員的姓名

羈留人士的姓名

傳譯員的姓名

地點

時間

日期