

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

本函檔號 Our Ref.: SBCR 3/2761/09

來函檔號 Your Ref.: LS/B/27/10-11

Miss Connie Fung,
Senior Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

13th January 2012

Dear Miss Fung,

Bills Committee on Immigration (Amendment) Bill 2011

Thank you for your letter dated 10 January 2012. Our response is as follows.

2. As stated in our paper CB(2)710/11-12(01), an immigration officer must take into account all considerations that are relevant to the torture claim in deciding whether to accept or reject the claim. This will require consideration of, among other things, the country conditions including the human rights situation of the country concerned. Indeed, as the claim is to be assessed in the context of non-refoulement protection under Article 3 of CAT, immigration officers will refer to the CAT jurisprudence and relevant case law from time to time, including the comments made by the Committee Against Torture¹ on Article 3 of CAT in General Comment No.1².

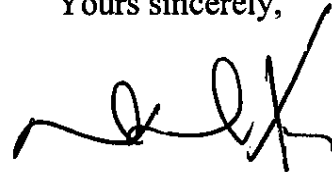
¹ The Committee is established under Article 17 of CAT.

² CAT was signed in 1984 and applied in Hong Kong in 1992. In 1996, the Committee issued General Comment No.1 to provide guidelines in relation to the implementation of Art.3 of CAT.

3. General Comment No. 1 provides one of the useful references in the assessment of torture claims and it lists out, on a non-exhaustive basis, information that would be relevant (where applicable) in the consideration of a torture claim³. Such information includes, but is not limited to, evidence of a consistent pattern of gross, flagrant or mass violations of human rights in the State concerned (which is referred to in Article 3(2) of CAT as a relevant consideration to be taken into account by the competent authorities where applicable). This approach is in line with the CFA's judgment in the case of Prabaker where the Court held that in assessing a torture claim under Article 3 of CAT, all relevant matters should be considered, including those referred to in General Comment No.1.

4. On the United States' approach, we note that the relevant matters cited in paragraphs (a) to (d) of the express provision concerned ("the cited matters") fall short of the list of relevant matters listed in General Comment No. 1. The rationale behind the selection of the cited matters is not clear to us.

Yours sincerely,



(Mark W K WOO)

for Secretary for Security

c.c. DoJ (Attn.: Ms Fanny Ip, SALD and Henry CHAN, GC)
Clerk to Bills Committee (Attn.: Ms Sharon TONG, PCS(2))

³ See paragraph 8 of General Comment No. 1.