

LC Paper No. CB(2)2345/11-12(01)

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.:

來函檔號 Your Ref.:

Tel : 2810 2506

Fax : 2868 1552

12 June 2012

Mrs Sharon Tong
Principal Council Secretary 2
Council Business Division
Legislative Council Secretariat
Legislative Council Complex
Central
Hong Kong

Dear Mrs Tong,

**Immigration (Amendment) Bill 2011 –
Timeframe for Returning Torture Claim Form**

Thank you for your email of 8 June 2012 requesting a response to the joint submission of the Law Society and Bar Association (“the joint submission”) on the captioned. Having considered further views of the legal professional bodies on the matter, we uphold that the 28-day initial timeframe for returning the torture claim forms, as provided for under Section 37Y(2) of the Bill, with extensions granted under Section 37Y(3) when necessary, be maintained.

As explained to the Bills Committee on various occasions, the timeframe of 28 days provided for in the Bill is reasonable and practical. There is indeed progress in reducing the average time taken by duty lawyers to assist torture claimants in completing the torture claim form since the launch of the enhanced screening mechanism in December 2009. As in the first quarter of 2012, claimants, assisted by publicly-funded legal assistance, spent on average 40 days to complete and return the torture claim forms, including some 14 days awaiting the Immigration Department (ImmD) to research and provide all personal data files pertaining to the claimants in the interim. As the ImmD has undertaken, upon the claimants’ agreement, to provide all personal data files pertaining to the claimants on the first day that

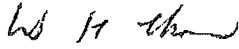
- 2 -

the claimants will be asked to complete the claim forms, the time for the claimants should be able to complete and return their claim forms within 28 days. Furthermore, any documentary evidence which are not readily available at the time of completing the torture claim form, including those quoted in the joint submission (e.g. relevant country and case evidence, medical reports or document, submitted to the UNHCR) may be provided to the ImmD after submission of the form, where necessary.

Where the claimants are in genuine need for more time to complete their claim forms, the ImmD's track record, as also shown to the Bills Committee, proves that all requests with reasons provided were granted. Furthermore, the ImmD has made it clear that approval will continue to be granted to cases with justifications. On the other hand, we do not see justifications to extend the timeline to a longer period generally to all claimants. Doing so will unnecessarily prolong the screening process and thus undermine effective immigration control.

Our proposal in the Bill (i.e. an initial 28-day timeframe, with extension granted for cases with needs) will guarantee that all claimants be given reasonable time to complete the claim form, whilst allowing screening be completed within a reasonable time. We have carefully considered the views of the stakeholders and, having regard to the need to conduct torture claim screening in a fair and timely manner, we trust that the proposal has struck on a reasonable balance between achieving fair screening while upholding effective immigration control.

Yours sincerely,


(W H CHOW)
for Secretary for Security

c.c. Director of Immigration (Attn: Mr KH Leung)
Law Draftsman (Attn: Ms Fanny Ip)