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GOVERNMENT SECRETARIAT
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HONG KONG

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5 January 2011

Mr Raymond LAM
Clerk to Panel on Security
Legislative Council
8 Jackson Road
Central
Hong Kong

Dear Mr LAM,

Screening of Torture Claims

Thank you for your letter of 14 December requesting information regarding the process and procedures for handling torture claims, with particular reference to the involvement of duty lawyers in the process. Our response is set out below.

The enhanced administrative screening mechanism, which commenced in December 2009, involves the following steps:

- (a) The claimant is served a Notice and a Questionnaire by the Torture Claim Assessment Section of the Immigration Department (ImmD). The Notice explains the screening procedures as well as the claimant's rights and responsibilities. The Questionnaire is provided for the claimant to submit information in support of the

torture claim. ImmD will also inform the claimant that publicly-funded legal assistance under the Duty Lawyer Service (DLS) is available for needy claimants.

- (b) ImmD will refer the claimant to DLS for legal assistance, usually on the same day when the claimant has received the above Notice and Questionnaire and has indicated his/her agreement for referral. The administrative staff of DLS will explain to the claimant the scope of legal assistance and relevant procedures. Upon the claimant's application and meeting the means test through self-declaration, DLS will assign a duty lawyer from a roster.
- (c) The duty lawyer will meet with the claimant and assist him/her in completing the Questionnaire. Claimants who do not require legal assistance (including those privately represented) will similarly complete the Questionnaire and return it to ImmD. Any other documents which can be produced in support of the claim should be submitted together with the completed Questionnaire. If the claimant or his/her lawyer considers that there is a need for medical examination, the case officer of ImmD may arrange one on a need basis.
- (d) The case officer of ImmD will normally conduct a screening interview with the claimant. The duty lawyer representing the claimant may also attend and accompany the claimant throughout the interview.
- (e) Upon completion of the full assessment process, ImmD will issue to the claimant the Decision on the claim. If a claim is refused, reasons will be given. The claimant has the right to consider a petition against the Decision. The duty lawyer will assess the merits of the case and may advise DLS to continue to provide full legal assistance throughout the petition process. In any event, a refused claimant may lodge a petition against ImmD's Decision irrespective of whether DLS decides to provide further legal assistance for the petition.

- (f) Petitions are handled by Adjudicators under the delegated authority of the Chief Executive. The Adjudicator handling a petition will decide whether to conduct oral hearing(s) on the petition, depending on the circumstances of the case. DLS' legal assistance for a petitioning claimant, if applicable, will also include preparation of the petition submission and the duty lawyer's representation at the oral hearing(s).

Yours sincerely,

W H Chow

(W H CHOW)
for Secretary for Security

c.c. Secretary for Home Affairs
Director of Immigration