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香港特別行政區政府
入境事務處

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Immigration Department
The Government of the Hong Kong
Special Administrative Region

3 June 2014

By fax (2869 0189) and by post

Mr Paul Shieh SC
Chairman
Hong Kong Bar Association
LG2 Floor, High Court
38 Queensway
Hong Kong

Dear Sir

**Re: Persons Detained in Castle Peak Bay Immigration Centre
Who may have Non-refoulement Claims**

Thank you for your letter dated 31 May 2014 addressed to the Secretary for Security and the Director of Immigration. The Director of Immigration is authorised to reply as follows:

In exercising detention powers conferred by the law in respect of persons subject or liable to removal, including non-refoulement claimants, the Immigration Department (ImmD) will continue to act in accordance with relevant laws and policies to ensure that decisions made are legal and reasonable. The ImmD has in place detention policies (available to the public at its departmental website: <http://www.immd.gov.hk>) to guide the making of decision to detain or grant release on recognizance conferred under sections 32 and 37ZK of the Immigration Ordinance (Cap. 115) respectively. We attach great importance to ensuring that detention must be justified with sufficient reasons and only for a period which is reasonable in all the circumstances.



香港灣仔告士打道七號入境事務大樓 Immigration Tower, 7 Gloucester Road, Wan Chai, Hong Kong.

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A claimant who has unlawfully landed or overstayed in Hong Kong will generally be put under temporary detention for investigation after being intercepted or arrested. Each case will then be considered on its own facts and merits, taking into account all relevant factors including whether the removal can be effected in the foreseeable future, whether he may pose threat to public safety, his likelihood of absconding and other personal factors (e.g. fitness of the detainee), to decide whether the subject shall continue to be detained or may be released on recognizance having agreed to an amount of sureties and reporting conditions. Reasonable alternatives will be considered before detention is authorized. Detention will be kept under regular review especially when there is a material change of circumstances. Under the existing policies, detainees are informed of the general criteria as well as specific grounds for their detention.

Your suggestion for detainees whose CAT claims have been rejected to be notified of the commencement of the unified screening mechanism (USM) is noted. As set out in the Security Bureau's letter to your Association dated 28 February 2014, the Duty Lawyer Service (DLS) has initiated contact with those claimants whose torture claim has been rejected (including those with ongoing appeals or judicial review applications) and who were still in Hong Kong before commencement of the USM. We understand that of over 3 100 such claimants, over 2 500 have already lodged a further non-refoulement claim on grounds other than torture risk with the ImmD before the commencement of the USM. These non-refoulement claims will be determined in one go under the USM.

Of all the persons being detained by the ImmD on 30 May 2014, seven are rejected torture claimants; four have already provided a written signification of their intent to lodge a non-refoulement claim under the USM. The three remaining claimants (they are among the 3 100 claimants mentioned above) are previous absconders who surrendered or were intercepted in May 2014; there is no issue of their having no access to information prior to detention as you are concerned. During the course of arranging for their removal, the ImmD has, as a matter of established practice, provided an opportunity for them to make representations (if any) against their removal; none has raised anything relating to fear of being subjected to ill-treatment other than torture once removed.

Yours faithfully



P H FUNG

for Director of Immigration

c.c. Clerk to the Panel on Security of the Legislative Council

(Fax No: 2185 7845)

Secretary for Justice

(Attn: Mr Clifford Tavares)

(Fax No: 3543 0389)

Secretary for Security

(Attn: Mr Billy Woo)

(Fax No: 2810 2506)