

政府總部
香港下亞厘畢道



GOVERNMENT SECRETARIAT
LOWER ALBERT ROAD
HONG KONG

本函檔號 OUR REF:

來函檔號 YOUR REF: CB2/PL/SE

Tel: 2810 2099

Fax: 2868 1552

30 January 2009

Mr Raymond LAM
Clerk to Panel
Legislative Council
Legislative Council Building,
8 Jackson Road,
Central, Hong Kong

(By Fax only)
2521 7518

Dear Mr LAM,

**Panel on Security
Meeting on 3 February 2009**

(Item IV: Concluding Observations of the Committee Against Torture on the second periodic report of the Hong Kong Special Administrative Region under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)

Thank you for your letter of 19 January 2009. Our response is set out below.

(a) Court judgment on *FB & Others* (HCAL 51/2007 etc.)

On 5 December 2008, the Court of First Instance (CFI) handed down judgment on six applications for judicial review from persons who had lodged torture claims in Hong Kong. The CFI will have a further hearing on 12 February 2009 on, among others, the declarations and orders to be made. As legal proceedings are ongoing, we are not in a position to discuss the details of the case with the Panel.

The Administration is fully committed to fulfilling our obligation under the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* not to remove a person to another place where he would be in danger of being subjected to torture. We have been continuously reviewing the procedures for screening torture claims to enhance its effectiveness and to meet procedural fairness. We will take into account the recent court judgment in the ongoing review.

The Government is considering the need for a legislative regime for handling torture claimants and would consult the Panel when we have a clear proposal.

(b) Administrative arrangements for torture claimants' access to legal aid

Our legal aid policy is to ensure that no one with reasonable grounds for taking or defending a legal action in the Hong Kong courts is prevented from doing so because of the lack of means.

Legal aid service is granted for legal representation in civil and criminal proceedings in the courts of Hong Kong, in accordance with the Legal Aid Ordinance and the Legal Aid in Criminal Cases Rules. Legal aid is available to asylum seekers and torture claimants who satisfy the relevant criteria, namely the means test and the merits test, in relation to the above proceedings.

Decision on a torture claim is subject to judicial review, and legal aid is available for such proceedings subject to the relevant criteria.

Yours sincerely,



(Miss Phidias TAM)
for Secretary for Security

c.c.

Secretary for Home Affairs

(Attn: Miss Christine Chow)

Fax: 2591 6002