



## HONG KONG BAR ASSOCIATION

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20 February 2009

Mr. Lee Siu Kwong Ambrose, IDSM JP  
 Secretary for Security,  
 6/F, Main and East Wings, Central Government Offices,  
 Lower Albert Road,  
 Central, Hong Kong.

Dear *M Secretary*

**Re: Assessment Mechanism for Claims for Protection of Non-refoulement under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment ("CAT")**

I refer to the meeting of the Legislative Council Panel on Security on 3 February 2009 during which Mr. Ngai Wing Chit, Deputy Secretary for Security indicated on behalf of the Administration that following completion of a study of overseas examples, the Administration will be presenting to the Legislative Council before the end of 2009 proposals for legislation to put in place a framework for assessing claims for protection of non-refoulement under CAT.

The Bar Council has discussed this matter and the implications of the judgment of the Court of First Instance in FB & Ors v Director of Immigration & Anor (5 December 2008) on 5 and 19 February 2009.

The Bar Council takes the view that the Administration is taking the right direction in providing for a statutory framework for assessing claims for protection of non-refoulement under CAT. Such a framework should ensure that the claims for protection be investigated, considered and determined in a highly fair, efficient and relatively expeditious manner. A framework with these characteristics would be credible with the United Nations and Hong Kong's international partners, as well as serve both as an assurance to genuine claimants and as a deterrent to abusers and potential abusers.

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The Bar Council also believes that a highly fair, efficient and relatively expeditious framework for the investigation, consideration and determination of claims for protection of non-refoulement under CAT must have two-tiers consisting of investigation and determination at the first tier and an avenue of appeal or review of the full merits of the claim. While the first tier of investigation and determination may be undertaken by dedicated teams of officers of the Immigration Department suitably trained for the purposes (and assisted by suitably trained interpreters), the second tier of appeal or review is best be discharged by an independent statutory tribunal.

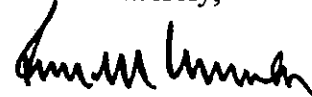
The Bar Council further considers that the legal profession in Hong Kong has a serious and significant role to play in the process of assessment. A claim for protection of non-refoulement under CAT is often factually and legally complex and more likely than not requires sensitive handling. Legal assistance afforded by the public purse and delivered through either the Duty Lawyer Service or the Legal Aid Department, it is believed, will ensure that claimants can put their forward their case fully and efficiently, and accordingly should be considered as an integral element of the assessment mechanism. Further, members of legal profession of standing, if appointed to the statutory tribunal for the second tier of appeal or review, will provide the expertise, credence and independence that such a tribunal needs.

The Bar Council notes that while the Administration is deliberating on the possible legislative proposals, there are in the meantime about 3,000 pending claims for protection of non-refoulement under CAT. Rather than putting the determination and/or review of all such claims on hold (which would have sent the wrong signal to potential abusers), the Administration should seek in the meantime to improve the assessment mechanism administratively and dedicate resources towards the training and provision of legal assistance.

I understand that there are members of the Bar who have had knowledge and experience in asylum and refugee law, including chairing hearings of refugee status appeals. I believe that they would give serious consideration to assisting the Administration in training and experience-sharing.

Please do not hesitate in contacting me or the Bar Association should you or the Immigration Department wish to seek our views on improving the assessment mechanism for claims for protection of non-refoulement under CAT, as well as to contact us in relation to the organizing of training or sharing/exchange sessions.

Yours sincerely,



Russell Coleman SC  
Chairman

Cc Mr. Raymond Lam, Clerk to Panel on Security, Legislative Council.  
Mr. Lester Huang, President of the Law Society.