



HONG KONG BAR ASSOCIATION

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31 May 2014

Mr. Lai Tung-Kwok SBS IDSM JP
Secretary for Security
 Security Bureau,
 10/F East Wing, Central Government Offices,
 2 Tim Mei Avenue, Tamar,
 Hong Kong.

Mr. Chan Kwok-ki, IDSM
Director of Immigration,
 Headquarters, Immigration Department.
 Immigration Tower,
 7 Gloucester Road,
 Wanchai, Hong Kong.

Dear Sirs,

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

We refer to the joint letter of the Hong Kong Bar Association and the Law Society of Hong Kong dated 2 May 2014 to you and copied to the Secretary for Justice and the Legislative Council Panel on Security concerning the Unified Screening Mechanism (“USM”) of Non-refoulement Claims on the grounds under the Convention Against Torture (“CAT”), Article 3 of the Hong Kong Bill of Rights (“BOR Art 3”) and in the light of the principle under Article 33 of the Convention on the Status of Refugees (“persecution risk”).

It has come to our attention that there are individuals currently detained in the Immigration Department’s Castle Peak Bay Immigration Centre pending removal or deportation after their CAT claims have been rejected but who may have a non-refoulement claim under BOR Art 3 and persecution risk, which would require determination under the USM.

We write this letter to urge you to notify these individuals of their entitlement under the USM to lodge a non-refoulement claim under BOR Art 3 and/or persecution risk, if you have not done so. This is because these individuals are incarcerated and do not have ready access to information like others who have been granted recognizance. And having had their CAT claims determined, the Duty Lawyer Service’s publicly funded legal assistance previously provided to them had come to an end.

香港大律師公會

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We also write this letter to urge you to consider, following notification, granting these individuals recognizance in lieu of detention if they indicate that they wish to lodge a non-refoulement claim. This is because continued detention pending the determination of their non-refoulement claims would be contrary to the principles set out in *R v Governor of Durham Prison ex p Hardial Singh* [1984] 1 WLR 704 and approved in the context of Hong Kong immigration law by the Privy Council in *Tan Te Lam v Superintendent of Tai A Chau Detention Centre* [1997] AC 97. Pursuant to the Hardial Singh principles, a removee/deportee may only be detained for a period that is reasonable in all the circumstances for the purpose of effecting removal or deportation. A removee/deportee who has lodged a non-refoulement claim requiring determination under the USM cannot therefore be detained for the purpose of effecting removal or deportation since the determination under the USM will materially affect whether it is legitimate to remove or deport that person to his or her place of origin or nationality.

We further write this letter to urge you to notify the Duty Lawyer Service after these individuals have been notified of the USM so that court liaison officers can visit them for the purpose of taking instructions.

We have taken the liberty to copy this letter to the Secretary for Justice and the Legislative Council Panel on Security so that the situation of these individuals can be discussed at the upcoming meeting of the Legislative Council Panel on Security on 3 June 2014.

Yours Sincerely,



Paul Shieh SC
Chairman

Copies to:

- Secretary for Justice.
- Chairman, Legislative Council Panel on Security.