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CACV 132,134 &136/2008

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION**

COURT OF APPEAL

CIVIL APPEAL NOS. 132, 134 & 136 OF 2008
(ON APPEAL FROM HCAL NO. 132 OF 2006 and
HCAL NOS. 43 & 48 OF 2007)

(HEARD TOGETHER)

BETWEEN

C Applicant in CACV132/2008

KMF Applicant in CACV134/2008

BF Applicant in CACV136/2008

and

DIRECTOR OF IMMIGRATION 1st Respondent

SECRETARY FOR SECURITY 2nd Respondent

Before: Hon Cheung CJHC, Yuen JA and Lam J in Court

Date of hearing and judgment: 14 December 2011

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Hon Yuen JA (giving the Judgment of the Court):

1. This is an application for leave to appeal to the Court of Final Appeal against our judgment dated 21 July 2011.

2. Having considered submissions made by leading counsel for the Applicant and for the Respondents, we take the view that the appeal raises the following issues of great general or public importance for which leave should be granted under s.22(1)(b) HKCFAO, cap. 484:

- (1) Is non-refoulement of refugees a peremptory norm of customary international law (*jus cogens*)?
- (2) Regardless of whether it is a peremptory norm or simply customary international law, has the norm/law of non-refoulement of refugees been validly excluded in the HKSAR by domestic legislation?
- (3) If it has not been validly excluded, is it a norm/law which requires a duty of independent inquiry by the HKSAR Government into whether a claimant is a refugee, which duty is not delegable to the UNHCR?

3. We do not consider that other questions raised involve issues of great general or public importance or for which leave should be granted under the “or otherwise” limb.

(ANDREW CHEUNG)
Chief Judge, High Court

(MARIA YUEN)
Justice of Appeal

(M H LAM)
Judge of the Court of
First Instance

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Ms Gladys Li SC, instructed by Barnes & Daly, assigned by the Director of Legal Aid, for the Applicants.

Mr Anderson Chow SC and Ms Grace Chow, instructed by Department of Justice, for the Respondents in all cases

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