



Parallel Report to the Committee on Economic, Social and Cultural Rights

Complementing the Third Report of the Hong Kong Special
Administrative Region (HKSAR) of the People's Republic of China

March 2014

Introduction

1. The Hong Kong Refugee Advice Centre (HKRAC) would like to bring to the Committee on Economic, Social and Cultural Rights' (CESCR) attention areas of concern before its forthcoming examination of the Third Report of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (Third Report) under the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹
2. It is regrettable that the Hong Kong Government's Third State Report, in paragraphs 2.46-2.49 on "protection for asylum-seekers and refugees," does not any provide details on the actual levels of humanitarian assistance provided to protection claimants, or the structural barriers they face – directly as a result of HKSAR legislation and policies – in realising the right to work, the right to an adequate standard of living, including food and housing, the rights to health, education and cultural life.
3. HKRAC would like to provide supplementary information to the Third Report on protection available for asylum-seekers, refugees, torture and cruel, inhuman or degrading treatment or punishment (CIDTP) claimants (**collectively, "protection claimants"**). HKRAC also made a submission to the CESCR pre-sessional working group (PSWG) last year, and we encourage CESCR members to read this newer submission as an updated complement to this earlier alternative report.

The reason for providing further information is that, in the past year alone and certainly since the time of writing of the State report in 2010, the landscape for protection in Hong Kong has drastically changed.

4. Specifically, since last year, after being forced by the courts, the Government has adopted, in operation since 3 March 2014, a new "unified screening mechanism" (USM) to process (i) persecution, (ii) torture and (iii) cruel, inhuman or degrading treatment or punishment claims, with the UN Refugee Agency (UNHCR) phasing out its refugee status determination as of early this year.
5. In regards to the right to work for protection claimants, in February 2014, the Hong Kong Court of Final Appeal (CFA) handed down a negative judgment that held that no constitutional right to work existed in favour of the Appellants (mandated refugees and successful torture claimants) and that Article 6 of the ICESCR did not apply to their case. As this report will detail, this judgment raises larger concerns regarding the domestic application of the ICESCR in the territory.
6. After escalating criticism and calls for reform, the Government introduced meagre "enhancements" to the humanitarian assistance package on 1 February 2014; however these cosmetic changes fall far short of the reforms that would be required to ensure that protection claimants can live a dignified life in Hong Kong.
7. These recent developments should be brought to the CESCR's attention, particularly in light of the Hong Kong Government's **failure** to reply to the list of issues (up to the time of this writing) in which the PSWG included refugee-specific questions,² in spite of civil society requests to the Hong Kong Government to provide answers to the CESCR PSWG's questions in a timely manner.³

¹ HKSAR Government, Third Report of the Hong Kong Special Administrative Region of the People's Republic of China under the International Covenant on Economic, Social and Cultural Rights, UN Doc.: E/C.12/CHN-HKG/3, 30 June 2010

² CESCR, List of issues in connection with the consideration of the second periodic report of the People's Republic of China (E/C.12/CHN/2) including Hong Kong, China (E/C.12/CHN-HKG/3) and Macao, China (E/C.12/CHN-MAC/2), adopted by the pre-sessional working group at its fifty-first session, UN Doc.: E/C.12/WG/CHN/Q/2, 21-24 May 2013, at para. 44, 55 and 58

³ See, for example: HKRAC, "Written Submission to LegCo Panel on Constitutional Affairs, in response to item IV. Third report by the Hong Kong Special Administrative Region under the International Covenant on Economic, Social and Cultural Rights", 17 February 2014, available at: <http://www.hkrac.org/wp-content/uploads/2013/04/HKRAC-Submission-to-LegCo-Panel-on-Constitutional-Affairs-CESCR-State-Report-February-17-20141.pdf>

The newly introduced “unified screening mechanism” fails to provide protection claimants with long-term solutions

8. Despite repeated recommendations by several treaty bodies,⁴ HKSAR continues to be one of the only wealthy jurisdictions in the world not to be bound by the Refugee Convention,⁵ which has not yet been extended to its territory. As such, it does not give any legal status whatsoever to protection claimants, who are not given any distinction under the Immigration Ordinance from illegal “over-stayers” and do not possess a Hong Kong identification card, but rather “recognizance papers”.⁶
9. Up until very recently, in order to fill the gap in protection, the UNHCR Sub-Office in Hong Kong conducted refugee status determination for persons claiming asylum. It took this role unwillingly, and it itself long-advocated for the HKSAR Government to take up this responsibility.⁷ The Hong Kong Immigration Department had another parallel, but separate administrative screening mechanism, which became statutory in 2012,⁸ to process torture claims in order to meet its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which it is bound. In the past twenty-one years since 1992, when CAT was applied to the HKSAR territory, out of roughly 13,000 torture claims filed to the Immigration Department, only 11 people have ever had a successful claim.⁹
10. As was mentioned in HKRAC’s report to the CESCR’s PSWG,¹⁰ on 21 December 2012 the CFA released its judgment that ruled that the Hong Kong Government has an obligation to offer protection to not only those who face the threat of torture but those who face the threat of CIDTP as well.¹¹ And on 26 March 2013, the CFA handed down its judgment in another case that calls for the Director of Immigration, in his or her decision to remove someone from the territory, to independently screen refugee claims, rather than relying exclusively on the UNHCR’s refugee status determination, in order to meet high standards of fairness and to ensure that the Hong Kong Government complies with the principle of non-refoulement.¹²

⁴ This recommendation has been explicitly raised in the most recent reviews of the CESCR, CEDAW, CAT, CERD, HRC, and the CRC. See: CESCR, “Concluding observations: People’s Republic of China (including Hong Kong and Macao)”, UN Doc.: E/C.12/1/Add.107, 13 May 2005, at para. 82 and 92; CEDAW, “Concluding comments: China”, UN Doc.: CEDAW/C/CHN/CO/6, 25 August 2006, at para. 43-44; CAT, “Concluding observations: Hong Kong Special Administrative Region”, UN Doc.: CAT/C/HKG/CO/4, 19 January 2009, at para. 7; CERD, “Concluding observations: China (including Hong Kong and Macao Special Administrative Regions)”, UN Doc.: CERD/C/CHN/CO/10-13, 15 September 2009, at para. 29; HRC, “Concluding Observations: Hong Kong, China”, UN Doc.: CCPR/C/CHN-HKG/CO/3, 29 April 2013, at para. 9; CRC, “Concluding observations: China, including Hong Kong, China and Macao, China”, UN Doc.: CRC/C/CHN/CO/3-4, 29 October 2013, para. 84

⁵ Under Hong Kong Basic Law, the HKSAR Government has control over immigration matters and the right to develop its own laws and policies. While the People’s Republic of China has ratified the Convention Relating to the Status of Refugees, which currently has 145 State Parties, and has extended it to the Macau SAR, it has not yet been extended to HKSAR territory. In the State report, the HKSAR Government has defended its position for not having the Refugee Convention extended to its territory by stating that, “Hong Kong is small in size and has a high and dense population. Our unique situation, set against the backdrop of our relative economic prosperity in the region and our liberal visa regime, makes us vulnerable to possible abuses if the abovementioned Convention were to be extended to Hong Kong.”

⁶ Immigration Ordinance, s. 36., available at:

[http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/ED717360D64A043E482575EE003DBF1A/\\$FILE/CAP_115_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/ED717360D64A043E482575EE003DBF1A/$FILE/CAP_115_e_b5.pdf)

⁷ Karani, Philip, “Adopting Refugee Convention Would Not Be a Slippery Slope for Hong Kong”, *South China Morning Post*, 27 December 2012, available at: <http://www.scmp.com/comment/insight-opinion/article/1113049/adopting-refugee-convention-would-not-be-slippery-slope-hong>

⁸ HKSAR Government, Immigration (Amendment) Ordinance 2012, Ord. 23 of 2012, available at: <http://www.immd.gov.hk/pdf/ImmOrd2012.pdf>

⁹ Branigan, Tania, “Hong Kong’s Dirty Secret: Thousands of asylum seekers left waiting in squalor”, *The Guardian*, 6 March 2014, available at: <http://www.theguardian.com/world/2014/mar/06/hong-kong-asylum-seekers-waiting-in-squalor>

¹⁰ HKRAC, “Asylum-Seekers and Refugees in Hong Kong, Submission to the Committee on Economic, Social and Cultural Rights (CESCR) complementing the Third Report of the Hong Kong Special Administrative Region (HKSAR) of the People’s Republic of China, Pre-sessional Working Group, 51st Session”, April 2013, available at:

http://www2.ohchr.org/english/bodies/cescr/docs/ngos/HKRAC_ChinaHongKongPSWG51.pdf

¹¹ *Ubamaka Edward Wilson v. The Secretary for Security and Director of Immigration* (FACV No.15/2011)

¹² *C, KMF and BF v Director of Immigration and Secretary for Security* (FACV Nos. 18/19/20 2011)

11. After several months of silence and speculation as to how the HKSAR Government would implement these two judgments,¹³ the Security Bureau announced, on 2 July 2013,¹⁴ that it would adopt **a unified screening mechanism** to determine three types of claims for “non-refoulement protection” which would be assessed “in one go”. These include:
- i. **torture** under Part VIIC of the Immigration Ordinance, Cap. 115;
 - ii. torture or **cruel, inhuman or degrading treatment or punishment** under Article 3 of Section 8 of the Hong Kong Bill of Rights Ordinance, Cap. 383; and
 - iii. **persecution** with reference to the non-refoulement principle under Article 33 of the 1951 Convention relating to the Status of Refugees (the Refugee Convention).
12. This was a welcome announcement for human rights advocates and legal experts, who have long called for such a unified, Government-led screening process. However, seven months passed without any clarity as to the operational details or timelines for the entry into force of the USM. On 7 February 2014, in a press release, the Hong Kong Government finally announced that the USM would begin operations on 3 March 2014.¹⁵ The Administration has commenced the USM by completely bypassing any sort of consultation or being answerable to the public in the lead-up to its start date, an omission that has recently been denounced by the Bar Association on 14 February 2014.¹⁶
13. As a result, there are a host of information gaps and challenges associated with the commencement of the USM.¹⁷ One of the most glaring uncertainties, which relates back to protection claimants’ enjoyment of their economic, social and cultural rights, is **what long-term solutions will be made available to successful claimants**. Under the USM, a meritorious claim will merely ensure protection against non-refoulement, but it does not confer any additional rights to the individual—such as legal status or residency, the right to work, ability to access vocational training and adult education, among other socio-economic rights.
14. Due to the fact that the HKSAR is not party to the Refugee Convention and does not have a policy of granting “asylum”,¹⁸ there are few efforts to integrate protection claimants into society. Instead, what is offered is **an extremely minimalist form of protection** (protection against being returned to one’s country of origin if there is a reasonable risk of harm) that will leave successful protection claimants in a protracted state of legal limbo in Hong Kong. It has been hinted that successful claims are determined based on persecution grounds will then be referred to UNHCR, which will continue to bear a role in finding a durable solution (namely, resettlement to a third country) – although even this process can take many years to complete. However, for claims on the grounds of torture or CIDTP, which fall outside of the UNHCR’s mandate, the Hong Kong Government has not provided any indication on what arrangements will be made available, such as resettlement to a third country, voluntary repatriation or local integration

¹³ It is important to note that, as a result of these judgments being handed down by the CFA, in HKRAC’s report to the PSWG, we asked: “How is HKSAR Government planning to implement the recommendations of the recent judgments handed down by the Court of Final Appeal in the *C & Ors v Director of Immigration* and the *Ubamaka Edward Wilson v Secretary for Security and Director of Immigration* cases, ensuring the highest standards of fairness in refugee status determination?”

¹⁴ HKSAR, “Panel on Security of the Legislative Council: Screening of Non-refoulement Claims”, LC Paper No. CB(2)1465/12-13(01), June 2013, available at: <http://www.legco.gov.hk/yr12-13/english/panels/se/papers/se0702cb2-1465-1-e.pdf>

¹⁵ HKSAR Government, “Commencement of Unified Screening Mechanism for Claims for Non-refoulement Protection”, Press Release, 7 February 2014, available at: <http://www.info.gov.hk/gia/general/201402/07/P201402070307.htm>

¹⁶ The Bar Association states, “The Security Bureau has never consulted the legal profession on the operational details of the USM”, see: Hong Kong Bar Association, “Unified Screening Mechanism for Non-Refoulement Claims”, 14 February 2014, available at: <http://www.hkba.org/whatsnew/misc/img-214175157.pdf>

¹⁷ For a summarised list of these, see: HKRAC, “Letter to the Panel on Security: Urgent action requested to discuss Unified Screening Mechanism to process “non-refoulement” claims, in operation since 3 March 2014”, LC Paper No. CB(2)1063/13-14(01), 13 March 2014, available at: <http://www.legco.gov.hk/yr13-14/english/panels/se/papers/se0318cb2-1063-1-e.pdf>

¹⁸ The Government has been insistent that even successful “persecution” claims will not be considered “refugees”. A Government spokesperson has stated to the media that the Government “will not be performing refugee status determination” as the convention has never been applied to Hong Kong. See: Ngo, Jennifer, “No Information for NGOs on New Hong Kong System for Asylum Seekers”, *South China Morning Post*, 3 November 2013, available at: <http://www.scmp.com/news/hong-kong/article/1346216/no-information-ngos-new-hong-kong-system-asylum-seekers>

Questions

- I. Can the Hong Kong Government please provide more details about what long-term solutions will be made available for successful protection claimants under the newly introduced Unified Screening Mechanism, such as local integration, voluntary repatriation and resettlement to a third country?

Protection claimants' right to work has been unanimously dismissed in a recent judgment by the Court of Final Appeal

15. Legally treated as over-stayers, neither protection claimants awaiting the outcome of their claim, nor successful claimants are granted the right to work—paid or unpaid.¹⁹ Illegal work is a criminal offense that is punishable with a maximum fine of HKD 50,000 (USD 6,440) and imprisonment for three years.²⁰ While extraordinary temporary permission to work may be issued by the Director of Immigration on a discretionary basis to claimants who demonstrate “exceptional circumstances”,²¹ this has rarely been granted in practice, with no transparency about how this administrative practice works, and the extremely low rate of granting permission raises concerns about the reasonableness of this policy.²²
16. In January 2014, the CFA heard a judicial review of the Director’s “blanket policy” of prohibiting recognised protection claimants from working in the case of *GA & Ors v Director of Immigration* (FACV 7-10/2013). The appellants included three refugees recognised by the UNHCR and one torture claimant recognised by the Hong Kong Government under the Immigration Department’s torture screening mechanism (all these claim recognitions had been granted before the introduction of the USM). All of the appellants had been residing in Hong Kong for a prolonged period of time (ranging from 8-13 years, of which time 5-10 years had been spent waiting for resettlement). In the Appeal, the appellants relied on the following provisions:
 - Article 14 of the Hong Kong Bill of Rights Ordinance (the right to privacy), as well as Article 3 (the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment)
 - Article 6 of the International Covenant on Economic, Social and Cultural Rights (the right to work and right to freely choose one’s work)
 - implicitly on Article 33 of the Basic Law (freedom of choice of occupation)
 - Common law
17. On 18 February 2014, the CFA handed down its judgment, where it unanimously dismissed the appeal and held that no constitutional right to work existed in favour of the appellants.²³ In this case, the appellants were not able to rely on the ICESCR as a result of a reservation entered into by the United Kingdom upon

¹⁹ Sections 38AA (1)(a) and (b) Immigration Ordinance Cap.115 create an offence for anyone who has entered Hong Kong illegally and remains without proper authority, or has been made the subject of a removal or deportation order, to take up any employment or establish any business here, even though they have released from detention with the approval of the Director of Immigration. HKSAR Government, Legal Aid Department Annual Report 2010, Chapter 3: Cases of Public Interest or Concern, available at:

http://www.lad.gov.hk/documents/annual_rpt_2010/en/casepi.htm

²⁰ Immigration Ordinance, s. 38AA,

[http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/ED717360D64A043E482575EE003DBF1A/\\$FILE/CAP_115_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/ED717360D64A043E482575EE003DBF1A/$FILE/CAP_115_e_b5.pdf); Criminal Procedure Ordinance, s. 113C(2),

[http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/AB95385D2FD2C236482575EE004ED4BB/\\$FILE/CAP_221_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/AB95385D2FD2C236482575EE004ED4BB/$FILE/CAP_221_e_b5.pdf)

²¹ Immigration Ordinance (Cap. 115) Section 37ZX, available at:

http://www.legislation.gov.hk/blis_ind.nsf/curallengdoc/5354F965EF897A9E48257AC9000BE49D?OpenDocument

²² As at November 2013, only two recognised protection claimants have ever been allowed to work. Chan, Thomas, “Work Ban on Refugees Could Bring Danger to Society”, *South China Morning Post*, 9 November 2013, available at: <http://www.scmp.com/news/hong-kong/article/1351201/work-ban-refugees-hong-kong-could-bring-danger-society>

²³ *GA & Ors v Director of Immigration* (FACV 7-10/2013) available at:

http://legalref.judiciary.gov.hk/lrs/common/ju/ju_frame.jsp?DIS=91534&currpage=T

ratification of the ICESCR on 20 May 1976 maintaining Hong Kong's discretion in immigration matters.²⁴ Furthermore, unlike the International Covenant on Civil and Political Rights (ICCPR), which has been incorporated through the Hong Kong Bill of Rights Ordinance, there continues to be no comprehensive incorporation of the ICESCR into one single piece of domestic legislation.²⁵ This has long been criticised by the CESCR (as well as civil society in their parallel reports) in its periodic reviews of the territory.²⁶

18. Article 39 of the Hong Kong Basic Law states that the provisions of the ICCPR and the ICESCR and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR. However, the judgment argued that “the provisions of the international covenants and conventions referred to in Article 39(1) of the Basic Law are not directly enforceable in Hong Kong by any individual unless implemented by domestic or municipal law.” Thus, without domestic enforceability there is no effective legal mechanism to compel the authorities to respect the rights of refugees.²⁷
19. As emphasised in the CESCR's General Comment 18, “the right to work is essential for realising other human rights and forms an inseparable and inherent part of human dignity.”²⁸ Being forced into inactivity has a negative impact on any person's self-esteem, dignity, social inclusion and physical and mental health. By denying protection claimants' the right to work, the Hong Kong Government is forcing them into **the margins of society and the brink of destitution** as the humanitarian assistance package is so low that it thrusts them far under the newly established poverty line.²⁹
20. Some protection claimants may even be forced to work illegally in the informal economy or turn to negative coping mechanisms for their survival, a situation that offers them no legal protection, puts them at a series of risks and opens them up to exploitation by unscrupulous employers who take advantage of their situation. Long stretches of unemployment and lack of access to vocational training and adult education further creates barriers to adjustment and integration – and even presents hiring stigmas – in their eventual country of resettlement.

Questions

- II. In light of the *GA* judgment, where the Hong Kong Court of Final Appeal unanimously dismissed that protection claimants have a constitutional right to work and ICESCR applies to their case,³⁰ can the Hong Kong Government explain:

²⁴ The reservation is: “The Government of the United Kingdom reserve the right to interpret article 6 as not precluding the imposition of restrictions, based on place of birth or residence qualifications, on the taking of employment in any particular region or territory for the purpose of safeguarding the employment opportunities of workers in that region or territory.”

²⁵ Ramsden, Michael Phillip, “Using the ICESCR in Hong Kong Courts”, *Hong Kong Law Journal*, 13 October 2012, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2160777

²⁶ CESCR, “Concluding Observations, China: Hong Kong Special Administrative Region”, UN Doc.:E/C.12/1/Add.58, 21 May 2001, at para. 15

²⁷ Marsh, Luke; Ramsden, Michael, “The ‘Right to Work’ of Refugees in Hong Kong: *MA v Director of Immigration*”, *International Journal of Refugee Law*, Vol. 25, No. 3, at p. 587, available at: <http://ijrl.oxfordjournals.org/content/early/2013/10/29/ijrl.eet036.abstract>

²⁸ at para. 1

²⁹ It is difficult to quantify the assistance, since it is mostly in-kind, and there is little transparency about the package, however, some estimates put the in-kind assistance at 37% below the poverty line, previous to 1 February 2014 enhancements, and 20% after the enhancements. This is based on the combined amount for rent and food for a single person against the newly established poverty line of HKD 3,600 for a single person. See: Vision First, “Crashing through the Poverty Line”, 10 January 2014, available at: <http://visionfirstnow.org/2013/11/02/crashing-through-the-poverty-line/>

³⁰ In relation to the assertion that the ICESCR is not directly enforceable in Hong Kong unless implemented by domestic or municipal law, the judgment relied on para. 5 of General Comment 9 on the domestic application of the Covenant, which states: “The Covenant does not stipulate the specific means by which it is to be implemented in the national legal order. And there is no provision obligating its comprehensive incorporation or requiring it to be accorded by any specific type of status in national law. Although the precise method by which Covenant rights are given effect in national law is a matter for each State party to decide, the means used should be appropriate in the sense of producing results which are consistent with the full discharge of its obligations.”

- i. Why there continues to be no legislation that incorporates all the provisions of the ICESCR into domestic and municipal law and the extent to which the rights enshrined in the ICESCR are legally enforceable under Article 39 of the Basic Law?
 - ii. The rationale for why it continues to maintain reservations to certain articles of the ICESCR, including Article 6 enshrining the right to work, and whether it plans to lift these reservations?
 - III. For those who request permission to work by the Director of Immigration, how are such permission requests assessed and decisions determined? For those for whom permission is granted, what are the guidelines or principles regarding the conditions attached to this permission to ensure just and favorable conditions of work as per Articles 6-8 of the ICESCR?
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The “humanitarian assistance” provided to claimants does not respect, protect and fulfill their socio-economic rights

21. Article 11 of the ICESCR provides for the right of everyone “to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. The Hong Kong Government bears a positive legal obligation to take appropriate steps to ensure the realisation of this right, especially as this group, in particular, is legally barred from working and thus is unable to provide for themselves in order to realise this right.
22. The Hong Kong Government has been offering a “humanitarian assistance package” since 2006. The policy is set by the Social Welfare Department and is administered by the International Social Service (ISS HK), a non-governmental organisation contracted by the Social Welfare Department, under its “Assistance in kind to Asylum Seekers and Torture Claimants Programme” or “ASTC Programme”.³¹ The assistance provides support for: food, accommodation, transport, clothing, toiletries, health and education.
23. The program is not designed in accordance with international human rights standards and principles; it is merely aimed at “preventing destitution”, although it is failing to even meet this objective. In January 2014, the Hong Kong Government announced certain “enhancements” to the humanitarian assistance package, which were rolled out on 1 February 2014.³² These include the following changes:
 - Adjustment of the existing rent allowance grid per claimant from HKD 1,200 to HKD 1,500 per month
 - Rental deposits (HKD 3,000 or an amount equivalent to two months of rent, whichever is the less)
 - Property agent fees (HKD 750 or an amount equivalent to the rent for half a month, whichever is the less)
 - Increase of the average budget for food per month for each claimant from HKD 1,060 to HKD 1,200
 - A transportation allowance per claimant ranging from HKD 200 to HKD 420 per month depending on their location of residence and the number of routine journeys
 - Adjustment of the monthly allowance for utilities from around HKD 260 to HKD 300 per claimant

These changes are a welcome and necessary first step, but insufficient to address the gravity of the problem or its root causes, which are five-fold:

³¹ International Social Service Hong Kong, “Assistance in kind to Asylum Seekers and Torture Claimants (supported by SWD)”, available at: http://www.isshk.org/e/customize/migrants_assistance.asp

³² HKSAR, Legislative Council Panel on Welfare Service, Humanitarian Assistance for Non-refoulement Claimants in Hong Kong, LC Paper No. CB(2)626/13-14(06), 13 January 2014, available at: <http://www.legco.gov.hk/yr13-14/english/panels/ws/papers/ws0113cb2-626-6-e.pdf>

24. First, the package has largely been **designed as a tide-over, temporary measure**, based on the erroneous assumption that protection claimants are in Hong Kong for a short period of time, when in fact, most claims take several years to process and, for successful claims, several more until a durable solution, if any, is found. ISS HK has even admitted that “The current assistance project is designed exactly as a tide over grant with barely adequate provisions for adaptation to Hong Kong. What has been missed is that this tide over lasted for years and people have been in suspended limbo over their stay in Hong Kong. Looking back, if anyone had stated that the length of time for each client to stay in Hong Kong would at least be a year or more, then the entire project design, policies and provisions should have been different.”³³
25. Second, these provisions are **still too low and not calibrated to Hong Kong’s cost of living**. The housing allowance, at HKD 1,500 (or USD 193) is grossly inadequate for a city that has the highest real estate prices in the world.³⁴ This amount is the going rate for most caged homes. As a result, many claimants are forced to live in precarious, informal, unsafe and unhygienic housing (even allegations of rental housing made out of converted animal coops).³⁵ There have been numerous international and national media reports over the past year about the “slum-like” conditions that protection claimants live in.³⁶ The increase for food, at HKD 1,200, still breaks down to a mere HKD 40 per day (USD 5.15), or HKD 13.33 per meal (USD 1.72).
26. Thirdly, the recent enhancements have been a one-off measure (largely as a result of heightened pressure from civil society)³⁷ but there is **no mechanism to annually adjust these amounts to changes in the cost of living and inflation**. As a result, without annual adjustments, the value of these amounts loses real value over time. There is **no transparency about how these amounts are determined** and calibrated or about the details of the ASTC Programme’s operations and budgeting. The current service contract for the humanitarian assistance will expire this year, and the Administration has announced that it will “consider building in a regular review mechanism based on objective criteria in the next service contract” but has made no guarantees that it will do so.
27. Fourth, other than the recently introduced transportation allowance, the package is **in-kind and therefore piecemeal**. Without access to any other form of income, in-kind assistance alone will never meet the full costs of living, nor will the package be flexible enough to respond to one-off or unforeseen needs that a protection claimant may have. It will never be sufficiently adaptable to cater itself to the individual needs of each recipient, which may vary from client to client, and even for a single client, may change from one month to the next. It is also in contrast to social security assistance provided to other population groups, which are monetary under the Comprehensive Social Security Assistance (CSSA).
28. Nowhere does the restrictiveness of the in-kind assistance play out more than with the food assistance. Refugees only have the option of choosing their food from a limited list of items and picking up bags of

³³ International Social Service Hong Kong, Legislative Council Panel on Welfare Services, Special Meeting, July 22, 2013, Ways to Improve the Situation of Refugees, Torture Claimants and Asylum Seekers in Hong Kong”, LC Paper No. CB(2)1646/12-13(01), at. p. 8, available at: <http://www.legco.gov.hk/yr12-13/english/panels/ws/papers/ws0722cb2-1646-1-e.pdf>

³⁴ Einhorn, Bruce, “The World’s Freest Economy Is Also Its Least-Affordable Housing Market” *Bloomberg Business Week*, 21 January 2014, available at: <http://www.businessweek.com/articles/2014-01-21/the-worlds-freest-economy-is-also-the-least-affordable-housing-market>

³⁵ Lee, Danny, “We Have No Secrets, Asylum Aid Chief over Illegally Converted Pigeon Coop”, *South China Morning Post*, 28 August, 2013, available at: <http://www.scmp.com/news/hong-kong/article/1299876/we-have-no-secrets-asylum-aid-chief>

³⁶ See: “Asylum Seekers in Hong Kong Face Slum-Like Conditions”, *Wall Street Journal*, 16 July 2013, available at: <http://online.wsj.com/news/articles/SB10001424127887323394504578608760287223132>; Lai, Samuel and Tjhung, Mark, “Hong Kong’s Refugee Shame”, *Timeout Hong Kong*, 19 June 2013, available at: <http://www.timeout.com.hk/big-smog/features/59068/hong-kongs-refugee-shame.html>; Chan, Wilfred, “Hong Kong’s ‘Shameful’ Treatment of Refugees Exposed”, *CNN*, 18 July 2013, available at: <http://edition.cnn.com/2013/07/18/world/asia/hong-kong-refugees-exposed/>; Branigan, Tania, “Hong Kong’s Dirty Secret: Thousands of Asylum Seekers Left Waiting in Squalor”, *The Guardian*, 6 March 2014, available at: <http://www.theguardian.com/world/2014/mar/06/hong-kong-asylum-seekers-waiting-in-squalor>

³⁷ Refugee Concern Network, “Improving the Living Conditions of Protection Claimants in Hong Kong: Recommendations from the Field”, Briefing to the HKSAR Security Bureau and Social Welfare Department, October 2013, available at: <http://www.hkrac.org/wp-content/uploads/2013/10/Refugee-Concern-Network-Briefing-to-Social-Welfare-Department-October-2013.pdf>

food three to six times a month from a handful of pick-up points.³⁸ This arrangement is extremely degrading for protection claimants, and there are claims that the said value of the items supplied by the food sub-contractor does not match up with market prices for the same items.³⁹ In fact, in a survey conducted by the Refugee Concern Network in August 2013, 75% of the protection claimants polled said that the food is not enough in quantity to last them through the allotted time period and an equal number stated that the amount of choices is not enough in quantity to meet their needs.⁴⁰

29. Fifth, the humanitarian assistance package **does not operate through a human-rights based approach**. The Government states that its aim is “to provide support which is considered sufficient to prevent them from becoming destitute, while at the same time not creating a magnet effect which could have serious implications on the sustainability of our current support systems and on our immigration control.” This rationale is based on tenuous arguments about reducing “magnet effects”, through the lens of border control rather than taking human rights standards and principles into primary consideration in determining its policies, to the detriment of protection claimants’ basic welfare.
30. The complete lack of a human rights-based approach is reflected not only in the content of the programme, such as low levels of assistance and a lack of any explicit reference to human rights standards whatsoever, but also in its operations. There are hardly any monitoring and evaluation systems built into the programme and none that are publically available—including performance indicators and benchmarks and disaggregated information about budgeting. There is **no transparency** about how the policies are determined and what the eligibility criteria of this means-tested programme are. There are **no avenues for participation or consultation** so that recipients can give feedback about the policy design and implementation. Given the many criticisms about the package that have surfaced in the media, civil society groups, including HKRAC, have called for the ASTC Programme to bolster its capacity to respond to complaints and put in place an ombudsperson function to handle complaints in an independent and timely manner and thus improve **accountability** of the humanitarian assistance.

Questions

- IV. Can the Government please provide disaggregated statistical data on: i) the number of beneficiaries under the humanitarian assistance package, ii) information on budgeting for the programme, staffing and training, iii) how assistance amounts are calculated and with what periodicity they are updated to adjust to changes in inflation?
- V. Can the Government please provide further information and evidence for its rationale for providing in-kind assistance so as to not “create a magnet effect”?
- VI. In relation to the new service contract for the humanitarian assistance package, set to be renewed this year, the Administration has recently claimed that it will “consider building in a regular review mechanism based on objective criteria in the next service contract”. Can the Government provide more information on how it will do this?
- VII. Can the Government explain how it will integrate human rights standards into the design and operations of the next service contract for the humanitarian assistance package, as well as building into its operations the procedural principles of equality and non-discrimination, transparency, participation and accountability?

³⁸ These include 21 meat products, 35 vegetables, 12 grains/cereals, 12 beverages, 9 fruits, 20 condiments/spices, 7 milk/dairy products, 40 baby food items. See: HKSAR, Paper provided by the Administration to the Legislative Council’s Panel on Welfare Services Meeting, Humanitarian Assistance for Torture Claimants, Asylum Seekers and Mandated Refugees in Hong Kong, LC Paper No. CB(2)1630/12-13(01), 22 July 2013, at para. 11, available at: <http://www.legco.gov.hk/yr12-13/english/panels/ws/papers/ws0722cb2-1630-1-e.pdf>

³⁹ Choi, Christy, “Calls for More Transparency as Food Costs for Hong Kong’s Asylum Seekers Don’t Add Up”, South China Morning Post, 19 February 2014, available at: <http://www.scmp.com/news/hong-kong/article/1430939/calls-more-transparency-food-costs-hong-kongs-asylum-seekers-dont-add>

⁴⁰ Refugee Concern Network, p. 6

Recommendations

1

The Hong Kong Government should swiftly adopt measures that adequately respect, protect and fulfil the economic, social and cultural rights of protection claimants. The humanitarian assistance programme should incorporate human rights standards and principles into its policy design and operations to ensure that protection claimants live in dignity while they are in Hong Kong. The assistance programme must also operate in a fair, transparent, accountable, and participatory manner, and must be adequately resourced and staffed.

2

The Hong Kong Government should amend its immigration legislation to give protection claimants legal status while they are awaiting the outcome of their claim and resettlement, granting them a Hong Kong identification card and providing them with the opportunity to work if they have substantiated claims or if a certain amount of time has passed before their claim is determined. HKRAC recommends that status be granted no more than one year after they file a USM claim.

3

The Hong Kong Government must provide durable solutions for successful protection claimants through the newly introduced “Unified Screening Mechanism”, such as local integration, voluntary repatriation and resettlement to a third country. It should seek extension of the 1951 Refugee Convention, heeding the calls of six treaty bodies, the UNHCR, professional legal bodies in Hong Kong, numerous civil society groups, human rights scholars and protection claimant advocates.

Appendix

The food assistance provided under the humanitarian assistance package is given in-kind, in bags of food that recipients pick up 3 to 6 times a month. The amount used to be equivalent to HKD 1,060 a month for a single adult, but have since been increased to HKD 1,200 a month (a HKD 140 increase). This increased amount is still only equivalent to HKD 40 a day (USD 5.15) or **HKD 13 a meal** (USD 1.72).

There are complaints that the food that is not sufficient in quantity or quality, that the food provided is not always the food requested or are random selections not suitable to make a meal, and even that some food is expired or in rotting condition, or that it does not meet adequate nutritional standards. The Government has recently stated that it “has obtained the expert advice of pediatrician and dietitian from the Department of Health (DH) regarding the choice, quantity and nutritional value of food on the standard selection”, which the DH said were sufficient,⁴¹ but, the findings from this “expert advice” have not been published.

In a survey conducted by the Refugee Concern Network in August 2013, only 50% of protection claimants reported that food remains suitable for consumption during the allotted time period. Civil society has asked for a cash allowance or at least a voucher system, which would be more fair, transparent and efficient.

(Photographs taken by Christian Action’s Chungking Mansions Service Centre, before enhancements)

Each of the three photos below is meant to last a single adult male five days



This is the amount for a family of four for five days. The lettuce is rotting.



⁴¹ HKSAR Government, “Humanitarian Assistance for Non-refoulement Claimants in Hong Kong”, Legislative Council Panel on Welfare Service, LC Paper No. CB(2)626/13-14(06), at para. 7, available at: <http://www.legco.gov.hk/yr13-14/english/panels/ws/papers/ws0113cb2-626-6-e.pdf>