



To:

Members of the Panel on Welfare Services  
Legislative Council  
Legislative Council Complex  
1, Legislative Council Road  
Central, Hong Kong

November 5, 2013

Esteemed Chairperson and Members of the Panel on Welfare Services:

The Hong Kong Refugee Advice Centre (HKRAC) writes this letter to follow-up on the Panel on Welfare Services Item I: “Ways to improve the situation of refugees, torture claimants and asylum seekers in Hong Kong”, discussed at a special meeting held on Monday, July 22 2013.

During this meeting, members of the Panel heard several oral statements from deputations—as well as received written submissions—that provided in-depth feedback on challenges that recipients face under the current humanitarian assistance scheme.

The representatives from the Administration for the Security Bureau and the Social Welfare Department both stated that the present scheme has “room for improvement” with regards to levels of assistance and operations, and that they would carefully consider the views given in the meeting.

Among other items for action, it was discussed in this meeting that the Administration would follow up and report back to LegCo within the coming 2-3 months, providing further documentation to the LegCo Panel, and that there would be a future meeting by the Panel on Welfare Services to discuss these issues further.

HKRAC also directs Members’ attention to a report that was filed directly to the Social Welfare Department, with an accompanying press release, last month by the Refugee Concern Network. Both the report and the press release are available here:

<http://www.hkrac.org/wp-content/uploads/2013/10/Refugee-Concern-Network-Briefing-to-Social-Welfare-Department-October-2013.pdf>

<http://www.hkrac.org/wp-content/uploads/2013/10/PRESS-RELEASE-Refugee-rights-groups-submit-proposal-for-change-to-Social-Welfare-Department.pdf>

This detailed report contains feedback from a survey conducted with refugees, asylum seekers and torture claimants, comparative research on welfare best practices in other jurisdictions and proposes an 8-Point Plan of Action for reform. The recommendations in the report offer both practical and fairer solutions to many of the problems outlined in the July 22 meeting.

We write Members to share this report and to request that the Panel on Welfare Services follow up diligently and expeditiously with the Administration on the outcomes and action items coming out of the special meeting on July 22, 2013. Lastly, we expect and urge the Panel to put an agenda item in its upcoming meetings to discuss these issues before the end of this calendar year.

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-The Hong Kong Refugee Advice Centre

# DIGNITY LIVELIHOOD INCLUSION

## **Improving the Living Conditions of Protection Claimants in Hong Kong** Refugee Concern Network

Recommendations  
from the field

October 2013



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‘While every refugee’s story is different and their anguish personal, they all share a common thread of uncommon courage: the courage not only to survive, but to persevere and rebuild their shattered lives.’

**Antonio  
Guterres**

**United  
Nations High  
Commissioner  
for Refugees**

# ABOUT

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**The Refugee Concern Network (RCN)** submits this briefing to the Hong Kong Social Welfare Department (SWD) with the aim of helping the Administration to inform its policy towards the development of an enhanced assistance package for asylum seekers, refugees, torture and cruel, inhuman or degrading treatment or punishment (CIDTP) claimants (hereafter referred to as ‘protection claimants’) in Hong Kong.

The briefing has been prepared by the Hong Kong Refugee Advice Centre, with findings from a survey conducted by Christian Action and the Vine Church in July 2013. RCN is a diverse coalition of front-line service providers, non-governmental organisations, faith-based groups, academics, and human rights lawyers and advocates unified by one single purpose: to support those seeking protection in Hong Kong and advocate for their rights.

With over a decade in existence, RCN works closely with protection claimants to make sure that their needs and basic human rights are being met. RCN members work in collaboration and complement each other’s services to ensure that our beneficiaries receive the best possible support. In this spirit of cooperation, RCN also lobbies and advocates for rights of protection claimants in Hong Kong—one of the territory’s most vulnerable groups.

**RCN and its affiliated groups look forward to continued dialogue and collaboration with the Administration to develop a sustainable solution firmly grounded in human rights.**

# INTRODUCTION

'Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services.'

## - Universal Declaration of Human Rights

This report contains policy recommendations that we formally submit to the Hong Kong Government's Social Welfare Department (SWD) and the Security Bureau regarding the humanitarian scheme for asylum seekers, refugees, torture and CIDTP claimants in Hong Kong (referred to as 'protection claimants').

The report is informed by direct experience of the Refugee Concern Network—a coalition of agencies that have worked with and for this population over the years—as well as comparative research on best practices in other country contexts. Additionally, the report references the results of a survey of 24 protection claimants, from a wide variety of backgrounds and nationalities. The survey results are an accurate sample of the current situation of Hong Kong's protection claimants.

At the time of this writing, Hong Kong is at a critical crossroads. In July 2013, the Government announced that, in order to comply with two recent judgments handed down by the Hong Kong Court of Final Appeal,<sup>i</sup> it will adopt a unified screening mechanism (USM).<sup>ii</sup> This mechanism will process:

- o torture as defined under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or 'CAT'
- o torture or cruel, inhuman or degrading treatment or punishment under Article 3 of the Hong Kong Bill of Rights; and/or
- o persecution with reference to the principle of non-refoulement under Article 33 of the 1951 Convention Relating to the Status of Refugees

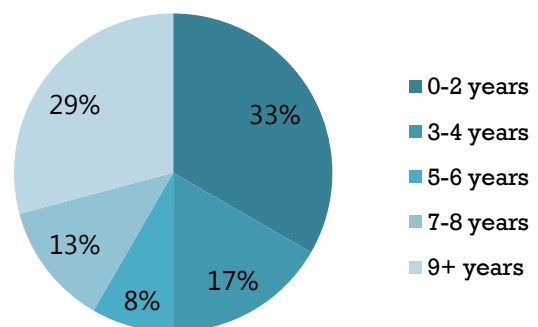
Civil society groups have long advocated for a government-led, unified screening mechanism and welcome this decision, although we have raised

several concerns about its operationalisation, which have been brought forth to the Panel on Security following the Administration's 26 July 2013 call for written submissions on the proposed USM.

These legal and policy developments on the USM also raise an opportunity to revisit Hong Kong's humanitarian assistance provisions. Simply extending the current package of assistance offered to protection claimants under the USM would be wholly unacceptable, given the numerous concerns that have gone largely unaddressed over the years and mounting pressure for re-evaluation and reform.<sup>iii</sup>

Hong Kong currently offers this population group in-kind assistance through the Asylum Seeker and Torture Claimant Programme (ASTC Programme). The programme is administered by International Social Service Hong Kong Branch (ISS-HK), a non-governmental organisation contracted by the SWD.<sup>iv</sup> HK\$203 million was allocated for this programme for 2013-2014.<sup>v</sup> The assistance includes support for: food, accommodation, transport, clothing, toiletries, health and education, although there are flaws in each assistance line.<sup>vi</sup> We find that there is ample evidence to show that the current assistance simply does not meet service users' needs and does not comply with Hong Kong's human rights obligations.

## Q: How long have you been seeking protection in Hong Kong?



While in Hong Kong, protection claimants' lives may not be at risk but their basic civil, political, social and economic human rights remain unfulfilled for years. The humanitarian assistance package has largely been designed as a tide-over, temporary measure under the premise that protection claimants are in Hong Kong for a short period of time. However, the reality on the ground is that, claimants—due to factors outside of their control—must often wait up to several years before their claims are determined. Our ask is



therefore simple and straightforward; refugees would like to be self-sufficient, but if they are unable to do so, then the support they receive must at least allow for a humane, livable level of existence.<sup>vii</sup>

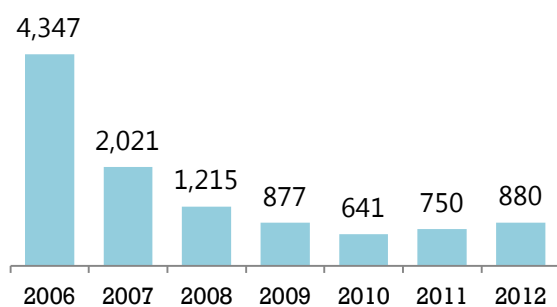
**'...Looking back, if anyone had stated that the length of time for each client to stay in Hong Kong would at least be a year or more, then the entire project design, policies and provisions should have been different.'**<sup>viii</sup>

### - ISS HK on the ASTC Programme

The Hong Kong Government has frequently justified its minimalist humanitarian assistance (aimed merely at 'preventing destitution'), its exclusive use of in-kind delivery models and its refusal to allow claimants—even successful ones—to have access to self-reliance opportunities, by arguing that these measures are necessary in order to prevent a 'magnet effect.'<sup>ix</sup>

Yet, the Government has not been able to put forth any empirical evidence to support the argument that an improvement in the human rights situation of protection claimants would result in a 'floodgates' scenario. In fact, protection claimants currently represent only an infinitesimal fraction of the total population and annual asylum seeking (see graph below) and torture claim trends (1,809 claims received in 2010, 1,432 in 2011 and 1,174 in 2012) show that numbers have been declining in recent years—after the instatement of the ASTC package in 2006.<sup>x</sup>

**UNHCR: Total persons of concern (2006-2012)**



Source: UNHCR Population Statistics Database

Media coverage and public debate frequently conflate economic migrants with refugees, skeptically questioning protection claimants' motives for being in Hong Kong and asserting that they come for 'our

good quality of life.' In fact, given its level of prosperity and economic development, Hong Kong is faring quite poorly compared to other countries that host larger asylum seeking populations with less resources (80% of refugees globally are found in developing countries).<sup>xi</sup>

Moreover, most international studies examining whether push or pull factors are responsible for driving refugee movements overwhelmingly agree that factors in the country of origin are the predominant determining variable for why asylum seekers flee.<sup>xii</sup> This is supported by the positive aspects about Hong Kong that our survey respondents identified, which overwhelmingly relate to physical security, rather than economic benefits.

### **Q: What are the positive aspects of being in Hong Kong?**

#### **3 MOST FREQUENT WORDS**

<b>safety</b>	14 of 23 respondents
<b>people</b>	In relation with the words 'patient', 'kind' & 'nice' cited as frequently as the word 'security'
<b>peace</b>	

#### **SELECTED RESPONSES**

'Respect for human rights. You know you won't just be taken away on the street.'

'It is safe, people are nice and the law is good. I have learnt many things here.'

'It is a good, safe place with stability. There is peace. I have no fear of death.'

We commend Hong Kong for offering community-based alternatives to closed detention for protection claimants, which is a more humane treatment and more in line with international human rights law and standards. Nonetheless, we remain concerned that, over the years, the Government has not reflected on its humanitarian assistance policy and has continued to use the same tired argument—a template response to criticism—that it seeks to 'prevent a person from becoming destitute without creating a magnet effect.'

However, as time moves on with the same problems unresolved, as more and more jurisdictions improve

their assistance to claimants without ‘opening the floodgates’, this sort of justification does not hold water. For too long, this rationale has shut the door on further debate.

It is time to move towards finding practical, sustainable and rights-based solutions that are in both the interest of protection claimants as well as Hong Kong. We do believe that the protection we offer to those fleeing persecution and the most unspeakable human rights abuses—how we treat our most vulnerable populations—speaks to the importance we give, as a society, to respect for human rights, rule of law and the dignity and inclusion of every person.

## HOUSING

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### Current Situation

For a city with one of the highest real estate costs in the world, the inadequacy of current levels of assistance is perhaps nowhere more manifest than the housing rent allowance. Although there is a certain degree of flexibility in determining the amount on a case-by-case basis, the benchmark for a single person is HK\$1,200 (adult) and HK\$600 (child). This is far too low to guarantee affordable, habitable, accessible, culturally appropriate, legally secure and physically safe housing. The assistance is not adjusted annually to inflation, leading to a backsliding in housing conditions.

Furthermore, this amount does not cover housing deposits, utility deposits or property agency fees or furniture, causing recipients to resort to borrowing money from friends or asking for help from civil society groups and faith-based organisations. Otherwise, protection claimants must find housing that does not require a deposit—which is often limited to informal, precarious housing arrangements. The housing allowance is transferred directly to the landlord, which can lead to exploitation and abuse if there is no adequate supervision and responsiveness from social workers to conflict resolution needs that tenants may have.

We note that under the Comprehensive Social Security Assistance (CSSA), the rent allowance for a single eligible-member in a household is a maximum level of HK\$1,440 a month, paid monthly via bank transfer directly to the bank account for paying rent.

Furthermore, an allowance is available separately for water and sewage, a grant for rent deposit up to two times the appropriate maximum rent allowance, a grant for utility deposits corresponding with actual expenses, a grant for telephone installation and monthly charges, a domestic removal grant, a grant for renewal of electrical fittings and a grant for emergency alarm system for elderly recipients.

With such low levels of support, many recipients are forced to live in remote and sometimes dangerous areas of the city and outskirts. Many must resort to housing with poor physical accessibility and little security, space or privacy, causing difficulties for persons with disabilities, children, older persons, single women and other vulnerable groups. Many forms of accommodation have substandard infrastructure that pose health and safety hazards (such as dangerous electrical wiring, poor water and sanitation, or inadequate locks, for example).

ISS caseworkers have challenges referring service users to decent housing, with some reports of precarious, informal settlements condoned by social workers in charge of securing the housing.<sup>xiii</sup> Although the programme is designed so that ‘no one be left on the street’ and offers emergency accommodation, homelessness does occur, particularly among new arrivals, who may be finding their bearings and—in the referral and registration process—experience an initial lag before they are able to receive the housing assistance.

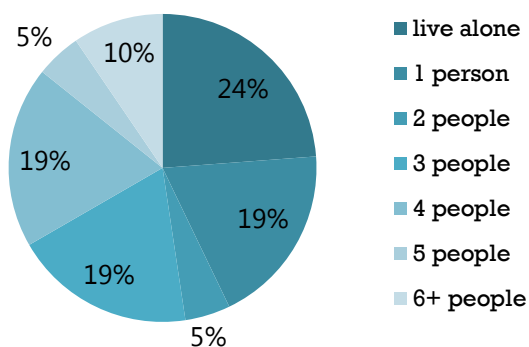
### Survey Findings

<b>47%</b>	had to pay a deposit to secure their accommodation
<b>88%</b>	are unable to assume the costs of their utilities
<b>76%</b>	have challenges with space or physical accessibility

*‘The human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity.’*

**-United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living**

**Q: How many people are you living with?**



## “ FEEDBACK

- There is no separation between roommates, sometimes I may be disturbed by them.
- The airflow is bad since there is no window. The house is too small.
- The landlord did not want to rent the house to asylum seekers.
- There is no suitable place in Hong Kong within our budget.
- We need more money to meet the inflation.
- Furniture and kitchen items should be included in what ISS is providing.
- I live on the eighth floor with no elevator. I have bypass surgery and it is hard to walk up to my home.
- The support is not enough. I need to fill the HK\$500 difference each month which makes my life very difficult.

### Ways Forward

The housing assistance amount must be at a level that ensures that recipients can enjoy adequate housing and live in dignity and security. We propose that the method of calculating the assistance package be based on the rent allowance under the Comprehensive Social Security Scheme, but should also factor in variables unique to the protection claimant population—such as the fact that they are unable to work and thus generate any other form of income for their own subsistence.

In particular, in determining the amount of assistance, the following costs must be explicitly included:

- rent adjusted to market real estate prices
- up to a two-month rent deposit
- property agency fees
- monthly utility expenses
- utility deposits

In addition, there must also be a degree of flexibility to adapt the amount to persons who meet certain vulnerability criteria, such as those who have medical conditions or disabilities, single-parent households, new arrivals, persons with post-traumatic stress disorder, among others.

Moreover, because protection claimants come with few or no possessions; do not receive assistance with furniture and appliances; are not allowed to legally take up employment, and given that the UNHCR has recently retracted cash assistance that it used to provide to recognised refugees, the Government should also provide a monthly cash grant to cover miscellaneous additional expenses, such as furniture or kitchen items and any unexpected costs related to housing. Based on our observations on how the former UNHCR cash assistance programme was utilised by refugees, we recommend, at minimum, HK\$500 per month extra allowance for housing needs.<sup>xiv</sup>

The housing arrangements that recipients live in must also meet certain minimum conditions for safety, security, sanitation and overall habitability. The ISS social worker must use these criteria at all times when referring recipients to accommodation options and when monitoring their living conditions. These conditions might include, inter alia: required basic facilities, such as a kitchen, toilet and shower, adequate ventilation, natural lighting, water, drainage, gas and electricity and refuse disposal; that the housing accommodation be protected from the elements, that it meet health and fire safety regulations and standards; and that the housing have tenure security; and a layout and amount of space that can ensure privacy.

In defining these criteria, we would urge the Government to refer to General Comment No. 4 on Adequate Housing by the UN Committee on Economic, Social and Cultural Rights, which provides an authoritative interpretation of the right to housing—including the elements of legal security of tenure; affordability; habitability; availability of services,

materials, facilities and infrastructure; accessibility; location and cultural adequacy.<sup>xv</sup>

Under any housing assistance scheme, accurate records must be kept of recipients' addresses, and there should be periodic monitoring by caseworkers to ensure that recipients' housing needs are being fully met. Given that the housing allowance is transferred directly to the landlord, there should also be supervision mechanisms in place to ensure that the landlord is complying with the terms of the housing contract and providing recipients with documentation as proof of any utility or other charges.

If the client finds his/her accommodation to be unsatisfactory and wishes to change accommodation, we urge that adequate assistance be granted towards helping the housing recipient to find alternative accommodation fit for habitation in legal structures.

## FOOD

### Current Situation

Protection claimants receive in-kind food assistance equivalent to HK\$1,000 per month. It is chosen from a shopping list by the recipients, and they can then pick up the food provided by contracted grocery suppliers periodically at various pick-up points.<sup>xvi</sup> ISS states that it has generated a list of over 500 food items,<sup>xvii</sup> although a list that RCN has a copy of contains 137 total items. In any case, the shopping list, according to the SWD,<sup>xviii</sup> includes:

- 21 meat/meat products
- 35 vegetables
- 12 grains/cereals
- 12 beverages
- 9 fruits
- 20 condiments/spices
- 7 milk/dairy products
- 40 baby food (where applicable)

The food is of inadequate quantity, quality and difficult to store and transport. When divided by thirty days per month and three meals per day, the assistance amount comes to the **equivalent of a mere HK\$11 per meal**. It is not adjusted **annually** to changes in food prices. This is in contrast to the CSSA, which is adjusted according to the movement of the Social

Security Assistance Index of Prices.<sup>xix</sup> We are highly concerned that the food allotment is not regularly reviewed and adjusted, resulting in recipients seeing a decrease in their monthly food items, as the equivalent amount of the food allowance is not adjusted to changes in food prices, essentially resulting in smaller and smaller amounts of food. Recipients feel frustrated that they have very limited choices over the kind of food they would like to eat beyond the small selection in the list provided. There are frequent reports of low-quality or rotting food.

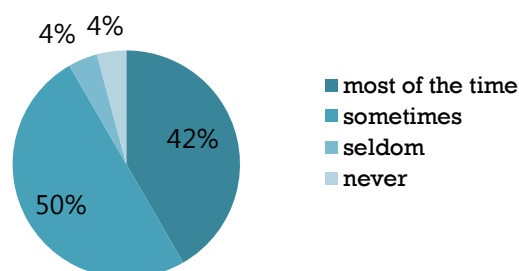
Moreover, because food is given in-kind, recipients have no control to purchase items at market prices where they best see fit, which in many cases is at a cheaper rate. Many recipients have found that the pricing of items in the in-kind programme is questionable and similar items can be bought for cheaper in stores. Without transparent pricing of items, protection claimants have reported that it is difficult to budget their requested foodstuffs when they have to fill out their grocery list form. Moreover, protection claimants do not always receive the items they request.

When discussions have been raised about substituting in-kind assistance with cash transfers, the Government has stated, 'As offering assistance-in-cash would likely create a magnet effect, the Administration had not intention to change the present arrangement of providing assistance-in-kind to asylum seekers.'<sup>xx</sup>

### Survey Findings

- 75%** say that amount of choices is insufficient to meet their needs
- 50%** report that food does not suitable for consumption through the allotted time
- 77%** say that the food is not enough in quantity for the time period

#### Q: How often do you get what you ordered from ISS-HK?





# “ FEEDBACK

- Give us more choice or give us money to buy the food ourselves.
- Quality and quantity must improve. There should also be more collection centres.
- It would be better if we collected food vouchers instead so that we can buy fresh food from the supermarket when we need.
- I don't always have what I need or what I wish I could have.
- The food is too heavy to carry for a six-person family.
- One time I asked to exchange a can of milk that was going to expire, but the shopkeeper refused.

## Ways Forward

If the in-kind assistance food distribution programme is to continue, it needs more supervisory mechanisms to ensure that pricing of food is transparent and based on market prices and to guarantee that there is quality control over the foodstuffs being distributed by sub-contractors in line with food safety standards. There should be more flexibility with the frequency with which recipients can pick up food, the monthly amount of food, as well as the variety of options.

However, [we assert that moving to a cash grant system, or at least a voucher system](#)—would be fairer, more empowering and more cost-effective—benefiting all parties. There is also support from many economists and a plethora of case studies from the field that have demonstrated that cash benefits are a more effective and just form of food aid.

Cash gives the ability to purchase the goods and services that recipients value and need the most, based on the idea that the recipient of a service is best-equipped to determine how to utilise it. By contrast, in-kind benefits strip aid recipients of the ability to choose, thereby forcing them to get less out of the very service that is meant to help them. This is inefficient, restrictive and disempowering. The economics of cash-based forms of assistance are backed by an overwhelming amount of evidence—both through the UNHCR's operations<sup>xxi</sup> as well as programmes in place in other country contexts providing welfare assistance to refugees and asylum

seekers.<sup>xxii</sup> These experiences can greatly inform the Government.

In practical terms, the Government will not need large amounts of resources to transform the current in-kind food programme to a cash benefits system. The international prevalence of cash benefits programmes proves that they are logistically easy to implement at a low cost to the Government in jurisdictions much larger than Hong Kong and with a significantly higher population of protection claimants.

Moreover, direct cash transfers can actually increase efficiency and reduce overhead costs, eliminating the need for staff to administer the programme or contractors to supply food—thus saving time as well as human and financial resources of the public coffers, and reducing the likelihood of irregularities in food supply and distribution. This would reduce resources spent by the Government on humanitarian assistance and also increase the purchasing power of protection claimants, having a positive feedback effect on the Hong Kong in the process as injecting cash into the local economy has a multiplier effect.

[Christian Action recently found that when claimants collected their monthly food bag, valued at HK\\$330, itemised it, and then went to local shops to purchase the same items, they were able to purchase food for HK\\$229, saving HK\\$101—roughly 30%.](#)

According to the SWD's 2011 Service Specifications, the ASTC Programme is designed to prevent the service user from being 'seriously hungry.' However, international human rights standards related to the right to food discuss elements that include:<sup>xxiii</sup>

- [Availability](#) of food in a quantity and quality sufficient to satisfy the dietary needs
- [Quality](#) so that it is free from adverse substances sets requirements for food safety
- Cultural or consumer [acceptability](#)
- Economic and physical [accessibility](#)

The food assistance package should incorporate a rights-based approach and give recognition to the implications that access to nutritious food has as a determinant on the ability to enjoy the right to health, with special importance given to the developmental needs of children. We note that the right to food entails a person, family or community's right to feed themselves, which would be most successfully achieved by ensuring the right to work is realised.

# HEALTH

## Current Situation

Protection claimants can access emergency medical care, public hospitals or outpatient clinics by medical waiver and specialist units by referral on a case-by-case basis, subject to the assessment by the Hospital Authority or service units of the SWD.

This system is operationally inefficient as protection claimants must seek a waiver each time they need to access publicly-available medical services, thus draining human resources and creating unnecessary bureaucratic hurdles for those in need of treatment—particularly for chronic conditions. Moreover, the assessment is focused on the anticipated length of stay of the protection claimants and the likelihood of their removal, rather than on their actual need; the gravity of their condition; and the severity of consequences if these are left untreated.

In order for patients to communicate with medical staff, they often need access to interpreter services, although this is not always available for every language, leading to misunderstandings about the services available and possible information gaps about their medical condition. Sometimes, patients have encountered that staff within the public healthcare system are not familiar with waiver procedures and recognizance documents, even asking protection claimants for a Hong Kong ID card, which they are not entitled to have. In some cases, protection claimants have felt that they have been discriminated against and do not know how to seek redress.

Clients have reported long waiting times, particularly for specialised healthcare appointments, and persons with complex medical issues do not always have their needs met. Increasingly, protection claimants with chronic medical needs report that they have been told to seek assistance from private fee-paying medical providers. Access to affordable dental care is nonexistent.

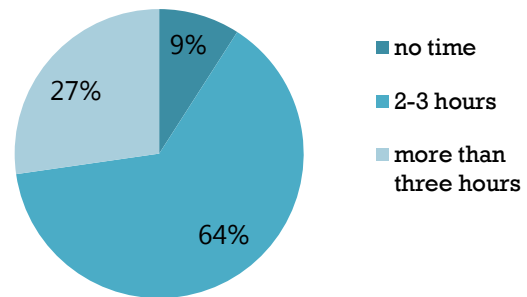
Perhaps most crucially, access to counseling is difficult and protection claimants' psychological needs are not fully met within the system. Yet these services are crucial for this population, many of whom struggle to cope with the trauma they experienced in their countries of origin and depression from the futility of

their existence in Hong Kong. The current practice by ISS-HK—the SWD's contractor—is to hire caseworkers with a counseling background to attend to their needs, but, as the service provider for other welfare needs, this creates an inherent conflict of interest. Moreover, the inadequate level of humanitarian assistance is contributing to physical and mental health problems amongst protection claimants.

## Survey Findings

- 70%** have sought assistance at the closest hospital to them
- 80%** have been able to communicate with health personnel
- 42%** felt staff did not make efforts to accommodate their needs
- 50%** felt comfortable with the manner in which service was provided to them

### Q: How long did you have to wait when you sought medical services?



## “ FEEDBACK

- It is difficult to get a medical waiver because, without a Hong Kong ID, they have to clarify all the documents.
- We need to prove many things. It is very complicated. Doctors are sometimes not willing to give documents since we do not have a Hong Kong ID.
- I need to wait a very long period of time for the appointment.

- Some doctors may not want to do an operation for us because we don't have money. Doctors only will prescribe *Panadol* for us.

## Ways Forward

Like any human being, protection claimants have the right to life and to the enjoyment of the highest attainable standard of physical and mental health.<sup>xxiv</sup> They should be able to receive appropriate medical care, including long-term care, without discrimination, and should be given compassion, respect and dignity. They must be treated according to the gravity of their condition, irrespective of their expected length of stay or likelihood of removal.

The current waiver system creates unnecessary bureaucratic hurdles. We therefore recommend a policy change that allows for an open waiver system, ideally by granting a healthcare card to replace the current procedure of having to use recognizance papers, which frequently causes confusion among frontline medical workers who are often unfamiliar with these documents.

As protection claimants do not have the right to work and therefore do not have access to income-generating activities, systems must be put in place to cover the totality of medical needs not covered by the public system, including treatment and medication costs. The next tender for the protection claimant assistance package should have funds reserved for: chronic medical needs not met by the public health system, ophthalmological service; and dental care, among other services.

In addition to having the same health needs as the overall population in Hong Kong, protection claimants are often at higher risk for particular conditions, including: post-traumatic stress disorder, anxiety, depression, alienation, grief, and the physical effects of persecution and torture. Compounding this is the mental strain placed on this group by the inherent uncertainty of the claim determination and resettlement process. Furthermore, we have found that the longer they are unable to use their time productively and meaningfully in Hong Kong due to their lack of access to education, volunteering, work or training opportunities, the more likely they are to experience a deterioration in their mental health condition, which can in some cases even lead to suicidal thoughts, negative coping mechanisms or self-harm.

All these variables point to the need for the Hong Kong Government to redouble its efforts to provide this population group with suitable psychosocial support, which is a glaring gap under the current scheme. We would recommend that there be a separate tender for psychological services, as having the same service provider that administers humanitarian assistance give counseling services is incompatible. Moreover, the revamped healthcare package must be culturally sensitive and address the diverse language needs and cultural backgrounds of the protection claimant community.

# EDUCATION

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## Current Situation

Protection claimants under 18 years of age can enroll in school and have their tuition waived by the Education Bureau and receive financial assistance. However, this is granted not as a universal right (which would entail [legal entitlements and obligations](#)),<sup>xxv</sup> but rather on a case-by-case basis. As stated verbally in the 22 July 2013 Special Meeting of the LegCo Panel on Welfare Services and in the Administration's paper, a variety of factors are considered, including: the likelihood that the student will be removed from Hong Kong, whether there are enough school vacancies, the duration of the schooling required, and the age and educational background of the minor, among others.

Financial assistance is available, provided by the Student Financial Assistance Agency (SFAA), but it does not include school supplies, uniforms or fees for school activities. Additionally, assistance by SFAA tends to arrive later in the school year, not at the beginning when up-front costs are most significant. Some children must go to schools that are located far from where they live, spending hours each day to commute. While a transportation allowance is given to cover the child's commute, none is granted for parents should they seek to accompany their children.

Language barriers and cultural differences can also make communication between teachers and parents difficult. While many protection claimants are very happy with their children's school experience and ability to access education, some report concerns that their children feel uncomfortable or discriminated against in school, making integration a challenge.

Although protection claimants feel very strongly that education is an important tool for their future, adults are not eligible to enroll in government-subsidised vocational training courses, to volunteer or to have access to the public education system if they are above the age of eighteen, even if a sponsor is willing to cover their costs.

### Survey Findings

- 100%** have training areas that they wish were available to them
- 100%** Consider education and training an important tool for preparing them for the future

## “ FEEDBACK

### on primary and secondary education for their children

- I struggle to provide money for an Octopus card, uniform, textbook, stationery and treats for my children.
- My child feels very good. He likes going to school.
- My child feels discrimination at school.
- I have a difficult time making sure they [my children] can have a proper lunch.
- My younger children are going to school but my eldest children have had trouble. One has been waiting for a year already and has not yet been approved and another has already exceeded the age requirement.

## “ FEEDBACK

### on university, adult education and training opportunities

- Education can improve one’s life and transform oneself. It can prepare us for future skilled work.
- Education is important because it can prepare me for work after resettlement.
- I would like to be able to access education to learn English, Cantonese, cooking and typing for a job.

- I have reached the university level and would like to continue my studies. Now I am gaining nothing.

### Ways Forward

As stated by the Committee on Economic, Social and Cultural Rights (CESCR), ‘Education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.’<sup>xxvi</sup> While the Hong Kong Government does grant permission to attend school, it is on a discretionary, case-by-case basis and does not therefore recognise the universal right to education of these children.

To meet its human rights obligations, the Government must: ensure that primary education is universally available for free to every child in its territory, irrespective of their immigration status, without discrimination. Secondary education must be made generally available and accessible to all by every appropriate means. Primary and secondary education must be offered to all claimants regardless of the ‘likelihood of their removal’ and waiting times must be minimised. If these children remain in Hong Kong without going to school, they may have an unnecessary gap in their education—which may also be exacerbated by disruptions in attendance in their country of origin and during their transit.

Primary and secondary education should also be economically accessible to protection claimant children. The SFAA must therefore cover the totality of education costs—including uniforms, miscellaneous school fees, lunches, and transportation for a parent to accompany his/her child to school. The education assistance package must also be reviewed annually to adjust to inflation and be able to adapt to changing financial needs.

We remind the Government that in 2005, the UN Committee on the Rights of the Child raised concern that refugee children and undocumented migrant children are not guaranteed access to education and recommended the Government to amend legislation and regulations to ensure that refugee and asylum seeking children in Hong Kong would be able to attend school without undue delay.<sup>xxvii</sup> Hong Kong will be reviewed again in September 2013 by the Committee. We also encourage the Government to heed the best practices and recommendations

contained in a report made by the former UN Special Rapporteur on the right to education, Vernor Muñoz, to the Human Rights Council in 2010 on the right to education of migrants, refugees and asylum seekers.<sup>xxviii</sup>

Lastly, adults should be able to access publicly-subsidised education and training. Protection claimants unequivocally understand that there is a strong correlation in having access to these opportunities and their ability to successfully integrate in their future country of resettlement in the long-term. Moreover, language classes in Cantonese and English would be beneficial by giving them the ability to navigate Hong Kong more easily and interact in society.

## OTHER COSTS

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### Current Situation

The current in-kind assistance package, in addition to accommodation, food, medical and health needs, also covers transportation, clothing and toiletries.

With transportation, an allowance is provided for 'genuine' travelling need for various purposes, including 'reporting to the Immigration Department, attending medical appointments, attending spiritual worship, meeting with lawyers, collecting food and basic necessities as well as meeting with ISS-HK, etc.' These are provided as a cash reimbursement equivalent to the cheapest means of transportation available and require document proof.

One of the main challenges that protection claimants face is that they do not have the cash needed to pay for these costs upfront, even if they are to be reimbursed retroactively. Furthermore, not all visits are reimbursed, even though they are crucial to the protection claimants' wellbeing. Moreover, recipients are only reimbursed for the cheapest route, however, the cheapest route fare is not disclosed in advance, and often the route assumes a significant amount of walking, which is difficult for families with young children or persons with limited mobility. Taking transportation along the cheapest route is sometimes the least user-friendly, and, it is often difficult to navigate due to Chinese-language barriers.

The Administration mentions that service users who can submit documentary proof (such as appointment slips) to ISS-HK before attending scheduled appointments will be given travelling expenses in advance. It would be, however, difficult to submit such physical documentary proof without needing to travel in the first place, thus eliminating the majority of appointments which are arranged by phone.

The transportation policy inherently assumes that the only 'genuine' transport needs are ones where formal appointments are made in advance, however there are other valid needs that entail transportation, such as accommodation hunting, going to clinics, or seeking education opportunities, for example. The transportation reimbursement criteria should be broadened to include these needs. Because many claimants live in the outskirts, access to transport is not secondary, but rather, instrumental for their needs.

There are other gaps in the humanitarian assistance provision. Access to a mobile phone and credit is a cost that is assumed in the ASTC Programme's *modus operandi* but not included in its assistance package. Almost all service providers and relevant organisations, including the ISS-HK, contact their protection claimant clients via telephone—yet there is no provision for a mobile phone or credit.. A pack of toiletries is given only once a month and clothing is insufficient.<sup>xxix</sup> An illustrative example of the inappropriateness of many of these in-kind items is the fact that baby diapers provided are made of cloth.

### Ways Forward

At present, protection claimants cannot afford many of the things we take for granted – a cup of coffee, a pair of shoes, haircut or even a simple birthday gift for their child. This puts them in a frustrating, disempowering and unhappy position.

The main source of the problem is the fact that any form of exclusively in-kind assistance will never meet the full costs of living in Hong Kong without an income, nor will it 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.

Many other jurisdictions simply offer daily, weekly or monthly living allowance for transport, food and other



expenses.<sup>xxx</sup> This sort of arrangement would ultimately be the most effective means of meeting their needs, and would ensure their dignity, freedom of movement and privacy. For this reason, we strongly advocate for a move towards a cash-based system.

'A strong body of evidence is starting to emerge to indicate that providing people with cash or vouchers works. It is possible to target and distribute cash safely, and people spend money sensibly on basic essentials and on rebuilding livelihoods.'<sup>xxxii</sup>

**-Paul Harvey, Overseas Development Institute, 2007**

Based on our experience working in the field and feedback from our own clients, we have come to the conclusion that it is simply **impossible** to survive in Hong Kong without a Hong Kong ID card and on a cashless basis without steadily being pushed to the margins of society and the brink of destitution. Moreover, the current situation creates unintended consequences. Some protection claimants may feel forced to sell their food, to work illegally or even turn to crime simply in order to obtain income to cover the needs that are not included in the programme. Others become aid-dependent, capable of surviving only with the help of NGOs and churches. Protection claimants should therefore be granted a distinct immigration status from that of 'illegal' over-stayers, an identity card, and be allowed to exercise their right to work.

## SELF-RELIANCE

### Current Situation

Protection claimants must often wait in Hong Kong up to several years before their cases are determined, and there is no long-term solution for successful claimants who are unable to be voluntarily repatriated or resettled in a third country. During this time, they are legally treated as visitors/over-stayers. Neither asylum seekers awaiting the outcome of their claim with the UNHCR, recognised refugees awaiting resettlement to another country, or torture claimants (even the handful who have been successful) are granted the right to work—paid or unpaid.<sup>xxxii</sup>

Nevertheless, the majority of protection claimants are of working age (18-59 years old). Extraordinary temporary permission to work may be issued by the Director of Immigration on a discretionary basis, but it is rarely granted in practice.<sup>xxxiii</sup>

## ASYLUM SEEKERS & REFUGEES RIGHT TO WORK IN OTHER JURISDICTIONS

### Malaysia

The government has recently announced that refugees will be trained in order for them to seek employment while they remain in Malaysia awaiting resettlement to a third country or voluntary repatriation.

### Portugal

Asylum seekers are allowed to start working as soon as they have received their provisional residence permit. If they arrive at the airport, they are given this permit directly when they lodge their application. At other borders, it generally takes 20 days to receive the permit.

### South Korea

Under Article 40 of the new Refugee Law, the Minister of Justice may permit an asylum seeker to engage in wage-earning employment six months after the date on which the refugee status application was received.

### United Kingdom

Asylum seekers can apply for permission to work if they have waited for over 12 months for an initial decision on their asylum claim and are not considered responsible for the delay in decision-making of the application.

### United States

Asylum seekers whose claim has not been determined may request permission to work after 150 days have passed since they filed their complete asylum application.

Forced inactivity has a human and financial cost. The inability to occupy their time meaningfully and productively has a negative impact on protection claimants' mental health and contributes to feelings of social isolation, depression and hopelessness. When claimants are denied self-reliance opportunities and

are prevented from undertaking training or skills development, their potential for future employment and successful integration is severely diminished.

Current policies cause some claimants to 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 and puts them at a series of risks—including potentially affecting the success of their claim. They may be subject to abuse and exploitative, unsafe and unhealthy working conditions propagated by unscrupulous employers who take advantage of their vulnerable position.

## Ways Forward

Everyone has the right not to live in poverty, to enjoy an adequate standard of living for themselves and their family and to contribute to the community in which they live. Access to decent work and professional training are very important means that give asylum seekers autonomy to start their new lives, build their self-esteem, integrate and give back to society and prepare themselves for the job market in their future country of resettlement.

We urge authorities and the Hong Kong public not to confuse the reasons why protection claimants arrive in Hong Kong with their basic needs once they are here. Claimants who are fleeing from persecution do not come to Hong Kong with the purpose of finding employment. They fear for their lives and seek safety. However, they must wait a protracted period for their claim to be determined. During this time, it is imperative that they have adequate means for survival.

For practical reasons, allowing asylum seekers and refugees to work would be beneficial for the Government. Human and financial resources devoted to the assistance package would be reduced. Unique skills and talents—particularly translation and interpretation needs—that the local working population is unwilling or unable to fill would provide a positive contribution to the economy. Illegal work activity would be regularised, reducing criminal activity and the shadow economy.

There are many studies from around the world that demonstrate the positive aspects that asylum seekers and refugees can have on host communities—particularly their economic and social contributions.<sup>xxxiv</sup>

Protection claimants' lives should not be wasted waiting for the status of the claim. They should not have to see their skills deteriorate over time or experience long-term unemployment, which create hiring stigmas in their future country of resettlement.

While more efficient, fair screening procedures are needed to expedite determinations, in the cases where claimants must wait for a significant period of time, an alternative must be offered. Allowing protection claimants to be self-sufficient would improve their own self-worth and also send a positive message to the public that they want to contribute to society and not be a drain on limited resources.<sup>xxxv</sup> Most importantly, this is what protection claimants, if given a choice, would like.

Numerous international human rights instruments and international labour standards protect the right to work. As articulated in the Michigan Guidelines on the Right to Work for refugees and asylum seekers,<sup>xxxvi</sup> this right is not the guarantee of a job but rather, the freedom to gain a living by work freely chosen or accepted. It is about access to the labour market and the ability to participate in self-reliance opportunities. It is therefore fundamental not only for the survival of a person, but for his/her autonomy and dignity.

# SOCIAL INCLUSION

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The current humanitarian assistance provisions—while concerned with (albeit failing to ensure), 'the prevention of destitution'—do nothing to address social exclusion and marginalisation of this group, neglecting the vital importance of inclusion and sense of community on one's wellbeing.

We cannot emphasise enough how indelible access to cash, work, education and volunteering opportunities is for social inclusion and interaction with the local population. Moreover, as the current immigration legislation treats protection claimants—both successful and those whose determination is pending—as over-stayers when their visas expire, they have no legal status in Hong Kong and therefore are not able to hold a valid Hong Kong ID card. The recognizance letters they receive from the Immigration Department do not confer any rights or

status. This non-recognition, combined with a lack of income, hinders their ability to access public services, recreational, leisure and cultural activities and other opportunities to participate in social life.

Furthermore, the public debate and coverage of asylum issues has generally been ill-informed and biased. Even government deliberations frequently use charged language such as 'genuine claims' or 'economic refugees' that question the credibility of protection claimants and only serve to perpetuate negative stereotypes and condone intolerant attitudes. Without broader public awareness campaigns and proactive education efforts, these hostile perceptions will not change. We also note that for many protection claimants, discrimination and racism continue to be a key underlying barrier to their integration.

Government policy must take into consideration social inclusion needs and proactively address these gaps, and be incorporated at all levels of government—particularly in districts where many protection claimants reside. Many other jurisdictions can provide best practices in relation to social inclusion policies and units, new arrival welcome and orientation, community-based organisations and public information campaigns that can be applied to the Hong Kong context.

## OPERATIONS

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### **Increase human and financial resources**

Adopting a rights-based approach to the social assistance package is the best way to ensure sustainability, equality, dignity, transparency, participation and accountability. Human rights can both substantively inform the design of the programme, but also procedurally inform its execution as well.

The resources currently allotted to the ASTC programme, HK\$203 million for the 2013-2014 fiscal year, only equate to 0.36% of the Government's total budget of HK\$56 billion to social welfare this year—that is, around HK\$3,600 (as of May 2013, 4,700 persons were receiving assistance) per service user per month, factoring in administrative and overhead costs as well (which comprise a large chunk of any in-kind assistance programme). However, information on how

these funds are allocated and then spent, what the resources are employed for and why, with disaggregated budget lines, is not publicly available. We recommend that this information about how public funds are being employed be publicly available. The current worker-to-service user ratio is putatively 1:130 and should be no more than 1:150, according to the 2011 Service Specifications. For accommodation assistance, there are only 16 staff members for the entire Hong Kong territory according to ISS-HK—which if compared to the total number of service users in need of housing, would far exceed the 1:150 limit for housing, which is one of the most in-demand areas of the package and a source of great frustration for protection claimants.

This unmanageable ratio is no doubt a leading cause of complaints about how social workers are executing their duties. It is also more than double that found in other social policy programmes, such as the Family Service Centre. Under such a caseload, it would be difficult for caseworkers to realistically fulfill their responsibilities to: 'conduct home visits, monitor food collection sites and check on client's well-being according to needs.' Excessive caseloads hamper programmatic functionality not only because they have a negative impact on the quality of services and responsiveness to service user needs. They also lead to high staff turnover, low morale and emotional exhaustion. We thus recommend that appropriate funds be dedicated in order to lower caseloads to an acceptable ratio.

### **Improve monitoring and evaluation**

Any service(s) that are contracted to third parties must have adequate due diligence, supervisory and appraisal mechanisms in place. Service providers have a duty to be answerable to their beneficiaries and to the Hong Kong public for their performance. Transparency about how policies and levels of assistance have been determined, the eligibility criteria, terms of the contract between the contractor and the government, performance statistics and budgeting would help to manage expectations, reduce variations in delivery and provide more clarity about the content of the provisions.

There are other ways to improve accountability in addition to transparency of information about the nature and content of the assistance and the contractual relationship between parties. We understand that (according to ISS-HK's LegCo submission) the SWD monitors the project through a

monthly statistical report and analysis of programme performance and services, including a scheduled financial reports submission. There are audits that may be announced or unannounced, conducted at least once a year. While we support these monitoring mechanisms, we believe that a fundamental part of good governance is that these reports be made [publicly-available](#) to the fullest extent possible.

There should be an opportunity for NGOs, service users and other stakeholders to take part in this monitoring and evaluation function, meeting with responsible parties about the design, funding and implementation of the programme. Consultation with protection claimants should be the norm and incorporated at all stages of the policy cycle.<sup>xxxvii</sup> These avenues of participation must not be tokenistic; claimants' feedback should result in corrective action.

### **Create more accountability mechanisms**

Effective complaints mechanisms should be in place that are truly accessible (taking into consideration language and cultural needs), responsive and effective. We understand that ISS-HK keeps a monthly complaints log, and that if a service user wishes to file a complaint, these may be done in person, writing or mail direct to the person concerned, to the immediate supervisor, to the Director of Programme of the Chief Executive and Advisory Committee of ISS-HK, or directly to the SWD. Complainants must identify themselves, and there is no system for handling anonymous complaints. Identification creates practical benefits in order to resolve the grievance immediately and might be appropriate for most cases. However, in some instances, if the receiver of the complaint is also the service provider, complainants might be hesitant to step forward. This highlights the need for an independent complaints mechanism.

An ombudsperson function could better monitor performance, respond to user complaints with more independence (and therefore more legitimacy) and ensure that third parties comply with the terms of the contract.<sup>xxxviii</sup> Such a role would be in the interest of everyone for several reasons. It would allow for a more proper investigation into complaints, which are often complex and require more time than a cursory review can provide. It would ensure that conflict resolution is conducted by a neutral actor, and would thus be fairer for both service provider and user. By reviewing many complaints over time, such a dedicated role could more easily identify common

trends and pick up on patterns that the agency may not have recognised on its own.

Lastly, we urge the Government to reinforce its training and capacity-building of frontline workers, particularly in health, education and immigration. Particularly as the USM moves forward and becomes operational, it is important that all persons working with this population group be trained on the USM, human rights, diversity and inclusion and sensitive to the particular needs of this vulnerable group.

## **CONCLUSION**

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We urge the Administration to take swift action to improve the situation for protection claimants in Hong Kong. We do believe that every component of the assistance package must be re-evaluated. The revision of the programme must be holistic, but without withdrawing the programme or putting claimants in a worse position.

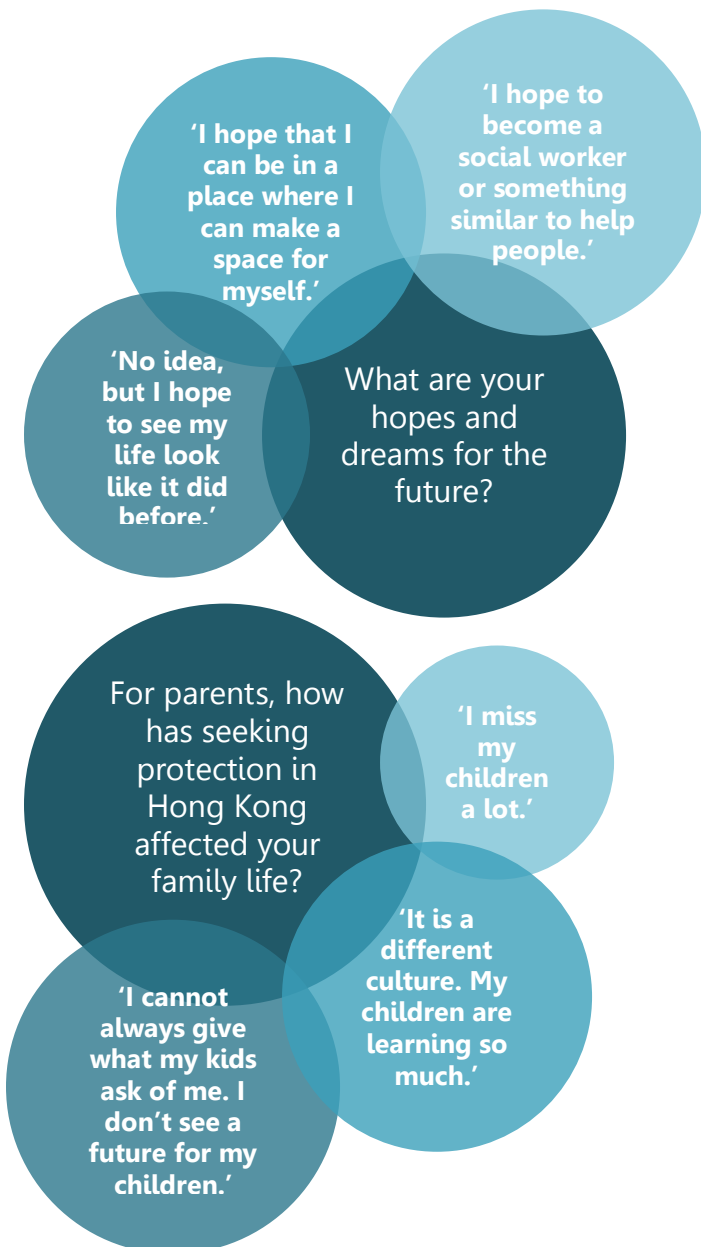
We also note that it is unacceptable that the current assistance package rely on charities to fill in the gap where the Government is not taking responsibility. Notably, according to the ISS-HK's LegCo submission, in determining the types of assistance a service user is eligible to receive by 'level of urgency' and 'availability of resources', the ASTC Programme assesses 'possible assistance from sponsors, church, religious groups, NGOs who the service client is accessing' as a 'possible source of assistance.' We affirm that no policy can inherently depend on charities. It is a risky strategy as NGOs have difficulties maintaining consistent levels of funding. It assumes that protection claimants are resourceful and could lead to variations in access to services. Lastly, we affirm that the Government is the primary duty-bearer, with the ultimately obligation to ensure that protection claimants' basic rights are met.

The gravity of the problem warrants careful consideration of all possible policy alternatives, rigorous research and comprehensive assessment and listening to the voices of protection claimants and relevant stakeholders. Other service delivery models exist that have proven successful in other contexts. These can guide the Administration to make proactive, fair, transparent and sustainable policy.

**Q: Of all the things we have talked about now, or any other issues, if you could change three things to make life easier here, what would they be?**

### Top 3 Responses

<b>work</b>	Work was mentioned eight times even though it was not brought up in earlier questions in the survey.
<b>education</b>	Education was also tied, being cited eight times.
<b>housing</b>	Housing issues came up seven times.



## 8 POINT PLAN

- 1. CONDUCT A COMPREHENSIVE EVALUATION** of the current service delivery model, considering possible alternatives, and best practices from other country contexts. Create an open channel of communication with civil society.
- 2. INCREASE THE ASSISTANCE AMOUNTS** for food and housing in the assistance package to livable, dignified levels which are based on objective criteria and adjusted to inflation. Move from in-kind assistance to cash transfers for more flexibility, fairness and efficiency.
- 3. ENSURE UNIVERSAL ACCESS TO EDUCATION** by reducing administrative and economic barriers that prevent protection claimant children from accessing school. Grant adults access to tertiary education and training.
- 4. ELIMINATE INEFFICIENCIES IN HEALTHCARE** by instating an open medical waiver system and ensure that the totality of health needs are met, such as medical expenses, mental health needs and specialised treatment and care.
- 5. MAKE SELF-RELIANCE A VIABLE OPTION:** Allow successful claimants and those whose claims have not been determined within one year through no fault of their own to have access to self-reliance and livelihood opportunities, including the right to work.
- 6. MAINTAIN MANAGEABLE CASELOADS:** Keep social workers' casework ratios to manageable levels, at least comparable to other social welfare programmes in Hong Kong, providing sufficient staffing and resources for quality and responsiveness.
- 7. ADOPT A HUMAN-RIGHTS BASED APPROACH** by employing human rights standards and the principles of participation, transparency and accountability transversally throughout the policy cycle.
- 8. COMBAT MARGINALISATION AND EXCLUSION:** Make proactive efforts to create and implement policies aimed at increasing social inclusion and awareness-raising for a more tolerant and harmonious society.



# ENDNOTES

<sup>i</sup> *Ubamaka Edward Wilson v. The Secretary for Security and Director of Immigration* (FACV No. 15/2011) and *C, KMF and BF v Director of Immigration and Secretary for Security* (FACV Nos. 18/19/20 2011)

<sup>ii</sup> HKSAR, Administration's Paper on the Screening of Non-Refoulement Claims, presented at a Meeting of the Panel on Security of the Legislative Council on 2 July 2013, LegCo Paper No. CB(2)1465/12-13(01).

<sup>iii</sup> Para. 15 of the Administration's paper on the screening of non-refoulement claims states: 'On humanitarian grounds, the Social Welfare Department (SWD), in collaboration with a non-governmental organisation (NGO) and on a case-by-case basis, offers in-kind humanitarian assistance to CAT and asylum claimants to prevent them from becoming destitute, covering temporary accommodation, food, clothing, other basic necessities, appropriate transport allowances, and medical service. To ensure that the basic needs of claimants are met, each case is reviewed monthly by the responsible NGO. The SWD monitors the programme closely, reviews assistance level from time to time and makes adjustments as necessary. The same assistance will be available to claimants under the USM.'

<sup>iv</sup> Information about the 'Assistance in kind to Asylum Seekers and Torture Claimants' is available on the International Social Service Hong Kong Branch website. According to the service specifications for 2011, the objective is for no service user to: i) be left to sleep on the street ii) be seriously hungry, or iii) be unable to satisfy the most basic requirements of hygiene.

<sup>v</sup> HKSAR, LegCo Meeting of the Panel on Security, Agenda Item II: Screening of Non-refoulement Claims, 2 July 2013, <http://www.legco.gov.hk/yr12-13/english/panels/se/agenda/se20130702.htm>

<sup>vi</sup> HKSAR, Administration's Paper on Humanitarian Assistance for Torture Claimants, Asylum Seekers and Mandated Refugees in Hong Kong, presented at a Special Meeting of the Panel on Welfare Services of the Legislative Council on 22 July 2013, LegCo Paper No. CB(2)1630/12-13(01).

<sup>vii</sup> In a notable development, recently in July 2012, the Federal Constitutional Court ordered the German government to increase the welfare cash benefits to asylum seekers under the Asylum Seekers Benefits Act by 50% in order to meet the constitutional provision that everyone should be entitled to a 'humane subsistence level'—arguing that the current levels, which had not been increased since 1993, were 'inhumane.' The fundamental right to guarantee for a dignified minimum existence is enshrined in the German Constitution, based on Article 1 sec 1 in conjunction with Article 20 sec 1. It applies to German citizens and foreign citizens in equal measure. See: German Federal Constitutional Court, 'Provisions Governing Basic Cash Benefits Provided for in the Asylum Seekers Benefits Act Held Unconstitutional', Press release No. 56/2012, 18 July 2012.

<sup>viii</sup> ISS-HK, the government-subcontractor to administer the ASTC Programme, has acknowledged, '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.' ISS-HK, Paper to the Legislative Council Panel on Welfare Services: Special Panel Meeting, July 22, 2013, at p. 8, <http://www.isshk.org/PublishWebSite/isshk/gallery/35bb80ad-7fbb-483e-aa89-8c3528d2f319.pdf>

<sup>ix</sup> Para. 4 of the Administration's paper to the LegCo Panel on Welfare Services states: 'The in-kind assistance provided to torture claimants, asylum seekers and mandated refugees is not welfare assistance provided to eligible Hong Kong residents. 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.'

<sup>x</sup> HKSAR, 'LCQ 14 Reply Annex. Table A: Number of torture claims - by country of origin,' [http://gia.info.gov.hk/general/201302/20/P201302200345\\_0345\\_107360.pdf](http://gia.info.gov.hk/general/201302/20/P201302200345_0345_107360.pdf) and UNHCR, Population Statistics Database Search Query, accessed on 8 August 2013, <http://www.hkrac.org/wp-content/uploads/2013/08/asylum-seeker-stats.png> and Karani, Phillip, 'Adopting Refugee Convention Would Not Be Slippery Slope for Hong Kong,' *South China Morning Post*, 27 December 2012.

<sup>xi</sup> UNHCR, World Refugee Day: UNHCR Report Finds 80 Per Cent of World's Refugees in Developing Countries,' *News Stories*, 20 June 2011. <http://www.unhcr.org/4dfb66ef9.html>

<sup>xii</sup> Koser, Khalid, 'Responding to Boat Arrivals in Australia: Time for a Reality Check', Lowy Institute for International Policy, December 2010, <http://www.lowyinstitute.org/publications/responding-boat-arrivals-australia-time-reality-check>; Spinks, Harriet, 'Destination Anywhere? Factors Affecting Asylum Seekers' Choice of Destination Country', Parliament of Australia, 5 February 2013, [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1213/13rp01](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1213/13rp01); 'Push vs. Pull—Asylum Seeker Numbers and Statistics', 19 October 2009, <http://blogs.crikey.com.au/pollytics/2009/10/19/push-vs-pull-asylum-seeker-numbers-and-statistics/>; Gauthier, Kate, Keski-Nummi, Arja, Menadue, John, A New Approach: Breaking the Stalemate on Refugees and Asylum Seekers,' Centre for Policy Development, August 2011, pp. 13-14, [http://cpd.org.au/wp-content/uploads/2011/08/cpd\\_refugee\\_report\\_2nd-run-WEB-VERSION3.pdf](http://cpd.org.au/wp-content/uploads/2011/08/cpd_refugee_report_2nd-run-WEB-VERSION3.pdf)

<sup>xiii</sup> The Hong-Kong-based non-governmental organisation Vision First has highlighted 'chicken farm' slums and informal settlements in the Ping Che area, among other districts in Hong Kong. These reports were also covered in several media sources. See: Chan, Wilfred, 'Hong Kong's 'Shameful' Treatment of Refugees Exposed', *CNN*, 18 July 2013 and Lee, Dany, 'Asylum Seekers 'Forced to Live in Pigeon Farm'', *South China Morning Post*, 18 August 2013.

<sup>xiv</sup> The UNHCR, due to the effects of the international financial crisis and competing humanitarian concerns globally, has been forced to make cuts to its budget, with repercussions for the Hong Kong Sub-Office. Beginning in July 2013, the HK\$500 a month cash assistance the UNHCR used to give to recognised refugees was discontinued.

<sup>xv</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment 4 on the Right to Adequate Housing (Article 11(1))', UN Doc.: E/1992/23, 13 December 1991.

<sup>xvi</sup> this ranges from 3-6 times per month

<sup>xvii</sup> ISS-HK Paper to the Legislative Council, at p., at p. 5

<sup>xviii</sup> Administration's paper on welfare provisions to the Legislative Council, at para. 11.

<sup>xix</sup> The SSAIP is compiled by the Census and Statistics Department ('C&SD') on a monthly basis to measure inflation according to the expenditure pattern of CSSA households.

<sup>xx</sup> HKSAR Legislative Council, Minutes of a Joint Meeting by the Panel on Welfare Services and Panel on Security held on 18 July 2006, at para. 33(b).

<sup>xxi</sup> Recently in 2013, the UN Refugee Agency (UNHCR) approved ATM cash transfers to Syrian refugees in Jordan to help them pay for daily living costs, including food, rent, transport, fuel and clothing. See: UNHCR, 'UNHCR to Help 30,000 Syrian Refugees through ATM Cash Programme,' *News Stories*, 6 February 2013. The UN had previously approved a similar program for Iraqi refugees in Jordan. See: Nyce, Sayre, 'ATM Cash Assistance: Does It Work?', *FMR* 34, pp. 42-43, <http://www.fmreview.org/en/urban-displacement/42-43.pdf>. The UNHCR also published a study on the effectiveness of cash-based interventions in its humanitarian operations: UNHCR, 'An Introduction to Cash-Based Interventions in UNHCR Operations,' March 2012. <http://www.unhcr.org/515a959e9.html>

<sup>xxii</sup> For example, Overseas Development Institute, Project on Cash Transfers and Their Role in Social Protection (2006-2009), <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/612.pdf>; Samson, Michael, 'Social Transfers and Pro-Poor Growth', in *Promoting Pro-Poor Growth: Social Protection*, OECD, 2009; Cunha, Jesse M., 'Testing Paternalism: Cash vs. In-kind Transfers in Rural Mexico', Stanford University, 30 March 2010; Reinhardt, Uwe E., 'Provide Cash, or Benefits In Kind?' *New York Times*, 21 January 2011;

<sup>xxiii</sup> OHCHR, International Standards on the Right to Food, [http://www.ohchr.org/EN/Issues/Food/Pages/Standard\\_s.aspx](http://www.ohchr.org/EN/Issues/Food/Pages/Standard_s.aspx)

<sup>xxiv</sup> 'States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy...' UN Committee on Economic, Social and Cultural Rights, 'General Comment 14 on the Right to the Highest Attainable Standard of Health (Article 12 of the Covenant)', UN Doc.: E/C.12/2000/4, 11 August 2000, at para. 34.

<sup>xxv</sup> By contrast, OECD countries' legal systems provide access to compulsory primary and secondary education for every child under a certain age, regardless of the child's national background and legal status. See: Bourgonje, Paloma, 'Education for Refugee and Asylum Seeking Children in OECD Countries: Case Studies from Australia, Spain, Sweden and the United Kingdom', Education International, March 2010.

<sup>xxvi</sup> UN Committee on Economic, Social and Cultural Rights, 'General Comment 13 on the Right to Education (Article 13 of the Covenant)', UN Doc.: E/C.12/1999/10, 8 December 1999.

<sup>xxvii</sup> UN Committee on the Rights of the Child, 'Concluding Observations for People's Republic of China (including Hong Kong and Macao)', UN Doc.: CRC/C/CHN/CO/2, 24 November 2005 at para. 81-82.

<sup>xxviii</sup> UN Special Rapporteur on the right to education, Vernor Muñoz, 'The Right to Education of Migrants, Refugees and Asylum Seekers', Report to the Human Rights Council, 14<sup>th</sup> Session, UN Doc.: A/HRC/14/25, 16 April 2010.

<sup>xxix</sup> This pack includes bath soap, shampoo, toothbrushes, toothpaste, and laundry soap, razors for men and sanitary pads for women.

<sup>xxx</sup> For an overview of welfare assistance provisions to asylum seekers and refugees in selected countries, see for example: 'Defending human rights: Community-Based Asylum Seekers in Queensland', 2005 at pp. 53-59, <http://www.uq.edu.au/boilerhouse/docs/scull-asylumseekers.pdf>

<sup>xxxi</sup> Harvey, Paul. *Cash-based Responses in Emergencies*. London: Overseas Development Institute, 2007.

<sup>xxxii</sup> 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 [http://www.lad.gov.hk/documents/annual\\_rpt\\_2010/en/casepi.htm](http://www.lad.gov.hk/documents/annual_rpt_2010/en/casepi.htm)

<sup>xxxiii</sup> Moy, Patsy, 'Immigration chief gives Sri Lankan refugee temporary right to work in HK', *South China Morning Post*, 16 April 2013.

<sup>xxxiv</sup> See, for example: Refugee Council of Australia, 'Economic, Civic, and Social Contributions of Refugees and Humanitarian Entrants: A Literature Review', February 2010.

<sup>xxxv</sup> Such an opportunity would be helpful in a difficult context. We note that a recent Liberal Party poll demonstrated an antagonistic perception of protection claimants and disapproval over the use of public resources to provide support to them. Chen, Andrea, 'Most Hongkongers Object to Using Public Funds to Help Refugees, Poll Finds', *South China Morning Post*, 3 August 2013.

<sup>xxxvi</sup> 'The Michigan Guidelines on the Right to Work', *Michigan Journal of International Law*. 31.2, 2010, pp. 293-306

<sup>xxxvii</sup> For more information on human rights-based approaches to programming see: Boesen, Jakob Kirkemann and Martin, Tomas, 'Applying a Rights-Based Approach: An Inspirational Guide for Civil Society', Danish Institute for Human Rights, 2007.

<sup>xxxviii</sup> State Ombudsman Programs, Juvenile Justice Bulletin, Juvenile Justice Bulletin, <https://www.ncjrs.gov/pdffiles1/ojjdp/204607.pdf>; 'Better Practice Guide to Complaint Handling,' Commonwealth Ombudsman, Australia, <http://www.ombudsman.gov.au/docs/better-practice-guides/onlineBetterPracticeGuide.pdf>; 'Principles of Good Complaint Handling', Parliamentary and Health Service Ombudsman, [http://www.ombudsman.org.uk/\\_data/assets/pdf\\_file/0005/1040/0188-Principles-of-Good-Complaint-Handling-bookletweb.pdf](http://www.ombudsman.org.uk/_data/assets/pdf_file/0005/1040/0188-Principles-of-Good-Complaint-Handling-bookletweb.pdf)

# PRESS RELEASE

## Refugee rights advocates submit a proposal for change to the Social Welfare Department to address protection claimants' deplorable living conditions.

**9 October 2013** - The Refugee Concern Network (RCN), a Hong Kong-based coalition of service providers, human rights lawyers and advocates, has formally submitted a detailed policy proposal to the Social Welfare Department outlining an alternative humanitarian assistance scheme for refugees, asylum seekers, and torture and cruel, inhuman or degrading treatment or punishment claimants (collectively, 'protection claimants') refugees in Hong Kong. The solutions-focused document provides recommendations to improve accountability, be fairer to recipients and save government resources. It offers practical recommendations for improvement around housing; food assistance; healthcare; education; self-reliance; social inclusion and improvement in the operations of the government-funded assistance programme.

The RCN files this report at an important time in Hong Kong when a new benchmark set by the Government has revealed that 1.3 million people in Hong Kong—a fifth of its population—live in poverty. Not having legal status in Hong Kong, protection claimants are not included in this group, yet they are in one of the most vulnerable positions in Hong Kong, and too often, their challenges remain invisible to society. Without access to self-reliance and livelihood opportunities or entitlement to a Hong Kong ID card, and often lacking informal social networks for support, protection claimants are effectively forced into deprivation and social exclusion. With mounting pressure on the Administration to take measures to alleviate poverty, the Refugee Concern Network urges the government to adopt an inclusive, holistic response to addressing the welfare needs of all of Hong Kong's poor and marginalised groups.

The Social Welfare Department itself has acknowledged that the current assistance is in need of improvement and has announced plans to conduct a review of the existing package. The briefing guides the Administration with evidence-based recommendations and feedback from recipients themselves. This briefing is informed by the direct experience of frontline workers who have been filling the gap for the government, comparative research from other countries, and data from a recent survey that was conducted with protection claimants. The RCN proposes an **8-Point Plan of Action** towards a model that ensures dignity, livelihood and inclusion. Aleta Miller, Executive Director of the Hong Kong Refugee Advice Centre (HKRAC), asserts, 'It's impossible for anyone in Hong Kong to get by on the current assistance package without falling into destitution. The current policy is falling short on too many fronts. What we want is to help find a sustainable solution to address urgent needs.'

One of the key difficulties that civil society groups have experienced in their efforts to reach out to the government is that accountability for the welfare of protection claimants is dispersed among several actors. The NGO International Social Service (ISS) is contracted by the Social Welfare Department to administer assistance to asylum seekers and torture claimants (ASTC Programme), and the SWD bears an oversight role. However, while ISS states that it has no control over policy or financing for the ASTC Programme and is only an implementer, the Social Welfare Department claims that it is the Security Bureau which actually sets policy. Complicating matters more, some elements of the ASTC Programme are further sub-contracted, such as the food assistance, which is distributed by third party grocery providers.

NGOs have made attempts over several months to have a meeting with the Social Welfare Department to present the briefing in person, but with no success. RCN Chairperson and Justice Advocate at the Vine Church, Tony Read notes, ‘This involves men, women and children who are suffering as a result of inaction. We cannot simply stand by while bureaucracies pass the buck. Someone must take responsibility.’

The need to review and revising the humanitarian assistance package is more critical than ever before as the Administration moves forward on putting in place a Unified Screening Mechanism (USM) by the end of this year. The USM will see the government screen for persecution and cruel, inhuman, degrading treatment or punishment in addition to torture claims, and the UNHCR will phase out of its role in conducting refugee status determination.

While the government has not yet unveiled many details on the operationalisation of the USM or given any indication of how it is following up on concerns that welfare assistance is failing to meet recipients’ basic needs, civil society groups are urging the government to treat these issues comprehensively at this critical time. Julee Allen, Manager of the Chungking Mansions Service Centre of Christian Action states, ‘It is not only a good governance practice but in the government’s own interest to listen to the voices of refugees themselves in the policy-making process.’

The RCN fully supports Hong Kong Secretary for Labour and Welfare, Matthew Cheung’s recent statement of wanting to build “a more caring, compassionate and inclusive society” in Hong Kong and believes that protection claimants must not be left out of the poverty picture. Civil society groups are therefore optimistic that the government will carefully consider the recommendations and policy alternatives set out in the briefing and that a regular channel for dialogue can be opened up with civil society.

\*\*\* ENDS \*\*\*

## NOTES FOR THE EDITOR

### About the Organizations

**Refugee Concern Network (RCN):** The RCN is a diverse coalition of front-line service providers, nongovernmental organizations, faith-based organizations, academics, and human rights lawyers and advocates unified by one single purpose: to support those seeking protection in Hong Kong and advocate for their rights. With over a decade in existence, RCN works closely with refugees, asylum seekers, and torture and cruel, inhuman or degrading treatment or punishment claimants (collectively, protection claimants) to ensure their needs and basic human rights are being met. RCN members work in close collaboration and complement each other’s services to ensure that our beneficiaries receive the best possible support. In this spirit of cooperation, RCN also lobbies and advocates for improving protection claimants’ quality of life in Hong Kong.

**Hong Kong Refugee Advice Centre (HKRAC):** HKRAC is a non-profit, human rights organisation that advocates for refugees in Hong Kong. HKRAC is the only NGO dedicated to the provision of high-quality free legal services to refugees applying for international protection from the United Nations High Commissioner for Refugees (UNHCR) in Hong Kong. HKRAC works to ensure that the asylum application process is fair, that the decision is accurate and that basic human rights are upheld. Since its establishment in 2007, HKRAC has provided life-changing legal services to over 1,500 refugee men, women and children.

**Christian Action:** Christian Action is a Hong Kong registered charitable organization established in 1985. Our mission is to serve the needy, disadvantaged, marginalized, displaced or abandoned in Hong Kong and Mainland China. We began by serving the Vietnamese Boat People in Hong Kong. Our services have since expanded to serve the unemployed adults and youth, new arrivals from Mainland China, low income families and children, ethnic minorities, refugees, asylum seekers and migrant domestic helpers, orphans and abandoned children in Qinghai and we also provide social enterprise services.

**The Vine Community Services Limited (a part of the ministry of the Vine Church):** The Vine Community Services Limited (VCSL) is a non-profit that works as a beacon of hope to the most overlooked, ignored and vulnerable in our society. Refugees and asylum seekers are not allowed to work in Hong Kong; they have to rely on handouts. VCSL supports 250+ refugees and asylum seekers, mainly from Africa and Southeast Asia, and works to equip, educate and empower individuals and families to become positive and contributing members of the community. Through tailor-made relief and advocacy work, VCSL restores physical and psychological brokenness for refugees and asylum seekers to ensure that they can be successfully integrated back into society.

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