



July 26, 2013

Response to the invitation for submissions by the Panel on Security to give written views on the Administration's proposed unified mechanism for screening of non-refoulement claims

The Hong Kong Refugee Advice Centre Ltd (HKRAC) welcomes the HKSAR Government's recent announcement to adopt a unified screening mechanism (USM) to process non-refoulement claims in response to the recent "C" and "Ubamaka" decisions by the Court of Final Appeal.¹ We further commend the Panel on Security's decision to invite interested parties to provide written submissions regarding the Administration's proposal. We respectfully make this submission—which responds directly to the Administration's paper ([LC Paper No. CB\(2\)1465/12-13\(01\)](#))—to encourage the Government to seriously consider: improving and clarifying the structure, procedure, and evidentiary requirements of the current torture screening mechanism and proposed USM; enhancing and expanding legal assistance and training for decision-makers; evaluating success rates and processing times; improving humanitarian assistance; providing long-term solutions for successful protection claimants; and ensuring a transparent, accountable and participatory process in designing and implementing a fair, efficient, and effective USM.

Improve and clarify the structure, procedure, and evidentiary requirements of the current torture screening mechanism and proposed unified screening mechanism (USM)

The HKSAR Government has already established a screening mechanism for torture claimants in order to meet its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Immigration Department set up a screening mechanism to assess torture claims under CAT in 2004, which it enhanced in 2009 to meet "high standards of fairness",² and a statutory framework was adopted in 2012. Despite these developments, the fairness,

¹ Two recent CFA judgments have paved the way for the creation of a unified Government-led screening mechanism for protection claimants in Hong Kong. On 21 December 2012, in the "Ubamaka" case, the Court of Final Appeal released its judgment that ruled that Hong Kong has an obligation to offer protection to those facing the threat of cruel, inhuman or degrading treatment or punishment (CIDTP). And on 26 March 2013 in the case of "C", the Court of Final Appeal handed down its judgment that calls for the Government to independently screen refugee claims, rather than relying exclusively on the UNHCR refugee status determination, in the decision to deport them. See: *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)

² The Courts have elaborated that "high standards of fairness" include a reasonable opportunity to establish the claim, proper assessment of the claim, and provision of reasons for rejection, as well as legal representation during completion of the questionnaire and interviews, free legal representation, the examining officer and the decision maker being the same person, sufficient training for decision makers, and provision for an oral hearing on appeal and legal representation at that hearing. See: *Secretary for Security v. Sakthevel Prabakar* (FACV 16 of 2003) and *FB v. Director of Immigration and another*; *NS v. Director of Immigration and another*; *M v. Director of Immigration and another*; *RO and others v. Director of Immigration and another*; *PVK v. Director of Immigration and another*; *ND v. Director of Immigration and another*, (HCAL 51/2007 & HCAL 105/2007 & HCAL 106/2007 & HCAL 107/2007 & HCAL 125/2007 & HCAL 126/2007)

efficiency, and effectiveness of the existing CAT screening mechanism has been called into question for several reasons, which we outline below. These concerns, along with questions about the operationalisation of the USM must be addressed before the USM is to come into force.

Clarify the structure of a combined statutory/administrative USM

In para. 10 of the Administration's paper, the Government states, "we plan to assess non-refoulement claims (namely CAT, BOR Article 3 and persecution) under a USM based on the existing statutory CAT claim screening mechanism." However, at a meeting of the Panel on Security on 2 July 2013,³ members of the Administration's delegation announced that under the USM, the Government plans to continue the statutory mechanism for torture claimants, but will put in place administrative mechanisms for screening cruel, inhuman or degrading treatment or punishment (CIDTP) and persecution claims in order to acquire "more experience" before legislating.

- **Can the Government give more clarification on how a proposed combined statutory/administrative USM will work in practice and how the Government will ensure that it meets "high standards of fairness" as set out in the relevant judgments handed down by the Court of Final Appeal?**

Improve and clarify the procedure for filing a claim and an appeal

Para. 10 of the Administration's paper also states: "Claimants will complete a unified claim form to provide all grounds of the non-refoulement claim or all available documentary evidences. After a completed claim form is returned by claimants, the Immigration Department would arrange for them to attend an interview to provide information and answer questions relating to their non-refoulement claims. Claimants must provide all information or all available documentary evidence relating to their claims for the Immigration Department's assessment in one go."

At the Panel on Security on 2 July 2013, a member of the delegation from the Security Bureau stated that under the USM, three decisions would be made (refugee, torture and CIDTP grounds). According to the representative at this meeting, if one claim is granted, then the other two may not have to be processed. If the first claim is rejected, then it would be necessary to look at the second and third claims. If the second claim were rejected, then the third claim would be examined, and if all claims are rejected, the claimant will be informed about how to file an appeal.

Under the current CAT screening mechanism, claimants have a total of 28 days from the time they file their claim with the Immigration Department to find legal assistance, complete the questionnaire, and provide all evidentiary documents to support their claim, such as identity cards, medical reports or certificates. If a rejected claimant wishes to file an appeal, they have 14 days from when the decision was issued to do so. This strict timetable is difficult to meet. Apart from delays in securing legal assistance and interpretation, many claimants—having been forced to leave their countries in a hurried fashion—may not necessarily have all their documents on-hand upon arrival to Hong Kong; and are suffering from trauma and stress related to their experience in their countries of origin, as well as their situation upon arrival to Hong Kong. The members of the Administration's delegation in the

³ Meeting of the Panel on Security, Agenda Item II: Screening of Non-refoulement Claims, 2 July 2013, information available at: <http://www.legco.gov.hk/yr12-13/english/panels/se/agenda/se20130702.htm>

Panel on Security stated that this deadline could be extended, if claimants were to have legitimate grounds.

Moreover, if a torture claimant enters the HKSAR territory on a valid visa (as opposed to stating an interest in filing a claim at the border), the Director of Immigration will not accept a person's torture claim until they have overstayed their visa and are therefore "at risk of being removed".

- **Can the Government give further elaboration about the requirement on claimants to file information "in one go", particularly if the assessments of the three grounds under the USM are to be consecutive? Will there be an opportunity for claimants to provide supplementary information anywhere in the process during the assessment of the three grounds?**
- **Can the Government clarify the order and procedure for assessment of the three grounds? Will there be a single interview and decision maker, or separate ones for each ground? What will be the appeal mechanism and procedure?**
- **Under the USM, is the Government considering extending the timeframe for providing the questionnaire and supporting documents, as well as the timeframe for lodging an appeal? What sort of "legitimate grounds" would allow for such an extension?**

Ensure proper provision and use of Country of Origin Information (COI) and medical and psychological evidence

The UNHCR has stated that "accurate and reliable information about the causes of refugee and other coerced population movements is essential for UNHCR and States alike: COI [Country of Origin Information] is decisive in determining who is in need of international protection and should be accorded asylum...It is undisputed that decision-makers should have access to accurate, impartial and up-to-date Country of Origin Information from a variety of sources...An objective and transparent COI system that can deliver rapid and reliable information is thus central to any RSD procedure." COI therefore forms the evidence that authorities in the receiving country use to decide whether a claim is substantiated.

While members from the Administration's delegation at the Panel on Security focused attention in the meeting on the obligations of the protection claimant to furnish evidence, there has been no such discussion about the Government's plans to enhance its collection of COI research—a crucial element to meet "high standards of fairness". Currently, the HKSAR Government has no centralized, comprehensive resource for COI, but to provide some examples from the experiences in other jurisdictions: in the United Kingdom (which the Secretary for Security TK Lai recently visited to learn more about its national asylum system),⁴ the UK Home Office's Border Agency has a Country of Origin Information Service; New Zealand has a Country Research Branch, Refugee and Protection Unit; and Canada's Immigration and Refugee Board has National Documentation Centres and country packages. In addition to a centralised COI resource, lawyers and decision-makers must be adequately trained on the use of COI.

⁴ HKSAR, "Security chief to visit London, Berlin", Press Release, 30 April 2013, Available at: http://www.news.gov.hk/en/categories/law_order/html/2013/04/20130430_170023.shtml

There have several criticisms related to the provision and use of medical and psychological evidence to shed light on the credibility of the claim—concerns voiced by legal experts that date back several years.⁵ The provision for a medical examination by a medical practitioner is arranged by an Immigration Officer, putting the medical investigation on the Government’s side and thus not allowing the claimant to present his or her own medical evidence at public expense.⁶

- **What is the Government doing to improve collection of COI research? What is the Government doing to train lawyers and decision-makers in the proper collection and use of COI evidence in the non-refoulement claim determination process?**
- **What is the Government doing to build the capacity of doctors and psychologists to provide expert medical and psychological evidence? How will the Government ensure fairness and lack of bias, either toward the decision-maker or toward the claimant, in such evidence? What is being done to train lawyers and decision makers in the proper use of such evidence?**

Improve legal assistance, considering a mixed model of service delivery, and improve training for decision-makers

Gaps with the current scheme for pro bono legal assistance

In para. 13-14 of the Administration’s paper, the Government notes that the Duty Lawyer Service (DLS) currently provides publically-funded legal assistance under the enhanced screening mechanism for CAT claims, and that the Government has initiated discussion with the DLS on extending the same assistance to claimants under the USM. The DLS CAT scheme began as a 12-month pilot project in December 2009 and has been extended until December 2013.⁷

The Government also states that decision-makers under the USM “will have a proper understanding of the expanded scope of the screening mechanism, relevant and updated international and local jurisprudence and training to be conducted by qualified and experienced authorities will be arranged for them before the USM commences operation.”

Many concerns have been raised about the quality of legal assistance for CAT claimants in Hong Kong under the DLS. Because there was no base pool of persons with sufficient expert knowledge of the relevant areas of refugee and international humanitarian law to join the DLS scheme, ‘from scratch’ training was initiated. However, at the 2 July 2013 Panel on Security meeting, several LegCo members, voicing larger concerns from advocates in the field, noted that the existing 4-day training,

⁵ These were voiced in written submissions and oral interventions of the Joint Professions (The Law Association of Hong Kong and Hong Kong Bar Society) at a Panel on Security special meeting on 29 September 2009 to review the torture claim screening mechanism. See: <http://www.legco.gov.hk/yr08-09/english/panels/se/minutes/se20090929.pdf>

⁶ Hong Kong Bar Association, Submission to the Human Rights Committee, 107th Session, 2 February 2013, at para. 13. http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HongKongBarAssociation_HongKong_HRC107.pdf

⁷ Currently the process for accessing the DLS is as follows: CAT claimants will file a claim with the Immigration Department, are then referred to the Duty Lawyer Scheme and must undergo a means test to see if they are eligible for pro bono legal services. A lawyer will then be appointed to the claimant and an initial meeting will be scheduled before filing the torture claim form within 28 days of lodging the claim.

provided by the Law Society's Academy of Law, is insufficient and inappropriate to adequately prepare lawyers.

The DLS fee rates, being substantially lower than Legal Aid rates, do not provide suitable incentives to attract practitioners of sufficient seniority who can dedicate enough time to undertake CAT work. Junior members of the legal profession may find the rates more attractive but will not have the levels of experience or knowledge needed to prepare these particular types of claims, raising issues about competency and specialisation. The worryingly low CAT claim success rates also raises questions about the possibility of inadequate legal assistance among other issues.

Ways forward for legal assistance – expansion and enhancement

Quality legal assistance is a crucial element for achieving high standards of procedural fairness. It contributes to more accurate decision-making to avoid mistaken rejections and is therefore a key factor driving successful outcomes. In the design and planning of a future USM, access to quality legal assistance must be enhanced in order to build a fair, efficient and effective protection system. In Hong Kong, if the DLS were to be the sole providers of pro bono legal assistance under a USM, this would put significant pressure on the system.

Refugee status determination will be a new area of domestic law in Hong Kong and is different to other areas of domestic law because it involves unique skills and knowledge that are nevertheless similar across jurisdictions.⁸ Beyond the DLS, there are other organisations and individuals, such as HKRAC—the only NGO dedicated to providing pro bono legal assistance to asylum seekers filing a claim with the United Nations High Commissioner for Refugees (UNHCR)—that have valuable experience in the area of refugee law. These entities are permitted to provide legal assistance under the UNHCR Hong Kong Sub-Office's Standard Operating Procedures on Legal Assistance, which provides a robust framework to protect asylum seekers and ensure oversight of legal representatives.⁹

In other jurisdictions where refugee status determination is well-developed within domestic law, mixed mode service delivery is the norm. A mixed model could include, for example, legal aid departments,

⁸ These include a) understanding of relevant international human rights law, including the Refugee Convention, Convention against Torture and related jurisprudence b) understanding of the grounds on which refugee status determinations may be subject to a merits review or a judicial review c) ability to conduct detailed, quality research on asylum seeker clients' country of origin d) ability to work with interpreters, and e) ability to work with vulnerable clients.

⁹ To ensure worldwide uniform standards for RSD, the UNHCR, published the Procedural Standards for Refugee Status Determination under UNHCR's Mandate ("UNHCR Procedural Standards") in 2005. These uniform procedural standards are implemented by UNHCR sub-offices through standard operating procedures ("SOP"). Both the UNHCR Procedural Standards and the SOP of Hong Kong's sub-office, incorporate universal standards for the accreditation of 'legal representatives' permitted to attend RSD interviews and participate in the RSD process. According to the UNHCR RSD Procedural Standards and the HK sub-office SOP, persons proposed as 'legal representatives' who do not have formal accreditation, should possess the following qualifications: a) a working knowledge of refugee law and RSD procedures b) experience assisting refugee claimants c) a thorough understanding of the Applicant's claim. Under the UNHCR RSD Procedural Standards and HK sub-office SOP, organisations that are recognised by the UNHCR as meeting the standards to be involved in RSD are also accredited as 'Support Organisations'. HKRAC has been an accredited as an UNHCR Support Organisation since 2007. All of HKRAC's in-house refugee lawyers have also been accredited by the UNHCR as 'legal representatives'. Consistent with the UNHCR's Hong Kong Sub-Office's SOP, legal assistance includes: individualised advice on refugee law or refugee status determination procedures, preparation of documents and accompanying asylum seekers to interviews (limited or full representation) as part of the application process.

pro bono legal services, NGOs, community law centres and student clinics in law schools. Such models can be found in many countries, such as the United States, Canada, and the UK. It is common for both lawyers and qualified non-lawyers (known variously as “migration consultants” or “migration agents”) to represent and advise asylum seekers. Many non-lawyers are from the NGO sector.

The proposal to simply expand the currently compromised and overloaded DLS scheme with refugee status determination should be revisited, and a mixed mode of service approach for the provision of legal assistance should be adopted, allowing for the inclusion of existing UNHCR accredited ‘legal representatives’ who have years of experience in providing pro bono legal assistance, at no cost to the public purse. This would also have advantages for both asylum seekers and the Government for several reasons. A mixed model would allow Hong Kong lawyers to learn from those who have previous relevant experience in refugee law/non-refoulement law. By spreading responsibility among several actors, asylum seekers would have more opportunities and options for assistance, giving them more choices of providers. And by alleviating pressure placed on a single provider, bottlenecks would be reduced and public resources would be saved.¹⁰

- **Can the Government give more information about how an enhanced training for lawyers and decision makers will be conducted, with timetables, as well as the new content of the training if the USM is to be operational before the end of the year?**
- **Is the Government planning to conduct a review of the Duty Lawyer Scheme to see if it is cost-effective and meeting claimants’ needs? Has the Government undertaken any research study to examine modes of legal assistance in other jurisdictions?**
- **Has the Government considered adopting a mixed mode of service delivery for the provision of legal assistance? Has the Government considered transferring claims from the DLS to the Legal Aid Department?**
- **Has the Government given consideration to including existing UNHCR-accredited ‘legal representatives’, who would bring much-needed additional expertise from the field at no additional cost, in the proposed USM?**

Monitoring and evaluating claim success rates and processing times

Although the most up-to-date statistics on determination rates are not publically available,¹¹ there has only been a handful of successful CAT claimants since the HKSAR Government began to process torture claims under the enhanced screening mechanism instated in 2009¹² (and there have been

¹⁰ We note that according to the Panel on Security meeting on 2 July 2013, the government has allocated HKD 90 million for legal assistance under the CAT scheme for 2013-2014.

¹¹ As of July 2, 2013, since 2009, seven torture claims have been substantiated, 3,355 rejected and 3,458 withdrawn. There are 4,065 claims pending. Ng, Joyce “Torture claimants let down by legal aid”, South China Morning Post, 2 July 2013. Available at: <http://www.scmp.com/news/hong-kong/article/1273339/torture-claimants-let-down-legal-aid>

¹² According to the government’s statistics, from 2010 to 2012, there were 4,415 applications filed under the torture screening mechanism. See: HKSAR, “LCQ: 14: Reply Annex Table A: Number of Torture Claims - by Country of Origin”, 20 February 2013. Available at: http://gia.info.gov.hk/general/201302/20/P201302200345_0345_107360.pdf

over 12,000 applications since 1992).¹³ This amounts to an acceptance rate of much less than 1%, which is quite low compared to other jurisdictions that include refugee and complementary protection claimants, for example the United Kingdom (33% in 2011), Canada (45% in 2011), Australia (44% as of 2011), or the global total recognition rate (38% in 2011).¹⁴ There are many reports of persons waiting up to several years for their claims to be determined. The factors that might explain why rates are so low and why cases have piled up should be identified, monitored, evaluated and remedied. Efficient, fair procedures would deter abuse and allow for quicker identification of genuine claimants, saving resources and reducing backlogs.

- **Is the Government considering conducting a study to determine what may be some of the likely reasons for the low acceptance rates, as well as processing delays and backlogs? How is the Government planning to increase efficiency without sacrificing fairness?**

The Government must holistically address claimants' larger human rights needs which bear an impact on the claim process

In the Administration's paper, the Government states that it intends to extend the same humanitarian assistance package (now administered under the Asylum Seekers and Torture Claimants "ASTC" Programme) currently available to asylum seekers, refugees and torture claimants to protection claimants under the USM. First, we strongly urge the Government to increase assistance to protection claimants to meet the costs in Hong Kong. Current levels are manifestly low and inadequate. Levels of assistance are not adjusted annually to changes in the cost of living and the UNHCR's HKD 500 cash assistance that used to be given to recognized refugees has been cut as of July 2013. Therefore, in real terms, the welfare assistance granted to recipients is actually reducing over time, causing a backsliding in living conditions. In-kind assistance has also been criticized as inappropriate to meet recipients' needs, in addition to being disempowering and potentially using more resources than cash-based alternatives.

Second, the Government, as the primary duty-bearer, has a responsibility to meet its human rights obligations and cannot simply develop a policy that inherently relies on NGOs or multilateral agencies to fill the gap. Rather than allowing protection claimants to have a dignified stay (often of several years), the current scheme is merely aimed at "preventing destitution". This minimalist approach essentially forces protection claimants into situations of poverty—deprivations that are avoidable in a prosperous society where the Government experienced a HKD 65 billion surplus last year. Moreover, protection claimants do not have access to livelihood opportunities, such as the right to work (paid or unpaid) or tertiary education and vocational training, in order to be self-reliant, provide for themselves and their families, contribute to society, use their time productively and meaningfully and prepare for resettlement. The combined impact results in a deterioration of claimants' mental and

¹³ Man, Joyce, "Hong Kong grants torture claimant protection; only the second ever", *South China Morning Post*, 23 March, 2013. Available at: <http://www.scmp.com/news/hong-kong/article/1197627/hong-kong-grants-torture-claimant-protection-only-second-ever>

¹⁴ Loper, Kelley, "Legal Representation for Asylum Seekers: Ensuring 'High Standards of Fairness' and Respect for Rule of Law in Hong Kong", Rights Talk Series, University of Hong Kong, 15 May 2013 and Australian Government, "Asylum Statistics—Australia: Quarterly Tables, March Quarter 2013". Available at: http://www.immi.gov.au/media/publications/statistics/asylum/_files/asylum-stats-march-quarter-2013.pdf

physical health. Moreover, deprivations of their basic socioeconomic rights can bear a negative influence on claimants' ability to present their claim.

This paper will not go into full detail about the current deficiencies under the current assistance scheme as well as policy recommendations, since HKRAC, along with Christian Action, the Vine Community Services, the Refugee Concern Network and Amnesty International Hong Kong, recently filed a joint written submission on 18 July 2013 to the Panel on Welfare Services before its meeting on 22 July 2013 to discuss "Ways to improve situation of refugees, torture claimants and asylum seekers in Hong Kong."¹⁵ We direct the questions contained in this report to the Panel on Security as well. We urge the Government to heed this and other written submissions filed by the deputations at this meeting, along with the oral interventions by members of civil society and protection claimants themselves that were made at this meeting. We also urge the government to grant protection claimants immigration status during the USM screening procedure, in addition to offering long-term solutions for successful claimants.¹⁶ Discussions about the USM and welfare assistance to claimants cannot be conducted in separate spheres and we call on the relevant Government departments, such as the Security Bureau, the Immigration Department and the Social Welfare Department, among other bodies, to coordinate and cooperate in the design and operationalisation of the proposed USM.

- **Please refer to the list of questions in the joint submission filed to the Panel on Welfare Services on 18 July 2013 (LC Paper No. CB(2)1630/12-13(03)).**

The mere guarantee of non-refoulement to successful claimants is not enough: longer-term solutions must be made available

Currently, successful CAT claimants are merely provided with the guarantee that they will not be returned to places where they face torture, but they are not granted with any rights to work or abode, and continue to receive humanitarian assistance, which is unfitting as the ASTC Programme conceives these provisions as temporary measures. Many of the successful claimants do not know when or if they will be able to be resettled to a third country or return to their home country—leaving them meanwhile in a state of legal limbo, uncertainty and mental stress.

¹⁵ See: Panel on Welfare Services, Special meeting about ways to improve the situation of refugees, torture claimants and asylum seekers in Hong Kong", 22 July 2013. <http://www.legco.gov.hk/yr12-13/english/panels/ws/agenda/ws20130722.htm>. For HKRAC, Christian Action, the Vine, Amnesty International and the Refugee Concern Network's Joint Submission please see: LC Paper No. CB(2)1630/12-13(03) <http://www.legco.gov.hk/yr12-13/english/panels/ws/papers/ws0722cb2-1630-3-e.pdf>

¹⁶ The Immigration Ordinance does not provide for any differential treatment for asylum-seekers compared to other persons seeking entry to Hong Kong. Those who enter into Hong Kong legally and file for asylum with the UNHCR are treated as "over-stayers" by HKSAR once their visas expire. At this point they may either voluntarily surrender to the Immigration Department or risk arrest for overstay. In either case, once they come to the attention of the Immigration Department, they may be subject to detention before the Director of Immigration, at his discretion, retains their passports and issues "recognisance papers". Recognisance papers grant the asylum-seeker permission to remain in Hong Kong temporarily until their claim has been decided and/or UNHCR is able to facilitate their resettlement to a third country. The Government affirms that it allows asylum-seekers without the right of abode (treated as "illegal immigrants") to remain in HKSAR on humanitarian grounds at the "discretion" of the Director of Immigration, rather than out of legal obligation.

The UNHCR recognises three durable solutions for refugees worldwide: voluntary repatriation, resettlement to a third country and local integration. For repatriation, the UNHCR works with the country of origin and host countries to help refugees return home; resettlement is an alternative for those who cannot go home, made possible by UNHCR and host governments; and local integration allows refugees to be incorporated into the host community, living in dignity and in peace.¹⁷ In Hong Kong, the HKSAR Government does not offer local integration; however, the UNHCR Sub-Office in Hong Kong has historically provided assistance for the former options. Resettlement can take years due to immigration procedures unique to each country, and voluntary repatriation may not be feasible even in the medium to longer term.

It is concerning that the Administration's paper fails to provide any explanation about the policies for handling successful claimants under the USM and the long-term solutions that will be available to them. In the Panel on Security meeting on 2 July 2013, the Administration stated that for successful claimants, arrangements will be made for them to be sent to another country who will agree to take in the person. For cases where claimants may not find a third country to take them in and are stranded in Hong Kong, after a certain amount of time has passed their claim may be reviewed. If at that time the situation in their country of origin has improved, voluntary repatriation could then be a viable option.

However, it is unclear if and how either the UNHCR or the Hong Kong government will be able to continue to facilitate resettlement, historically the primary durable solution, with host countries. The resettlement process also has its challenges, including limited quotas, lengthy procedures, and for some refugees, a scenario where they are unable to find any resettlement country to accept them. Voluntary repatriation, according to UNHCR statistics, was only chosen by 6 persons between 1 January 2008 and 30 November 2012.¹⁸ Under a USM, more options must be available for those who are unable to be resettled but cannot return to their country for fear of harm—simply waiting for a review of the case and improvement in the situation in the country of origin is not reasonable policy.

- **Under the USM's proposed resettlement scheme, how is UNHCR and/or the government going to negotiate and coordinate with third countries to accept recognised protection claimants, particularly when Hong Kong receives a relatively small number of claimants and it is a well-developed jurisdiction with ample resources?**
- **What alternatives will be available for successful claimants under the USM who are experiencing challenges being accepted by a third country for resettlement but cannot return home under a voluntary repatriation scheme? What rights will be granted to such persons in the meantime? With what frequency will their cases be "reviewed"?**
- **In taking into consideration the UNHCR's options for durable solutions, as well as asylum policies in other jurisdictions, has the Government considered local integration as a long-term option available to successful claimants?**

¹⁷ From the UNHCR website, see: <http://www.unhcr.org/pages/49c3646cf8.html>

¹⁸ UNHCR Sub-Office Hong Kong, "Durable Solutions" PPT Presentation from Delivering Protection Workshop, 6 December 2012

Ensuring transparency, accountability and participation in the USM design, implementation, monitoring and evaluation

We commend the earnestness by the Administration to respond to the CFA judgments and proposal to make the USM operational by the end of the year; however, a USM that is put into place without having addressed these and other civil society concerns will not have a solid foundation and will likely be unsustainable and subject to further litigation. Moreover, clear, timely information about the transition process (from the UNHCR to the HKSAR Government for the processing of refugee claims) as well as the procedures under the USM for filing a claim on the three grounds (torture, CIDTP and persecution) need to be communicated to protection claimants and relevant stakeholders, including NGOs, legal assistance providers, and other civil society organizations, to avoid confusion, respect protection claimants' due process rights, and ensure smooth implementation of the USM. This is particularly true for persons who may have been unsuccessful in their claims under the CAT screening mechanism and the UNHCR refugee status determination process, but who wish to file a CIDTP or government-determined persecution claim.

This submission has identified a number of concerns regarding the current system, including short timelines, unclear extension criteria, forced overstay, insufficient provision and use of COI and medical and psychological evidence, inadequate legal assistance and training for decision-makers, low and inappropriate provisions for protection claimants' socioeconomic needs, and lack of long-term solutions, and information gaps, including a) national asylum systems in other jurisdictions b) legal assistance models c) reasons for the low acceptance rate and backlog of CAT claims d) welfare provision alternatives e) proposals for long-term arrangements for successful claimants under the USM. We urge the Government to address these issues prior to making the USM operational.

In this process, we encourage the Government to collaborate and consult with a wide range of stakeholders, including, amongst others, the academic community, the Hong Kong Bar Association and Law Society, the DLS, the UNHCR, civil society actors such as HKRAC that provide legal assistance and welfare services, as well as protection claimants themselves. These stakeholders have a wealth of expertise in the areas of human rights and refugee law that would be very useful for the government as it moves forward on the USM. We urge the government to give further information on the process, including avenues for participation and timetables towards the establishment of the USM.

- **Can the Government clarify the order and procedure, including any information-sharing procedures between the UNHCR and the Government, for new and existing claimants, including those with UNHCR claims only, those with CAT/CIDTP claims only, those with both and those with neither, at all various stages of processing?**
- **Can the Government please provide further information on mechanisms for participation with relevant stakeholders in the lead-up to the operationalization of the USM? Can the government give a detailed timeline up to the end of 2013 giving more information about the operationalisation of the USM?**



About HKRAC

The Hong Kong Refugee Advice Centre Ltd (HKRAC) is a non-profit, human rights organisation dedicated to the provision of free legal services to persons applying for asylum protection before the UN Refugee Agency and advocates for the rights of refugees in Hong Kong. Our starting point is that refugees are not victims with needs, but survivors with rights. Since we began in 2007, HKRAC has provided life-changing services to over 1,500 refugee men, women and children.

HKRAC's life-changing services

With a team of experienced staff attorneys, HKRAC works to ensure that the asylum application process is fair, that the decision is accurate and that basic human rights are upheld. HKRAC works closely with our clients to ensure their psychosocial wellbeing. With a dedicated Community Outreach Worker, we work with partner organisations such as Christian Action to provide counselling where needed, as well as help with finding shelter, food and clothing.

Beyond individualised client services, HKRAC also advocates for broader, more systemic change in Hong Kong's policies towards refugees, representing the cause at every level of authority and working to raise awareness and to generate support among lawmakers, government officials and the larger Hong Kong public. HKRAC seeks to transform attitudes of suspicion and caution to informed understanding and empathy, with a vision of Hong Kong as an inclusive society that offers refugees not only protection, but a sanctuary from the terrors from which they have fled.

Shaping the future of human rights in Hong Kong

HKRAC recognises the importance of building a culture of human rights in Hong Kong and the value of pro bono services to meet the needs of refugee clients. We work closely with corporate partners who provide pro bono legal services. Pro bono lawyers attend our rigorous refugee law training weekends and come away equipped and inspired to provide services to refugees. To date, HKRAC has trained over 500 lawyers in refugee law.

HKRAC works to educate the next generation of human rights defenders. We work with students in our innovative schools outreach programme, to raise awareness and create young ambassadors for the human rights cause. We run a widely respected Clinical Legal Education programme, with students from the University of Hong Kong and the Chinese University of Hong Kong working closely with our staff attorneys to practise refugee law in an experiential learning setting.

Our Partners

Pro bono partners: We are proud to partner with seven of Hong Kong's international law firms pro bono partners. Pro bono partners provide financial support and staff time and undertake both legal research and casework. Pro bono partners include: Davis Polk & Wardwell; Freshfields Bruckhaus Deringer; King & Wood Mallesons; Latham & Watkins; Linklaters; Shearman & Sterling; Skadden, Arps, Slate, Meagher & Flom.

Academic and research partners: We partner with two of Hong Kong’s leading universities to deliver a legal clinic programme with law students who gain practical experience of client work and refugee law. We partner with the Chinese University of Hong Kong and the University of Hong Kong. In February 2013, we were delighted to welcome LexisNexis as our Research Partner who provides research assistance and access to comprehensive refugee research and case law.

Clifford Chance Access to Justice Award 2012: In 2012, we were honoured to be chosen as the recipient of the international Clifford Chance Access to Justice Award. HKRAC was chosen from among more than 60 nominations from human rights organisations worldwide. The award includes a financial donation and pro bono hours from Clifford Chance.

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