



To:

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

12 November 2013

Follow-up information on the Administration's announcement to adopt a "Unified Screening Mechanism" (USM) to assess claims for non-refoulement protection

The Hong Kong Refugee Advice Centre (HKRAC) writes this letter to urgently request that the Panel on Security follow up on the outcomes of its meeting on July 2 Agenda Item II entitled "Screening of Non-refoulement Claims".

At this meeting, representatives from the Security Bureau and the Immigration Department announced the Administration's intention to adopt a Unified Screening Mechanism¹ to process "non-refoulement claims" in response to the recent "C" and "Ubamaka" decisions by the Court of Final Appeal.² The Administration stated that it expects the USM to be operational before the end of the year, but since that meeting, and as of November 2013, the Administration has provided no further indication on when the USM will be operational, no concrete details on how it will work in practice, and—other than a call for written submissions in July 2013—no opportunities for consultation with civil society stakeholders and the protection claimant community.

The lack of clarity on the USM is causing a *significant amount* of distress and anxiety on the protection claimant community, who for several reasons, are an already highly vulnerable population group, because of the uncertainty about how the USM will be implemented and the implications that this has for their lives. Given how close we are to the end of the year, HKRAC finds it *extremely concerning* that the USM was not discussed at the Panel on Security's 5 November 2013 meeting, is not expected to be discussed at its 3 December 2013 meeting based on the preliminary agenda available on the LegCo website, and is not mentioned in the Panel on Security's list of outstanding items.

It is critical that the Administration provide information on developments on the proposed USM and how it has incorporated feedback from the written call for views that was issued following the July 2 meeting, which HKRAC - among other stakeholders - made submissions to. We therefore ask the Panel on Security to request information from the Security Bureau and Immigration Department in this regard. We also urge the Panel on Security to create an opportunity for meaningful discussion, before the end of the year, on the USM, with representatives from the Administration present, and open to deputations for views from civil society and other key stakeholders.

Board Chair
Farzana Aslam
Board of Directors
Raquel Amador
Som Leung
Heather Li
Kelley Loper
Davis Lusk
Thai MacDonald
Melissa Kaftarian
Strecker
Lindsay Ernst
Aasha Pai
John Jackson

Hong Kong Refugee Advice Centre

¹ The USM will process a) torture as defined under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or "CAT" b) torture or cruel, inhuman or degrading treatment or punishment under Article 3 of the Hong Kong Bill of Rights; and/or c) persecution with reference to the principle of non-refoulement under Article 33 of the 1951 Convention Relating to the Status of Refugees.

² Two Court of Final Appeal 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)