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

11 November 2013

Concluding Observations by the United Nations Committee on the Rights of the Child on the Second Report of the Hong Kong Special Administrative Region under Convention on the Rights of the Child

The Hong Kong Refugee Advice Centre (HKRAC) writes this letter in response to the invitation for submissions on the Concluding Observations by the United Nations Committee on the Rights of the Child (CRC) on the Second Report of the Hong Kong Special Administrative Region under Convention on the Rights of the Child, following the Committee's review of the State at its 64th session.¹ This letter provides responses on issues that relate to asylum seeking, refugee, torture claimant or cruel, inhuman degrading treatment or punishment claimant children - collectively referred to hereafter as 'protection claimant' children. Many of the concerns that are touched upon in this letter are expanded on in an earlier submission filed by the Refugee Concern Network to the Social Welfare Department in early October 2013, which the Administration has yet to give a response to.²

ALLOCATION OF RESOURCES

In para. 12, the Committee notes that 'in Hong Kong SAR, resource allocation to education and social welfare remain inadequate and do not effectively target the most vulnerable groups...particularly asylum seeking children...' recommending that the Hong Kong SAR 'define strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures.' HKRAC—and other civil society actors—have been pushing for greater transparency over how funds are allocated and spent for administrative, manpower, education, food, housing, healthcare and education costs aimed at assisting this population group. It is now known that \$203 million has been earmarked for the Asylum Seeker and Torture Claimant Programme (ASTC Programme) for 2013-2014.³ However, there is no information with disaggregated budget lines on how resources are being employed. There should be greater monitoring, transparency and consultation throughout the budget cycle.

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The level of humanitarian assistance provided to protection claimants is too low to ensure that their needs are being met. For example, the benchmark for the housing subsidy is \$1,200 a month per adult and \$600 a month per child, far too low to secure adequate housing in Hong Kong. The food provided under the programme is putatively \$1,000 per adult per month -the equivalent of \$33 a day. Other than baby milk formula, there is no

¹ Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of China, adopted by the Committee at its sixty-fourth session, UN Doc.: CRC/C/CHN/CO/3-4, 29 October 2013. Available at:

http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_CHN_CO_3-4.doc

² Refugee Concern Network, Improving the Living Conditions of Protection Claimants in Hong Kong: Recommendations from the Field, October 2013. Available at: <http://www.hkrac.org/wp-content/uploads/2013/10/Refugee-Concern-Network-Briefing-to-Social-Welfare-Department-October-2013.pdf>

³ Hong Kong SAR, 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>

information on how children's nutritional needs are being taken into consideration. Moreover—as opposed to welfare assistance under the Comprehensive Social Security Assistance (CSSA)—the humanitarian assistance package to protection claimants through the ASTC Programme is not adjusted regularly to inflation, resulting in a backsliding of their living conditions, including their rights to food, housing and an adequate standard of living. Many administrative and economic barriers impede their ability to enjoy their rights to education and physical and mental health.

MONITORING AND EVALUATION

In para. 17, the Committee strongly recommends that Hong Kong SAR establish centralised data collection systems to collect independently verifiable data on children and to analyse the data collected as a basis for assessing progress achieved in the realisation of child rights and for designing policies and programmes to implement the Convention. This data should be disaggregated, including giving attention to protection claimant children.

Protection claimants are one of the most invisibilised groups in Hong Kong and we note a complete dearth of information and statistics related to this population group and the services to assist them. The assistance package to protection claimants has not been periodically reviewed, nor are there adequate monitoring and evaluation systems to assess these programmes. Civil society has been advocating for publically available data on indicators related to budgets, staffing, demographics, and performance.

As an example, at a July 22 special meeting of the Panel on Welfare Services on ways to improve the situation of asylum seekers, refugees and torture claimants, requests were made on how many applications for schooling the receives annually and how many are granted. These have yet to be provided.

DISCRIMINATION, INCLUDING ACCESS TO IDENTIFICATION DOCUMENTS

In para. 28, the Committee shows concern about the persistence of discrimination against refugee and asylum seeking children, among other groups, and recommends that the Hong Kong SAR intensify measures, including awareness-raising, identification of discriminatory policies and timely implementation of relevant programs, to combat this discrimination and ensure that these children have equal access to basic services, including health, education and other social services.

The government has no specific programmes or campaigns in place to raise awareness among the Hong Kong public about protection claimants in Hong Kong. Indeed, HKRAC finds that it is often as a result of lack of information that misconceptions and negative stereotypes are perpetuated. The Hong Kong government has taken no measures to foster social inclusion for protection claimants, and without any legal status or entitlement to a Hong Kong ID Card, protection claimants—including children—are significantly marginalised. Many protection claimant parents face administrative and economic barriers in obtaining access to birth registration documents. For many protection claimants, racism also continues to be a key underlying barrier to their integration.

STANDARD OF LIVING UNDER THE CURRENT HUMANITARIAN ASSISTANCE SCHEME

In para. 72 of its concluding observations, the Committee notes concern about child poverty in the Hong Kong SAR and that children of migrants, ethnic minorities and asylum seeking children are disproportionately represented among the poor and live below the poverty line. It requests that the Hong Kong SAR implement social protection and targeted programmes for children and families who are particularly vulnerable to poverty, such as migrant children, children of ethnic minorities and asylum seeking children.

The current humanitarian assistance is aimed at ensuring no protection claimant is left destitute, however, it is far too low to even ensure this minimalist guarantee. In fact, as has been recently highlighted by the Refugee Concern Network in a briefing submitted in

October 2013 to the Social Welfare Department, there are more dignified, efficient and cost-reducing alternatives available that would benefit both protection claimants, the Administration and the Hong Kong public.

The current humanitarian assistance package granted to protection claimants must ensure that recipients are able to live in dignity and exercise their social and economic rights, including the right to an adequate standard of living, including food and housing, as well as health and education. The assistance must take into full consideration the unique developmental needs of protection claimant children, in particular. We note that early deprivations in childhood—during a person’s critical formative and developmental years—can have lasting, irreversible effects that can negatively impact on their ability, as adults, to enjoy other rights, affecting them for the rest of their lives.

The Hong Kong SAR must establish/strengthen robust, accessible and responsive oversight and complaints mechanisms in the humanitarian assistance provision process. The Administration should also open participation channels for beneficiaries—adult as well as children protection claimants—to voice their concerns and give feedback at all stages in the policy cycle, including: design, implementation, monitoring and evaluation.

THE UNIFIED SCREENING MECHANISM FOR “NON-REFOULEMENT CLAIMS”

On July 2, 2013, the Administration announced its intention to adopt a Unified Screening Mechanism⁴ to process “non-refoulement claims” in response to the recent “C” and “Ubamaka” decisions by the Court of Final Appeal.⁵ The Administration has stated that it expects the USM to be operational before the end of the year, but since that meeting, and as of November 2013, it 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. HKRAC’s concerns and questions on the USM have been articulated in our response to the written call for submissions.

As a matter of practice, protection claimants are currently given discretionary permission by the Director of Immigration, on humanitarian grounds, to remain in the Hong Kong SAR until their claim has been determined. However, the government should amend its immigration legislation to grant claimants a legal status that differentiates them from visa over-stayers. In its concluding observations, the Committee on the Rights of the Child, as many other treaty monitoring bodies have recommended in the past, has also called on the government to accede to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

The Hong Kong Refugee Advice Centre

⁴ 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.

⁵ 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)