

# **SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN**

## **59th Session, 20 October – 7 November 2014**

Justice Centre Hong Kong (formerly Hong Kong Refugee Advice Centre) is a non-profit organisation working fearlessly to protect the rights of Hong Kong's most vulnerable forced migrants - refugees, other people seeking protection and survivors of modern-day slavery. This submission highlights particular concerns regarding the situation of asylum-seeker, refugee and other women seeking protection (hereafter collectively called "protection claimant women") in the Hong Kong Special Administrative Region (HKSAR) and the level of compliance of current policies of the HKSAR Government with international standards set out in CEDAW as applicable to this group of women.

### **BACKGROUND:**

On 3 March 2014, the HKSAR Immigration Department introduced a new "Unified Screening Mechanism" (USM) to assess "non-refoulement" claims, "in one go" on the three grounds of i) torture under Part VIIC of the Immigration Ordinance, Cap. 115 ii) torture or cruel, inhuman or degrading treatment or punishment (CIDTP) under Article 3 of Section 8 of the Hong Kong Bill of Rights Ordinance, Cap. 383, and iii) persecution with reference to the non-refoulement principle under Article 33 of the 1951 Convention relating to the Status of Refugees.<sup>1</sup> Prior to the introduction of the USM, refugee status determination was undertaken by the United Nations Refugee Agency (UNHCR) Sub-office in Hong Kong under its international protection mandate, as HKSAR is not bound to the Refugee Convention. The HKSAR Government had a parallel, but separate, torture screening mechanism to meet its obligations under the Convention against Torture, which the USM largely builds upon. It is concerning that from 2010 to 28 February 2014 (the day before the commencement of the USM), out of 8,764 claims that were determined, only 0.2% (19 claims) were deemed meritorious by the HKSAR Immigration Department. This rate of success is extremely low.<sup>2</sup>

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<sup>1</sup> UN Refugee Agency (UNHCR) Sub-Office in Hong Kong, "Unified Screening Mechanism Procedures and Other Relevant Information", <http://www.unhcr.org.hk/files/unhcr/USM/Unified%20Screening%20Mechanism%20Procedures0821.pdf>

<sup>2</sup> HKSAR Immigration Department, Removal Assessment and Litigation (Operations Support) Section, Response to Justice Centre's Application to Information under Access to Information Code, 28 May 2014

The HKSAR Government implemented the USM reluctantly only after the HKSAR Court of Final Appeal issued a ruling in 2013 requiring it to do so.<sup>3</sup> In this sense, the design and implementation of the government protection mechanism has shown a great lack of political will, only taking care of the 'bare minimum' in terms of human rights standards.<sup>4</sup> Justice Centre Hong Kong notes that several UN treaty bodies have made recommendations in their concluding observations asking the government to seek extension of the 1951 Refugee Convention to its territory. In fact, in 2006 in its concluding comments, CEDAW "noted with concern the representative's statement that the HKSAR has no intention of having the 1951 Refugee Convention extended to Hong Kong" and recommended that it do so.<sup>5</sup> Justice Centre notes that in the State Party's report, the HKSAR's position remains unchanged since the last review by CEDAW and urges the Committee to inquire further on its position given most recent developments with the USM.<sup>6</sup> We regret the HKSAR Government's rationale for having no intention to seek extension of the Refugee Convention to the HKSAR because of the territory's "vulnerability to abuse", as cited in the State party report.<sup>7</sup> We also note that regardless, the fact that the Refugee Convention does not apply to HKSAR does not mean that HKSAR Government has legal no obligations to respect, protect and fulfill protection claimants' basic human rights.

Moreover, while we commend recent "enhancements" to increase the amount of funds allocated for housing and food this year, the USM does not pay enough attention to the socio-economic situation of people in need of international protection in HKSAR.<sup>8</sup> The current general policy provides for limited "humanitarian assistance" to refugees on discretionary grounds for the purpose of "preventing destitution", and is not regarded as a legal obligation of the government for the fulfilment of human rights in a context of vulnerability. The totality of the assistance still puts recipients under the poverty threshold set out by the government and does not incorporate a rights-based approach. This situation deeply affects women, who constitute a part of the population subject to non-refoulement protection in Hong Kong.<sup>9</sup>

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<sup>3</sup> *C, KMF and BF v Director of Immigration and Secretary for Security* (FACV Nos. 18/19/20 2011)

<sup>4</sup> Justice Centre Hong Kong, Meeting the Bare Minimum: Hong Kong's New Screening Process for Protection. A stocktake of the first months of implementation of the Unified Screening Mechanism for Non-refoulement Claims, May 2014, <http://www.justicecentre.org.hk/framework/uploads/2014/03/USM-Briefing-Meeting-the-Bare-Minimum-HK-New-Screening-Process-for-Protection.pdf>

<sup>5</sup> CEDAW, Concluding comments, China, UN Doc. CEDAW/C/CHN/CO/6, 25 August 2006, para. 33 – 34

<sup>6</sup> The State Party report notes, "Hong Kong's unique situation, with its small geographical area, dense population and easy access from different parts of the world, makes us vulnerable to possible abuses if the 1951 Convention were to be extended to Hong Kong. We maintain a firm policy of not granting asylum and have no obligation to admit individuals seeking refugee status under the 1951 Convention. Applications for refugee status lodged in Hong Kong are handled by the Hong Kong Sub-office of the United Nations High Commissioner for Refugees.", HKSAR Government, Combined Seventh and Eighth periodic reports of States parties to CEDAW, UN Doc.: CEDAW/C/CHN-HKG/7-8, 17 January 2013, para. 473.

<sup>7</sup> *ibid*

<sup>8</sup> HKSAR Government, "Humanitarian Assistance for Non-refoulement Claimants in Hong Kong", Legislative Council Panel on Welfare Services, LC Paper No. CB(2)626/13-14(06), 13 January 2014, <http://www.legco.gov.hk/yr13-14/english/panels/ws/papers/ws0113cb2-626-6-e.pdf>

<sup>9</sup> Ramsden, M; Marsh, L. Refugees in Hong Kong: Developing the Legal Framework for Socio-Economic Rights Protection. Human Rights Law Review, 2014, 14. Oxford University Press. 2014. Pg. 267. See also: Brown, Sophie, "The Waiting Game: Refugees live in limbo in Hong Kong", CNN International, 30 September 2014, <http://edition.cnn.com/2014/09/30/world/asia/mohammadi-rahman-profile/>; Branigan, Tania,

## ADDRESSING THE PARTICULAR NEEDS OF WOMEN

According to UNHCR, "Women share the protection problems experienced by all refugees...women need protection against forced return to their countries of origin; security against armed attacks and other forms of violence; protection from unjustified and unduly prolonged detention; a legal status that accords adequate social and economic rights; and access to such basic items as food, shelter, clothing and medical care...In addition to these basic needs shared with all refugees, refugee women and girls have special protection needs that reflect their gender: they need, for example, protection against manipulation, sexual and physical abuse and exploitation, and protection against sexual discrimination in the delivery of goods and services".<sup>10</sup>

This guideline is in line with the CEDAW Art. 3 which states that: "States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men". This provision entails the full protection of women throughout the non-refoulement process, including due process and the proper access to livelihoods.

Taking after the UNHCR guidelines on the protection of refugee women, "...international protection goes beyond adherence to legal principles". Furthermore, the protection of refugee women requires adopting policies, programmes and priorities that "support their safety and well-being".<sup>11</sup> Refugee women who are not able to "feed, clothe and shelter themselves and their children will be more vulnerable to manipulation and to physical and sexual abuse in order to obtain such necessities". Further, refugee women who have limited access to "essential goods will be more susceptible to sexual harassment". In this sense, the "intrinsic relationship which exists between protection and assistance is particularly evident in relation to refugee women, female adolescents and children".<sup>12</sup>

The fact that the protection system currently in place in Hong Kong does not have a specific focus on the protection of women or incorporate gender mainstreaming, raises serious questions about the system's capacity to successfully address the needs of women and girls, who include: survivors of torture, trauma or sexual and gender-based violence; illiterate women; female heads of household; women with medical conditions, among others, as they might be vulnerable and may have more difficulty or feel uncomfortable narrating their testimony fully, chronologically and coherently. In the worst scenario, without adequate vulnerability identification criteria and quality legal aid, this may increase the chance of their claims being wrongly rejected at first instance.

The HKSAR Immigration Department's "Notice to Persons Making a Non-refoulement Claim" and some letters in response to protection claimants written significations (letters a claimant must file to enter into the USM) make

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"Hong Kong's dirty secret: thousands of asylum seekers left waiting in squalor", The Guardian, 6 March 2014, <http://www.theguardian.com/world/2014/mar/06/hong-kong-asylum-seekers-waiting-in-squalor>; Knowles, Hazel, "Haven of Hopelessness", ChinaDailyAsia, 28 March 2014, [http://www.chinadailyasia.com/focus/2014-03/28/content\\_15127742.html](http://www.chinadailyasia.com/focus/2014-03/28/content_15127742.html)

<sup>10</sup> UNHCR. Guidelines on the Protection of Refugee Women. Geneva 1991, para. 2-3, <http://www.unhcr.org/3d4f915e4.html>

<sup>11</sup> *ibid*, para. 9

<sup>12</sup> *ibid*, para. 9-10

passing reference to claimants with "special needs" and the possibility for them to request prioritisation [of their cases].<sup>13</sup> The "Determination of Non-refoulement Claims" Note to officers of the Torture Claim Assessment Section of Immigration Department states that "case officers should be aware of clients with special needs" and that these cases should be handled with "due care". However, even if a vulnerable protection claimant becomes aware of this, the criteria for "special needs", the grounds for prioritisation, any vulnerability assessment apart from self-identification, and any support the Immigration Department may be able to provide are unclear. In none of the documents issued by the HKSAR Government, that Justice Centre is aware, are there standards that specifically set forth to provide for women's protection. In the UNHCR's refugee status determination system, it had acceleration criteria for vulnerable persons under its procedural standards, as well as a social worker on-hand to liaise with relevant government departments and civil society organisations on cases of concern.<sup>14</sup>

Furthermore, the socio-economic needs of protection claimants, especially women, which have generally been left out of the discussion about the USM, must be addressed, as this is crucial for their local integration as they wait for a decision in their case, which can take several years to be processed. The current exclusively in-kind humanitarian assistance provided by the government is inadequate and doesn't respond to the rights of women. For example, the housing assistance provided is equivalent to 193 USD (HKD 1,200) in a city with one of the most expensive property markets in the world. The food assistance, given in bags of food that claimants must collect from pick-up points, is equivalent to a mere 5.15 USD (HKD 40) a day. Protection claimants, regardless of their length of stay and whether their claim has been determined as meritorious, do not have the right to work because they are not granted any legal status in Hong Kong.

Worryingly, on the few occasions where the USM has been discussed publicly and in the government's written documents, the issue about what long-term solutions will be available to successful claimants (those with substantiated claims) has not been addressed. "Non-refoulement" protection merely protects the claimant from being returned to their country so long as they face a risk of harm, but it does not confer any additional rights to the individual nor does it grant them any legal status in Hong Kong. Successful claimants still do not have the right to work or to even volunteer in Hong Kong and continue to receive the same humanitarian assistance package as before their claim was substantiated.

The government has stated that substantiated claims on persecution grounds will be referred to the UNHCR-HK which will seek to find a durable solution for that person, but the procedure for referral process is unknown. For the other two grounds, torture and CIDTP, which fall out of the scope of the UNHCR's mandate, the government has alluded that they

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<sup>13</sup> HKSAR Immigration Department, "Notice to Persons Making a Non-refoulement Claim", [http://www.immd.gov.hk/pdf/notice\\_non-refoulement\\_claim\\_en.pdf](http://www.immd.gov.hk/pdf/notice_non-refoulement_claim_en.pdf) and "Non-refoulement Claim Form", [http://www.immd.gov.hk/pdf/notice\\_non-refoulement\\_claim\\_en.pdf](http://www.immd.gov.hk/pdf/notice_non-refoulement_claim_en.pdf) and HKSAR Government, Implementation of the Unified Screening Mechanism, Panel on Security of the Legislative Council, LC Paper No. CB(2)1621/13-14(06), 2 June 2014, <http://www.legco.gov.hk/yr13-14/english/panels/se/papers/se0603cb2-1621-6-e.pdf>

<sup>14</sup> UNHCR, Procedural Standards for Refugee Status Determination Under UNHCR's Mandate, 20 November 2003, s. 4.6, available at: <http://www.refworld.org/docid/42d66dd84.html>

will be able to be resettled to a third country, but has provided no details about how.<sup>15</sup> There is no information about how this will happen in practice and which countries, if any, the government has been in negotiations with.

Most likely, substantiated claimants will be in a position similar to the few successful torture claimants in the CAT system previous to the USM - legal limbo. These claimants have often been in Hong Kong for several years, with no hope of resettlement, no ability to return to their countries and essentially stranded in an indefinite "waiting room". The inability to have legal status, to be granted the right to work or have access to adult education or to integrate locally takes a significant toll on these claimants' well-being. The longer these protection claimants are forced to rely on the government's low humanitarian assistance package, the more they slip into poverty and marginalisation. In the face of this impossible dilemma, claimants may even feel compelled to risk the danger of returning to their country of origin before it is safe to do so,<sup>16</sup> which could even amount to "constructive refoulement".<sup>17</sup>

The sum of these conditions puts these women in a highly vulnerable, dependent and marginalised situation. A change in the current policy towards livelihoods and a rights-based approach should take place in order to fulfill the socioeconomic rights of women refugees.

## **EFFORTS TO ADDRESS DUE PROCESS FOR WOMEN PROTECTION CLAIMANTS**

In the USM, women are afforded a minimum protection standard in the midst of the non-refoulement process, such as the right to request the assistance of a female case officer or interpreter throughout the proceedings.<sup>18</sup> Despite this, the system still presents core challenges for women attempting to access the process. A situation that poses a challenge for female protection claimants as they access the USM is certainly the lack of information provided by the government on the new protection proceedings - one of the reasons Justice Centre Hong Kong began to offer information sessions on the USM in different languages for protection claimants to meet the gap. Furthermore, no regulation is set in the current corpus juris on the legal situation of the female claimant or to guide the assessment of the substance of their claims. This omission in the law may also increase the chance of their claims being wrongly rejected.

Moreover, in the USM, a person may only file a claim if they do not have a valid visa and they have a removal order issued against them, upon which they must surrender to authorities. It is only once they have an open claim and receive a "recognizance paper" (their only identification papers once their passports are confiscated, but which does not regularize their stay) by the Immigration Department that they may be referred to for the humanitarian assistance. As many protection claimants enter the territory on a valid visa, it may take anywhere from a couple of weeks to up to

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<sup>15</sup> See discussion at the LegCo Panel on Security, Agenda Item II. Screening of Non-refoulement Claims, 2 July 2013.

<sup>16</sup> Kao, Ernest, "I'd rather face death in Somalia than be destitute in Hong Kong", says asylum seeker", South China Morning Post, 22 April 2014, <http://www.scmp.com/news/hong-kong/article/1493770/journalist-forgoes-hong-kong-life-breadline-war-torn-somalia?page=all>

<sup>17</sup> "Scholars, NGOs and the UNHCR use the term 'constructive refoulement' to describe a situation where a refugee is forced to return 'voluntarily' because of conditions that are insupportable." Mathew, Penelope, *Reworking the Relationship between Asylum and Employment*, Routledge Press: New York, 2012, at. pp 97-98.

<sup>18</sup> Immigration Department. Notice to Persons Making a Non-Refoulement Claim. Paragraph Nr. 31

three months for their visa to expire. As a result, many new arrivals experience significant delay in accessing protection and fall through the cracks in the system, often finding themselves without any assistance in a new city, and in some cases, in poverty and even homeless. Justice Centre has brought this concern to the Government on many occasions, but the HKSAR has not addressed it.<sup>19</sup>

## REFUGEE WOMEN'S ACCESS TO SOCIO-ECONOMIC RIGHTS

### Access to Healthcare, Food and Livelihoods

In Article 12, CEDAW requires State Parties to take all appropriate measures to eliminate discrimination against women regarding healthcare. This includes access to health care throughout the life cycle, and it requires special consideration to be given to women-specific healthcare aspects such as maternity. Special attention should be given to the health needs and rights of women belonging to a particularly vulnerable and disadvantaged group, such as refugee women and female asylum seekers.<sup>20</sup> This includes taking into account cultural aspects that might pose additional challenges to these women's health as well as aiming to eliminate cultural and other barriers.<sup>21</sup> Given the particular vulnerability of refugee women and female asylum seekers and the likelihood of their having been exposed to trauma, it is important that access to health services such as trauma treatment and counselling are ensured.

As the Committee has noted in its General Recommendation No. 24, "women's right to health can be achieved only when State parties fulfil their obligation to respect, protect and promote women's fundamental right to nutritional well-being throughout their lifespan by means of a food supply that is safe, nutritious and adapted to local conditions." Furthermore, access to other utilities necessary to maintain good health and female hygiene has to be ensured.

It is of concern to Justice Centre that in a 2013 survey conducted by the Refugee Concern Network, 75% of respondents said that the number of choices offered in the food package were insufficient to meet their needs, 50% reported that the food is not suitable for consumption throughout the allotted time period (5 to 10 days between pick-up appointments), and 77% said the food is not enough in quantity for the time period. Many experts and NGOs, including Justice Centre, have repeatedly called on the government to adopt a cash transfer or at least a voucher system for food, which would most likely be at no additional cost to the government, would remove many overhead costs in the current programme, and would address many complaints about food choice, quality and quantity by allowing protection claimants to purchase the food they wish, closer to their home, when they need it.<sup>22</sup>

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<sup>19</sup> See for example: Justice Centre Hong Kong, Letter to Chairperson of the Panel on Security and Members of the Panel on Security of the Legislative Council, Agenda Item IV. Implementation of the Unified Screening Mechanism (USM), LC Paper No. CB(2)1621/13-14(07), 23 May 2014, <http://www.legco.gov.hk/yr13-14/english/panels/se/papers/se0603cb2-1621-7-e.pdf>

<sup>20</sup> See CEDAW, General Recommendation No. 24 (20<sup>th</sup> session, 1999), Article 12: Women and health, para. 6

<sup>21</sup> Ibid, para. 7.

<sup>22</sup> See Joint submission by Hong Kong Refugee Advice Centre, Christian Action, Refugee Concern Network, The Vine Community Services, Amnesty International Hong Kong, "Ways to improve situation of refugees, torture claimants and asylum seekers in Hong Kong", Special Meeting of the LegCo Panel on Welfare Services, LC Paper No. CB(2)1630/12-13(03), 22 July 2013, <http://www.legco.gov.hk/yr12-13/english/panels/ws/papers/ws0722cb2-1630-3-e.pdf> and UNHCR Sub-Office Hong Kong, Written Submission to Legislative Council Panel

In regards to access to healthcare, the HKSAR Social Welfare Department (SWD) can be approached by protection claimants in order to obtain a medical fee waiver once they have received their recognizance paper and have successfully registered their protection claim.<sup>23</sup> This waiver, granting access to public healthcare facilities, has to be obtained by Hospital Authority or the services unit of the SWD.<sup>24</sup> A waiver must be obtained for each appointment, no matter how chronic the condition, creating bureaucratic hurdles that are a barrier for accessibility to healthcare. Moreover, many protection claimants report that frontline workers are not necessarily familiar with recognizance papers and that interpretation services are often limited. Newly arrived protection claimants (who are not yet able to file a USM claim due to the system's requirement that they first be liable to removal) are prevented from accessing healthcare, among other assistance, in Hong Kong. For women who may bear physical trauma or are survivors of sexual and gender-based violence, this is a great problem. Access to healthcare facilities is further complicated by the limited financial means available to refugee women to pay for their travel to healthcare providers, to purchase medication or to access specialised services not necessarily covered in the healthcare assistance.

It is a concern that the treatment provided, regardless of the medical condition, according to protection claimants' feedback, often consists on the prescription of pain killers. Anecdotally we understand that said painkillers have been prescribed to breastfeeding women and in many instances more appropriate treatment was received only after the women's health had further deteriorated. Often said treatment is then provided by private healthcare providers on a pro- bono basis. This adversely affects refugee women's trust in the local healthcare system and on some occasions deters them from seeking treatment in the first place. At the time of writing, counselling and mental health services are not included in the humanitarian assistance and are only provided by private and non-governmental organisations - despite these services being crucial for this population's well-being and even in the claim process itself.

## Access to Housing

Access to an adequate standard of living, including housing, is a human right.<sup>25</sup> It applies to all women, whether urban or rural inhabitants, and includes refugees and asylum seekers. The CEDAW Committee highlights the obligations of States to ensure adequate living and housing conditions in connection with the protection of women's right to health.<sup>26</sup> The provision of housing and adequate living conditions must be accessible, suitable and safe. Inadequate housing conditions have specific and detrimental consequences for women, particularly for protection claimant and refugee women, who are often survivors of SGBV and have experienced significant trauma prior to their arrival in Hong Kong.

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on Welfare Services, LC Paper No. CB(2)1630/12-13(06)(Revised), 22 July 2013, <http://www.legco.gov.hk/yr12-13/english/panels/ws/papers/ws0722cb2-1630-6-e.pdf>. Also see Justice Centre's petition to the Hong Kong government to let refugees eat in dignity under "Hungry for Change" campaign at <https://www.change.org/p/the-hong-kong-government-let-refugees-eat-in-dignity>.

<sup>23</sup> HKSAR Hospital Authority, Waiving Mechanism of Public Hospitals (Information Leaflet),

[http://www.ha.org.hk/visitor/ha\\_visitor\\_index.asp?Content\\_ID=10047&Lang=ENG&Dimension=100&Parent\\_ID=10044&Ver=HTML](http://www.ha.org.hk/visitor/ha_visitor_index.asp?Content_ID=10047&Lang=ENG&Dimension=100&Parent_ID=10044&Ver=HTML)

<sup>24</sup> International Social Service Hong Kong, Assistance in kind to Asylum Seekers and Torture Claimants (supported by SWD),

[http://www.isshk.org/e/customize/migrants\\_assistance.asp](http://www.isshk.org/e/customize/migrants_assistance.asp)

<sup>25</sup> International Covenant on Economic, Social and Cultural Rights – Article 11

<sup>26</sup> Committee on the Elimination of Discrimination against Women, General recommendation No. 24 (1999), para 28.

Because the level of housing provided is not adapted to Hong Kong's housing prices, arrangements have included the following precarious scenarios that have come to Justice Centre's attention: a mother staying in an office space with a young child with no bath, kitchen or shower facilities, and single women having no choice but to stay in houses or rooms with unknown men out of economic necessity, despite feeling uncomfortable with this arrangement. Women must rely on charities, faith-based groups, NGOs or good Samaritans to provide accommodation alternatives in these situations. Homelessness and inadequate arrangements such as this raise significant security issues for women and make them vulnerable to violence and abuse. The "slum-like" conditions of housing among this community have been well-documented in the international media.<sup>27</sup> Housing options provided by the Hong Kong Government have sometimes failed to adequately address refugee and protection claimant women's specific needs, particularly in relation to hygiene, security, and families with children or pregnant women, such as providing housing which is in walk-up buildings or even on roofs.

The Hong Kong Government provides protection claimants and refugees in Hong Kong with a monthly allowance of up to \$300 per claimant in order to meet utility expenses.<sup>28</sup> The Hong Kong Government notes that this gives protection claimants flexibility to use the allowance to meet different utilities' charges such as water, gas and electricity. In practice, women have great difficulty budgeting and managing the use of utilities for a number of reasons. Often there are several people or families living in rooms of the same house using the same meter and copies of utilities bills are not provided. Providing copies of the bills to ascertain accurate usage would improve transparency and flexibility, enabling women to make budgeting decisions about usage over the course of the year. It would also prevent utilities being cut off due to failure of bills being paid by ISS to individual landlords. Furthermore, Immigration Department, Social Welfare Department, ISS and NGOs contact protection claimants on their mobile phone, yet no assistance is given for this important utility cost.

The service contract does not specifically provide for cooking appliances, clothes, mattresses or other living essentials. Claimants are reliant on charities for such provisions. Further, the provision of cooking apparatus is only of benefit if one is provided with accommodation which has cooking facilities, and permission and opportunity to use them. Many boarding rooms and guest houses in which refugees and protection claimants find themselves do not permit tenants to cook within them. In short, the current policies force protection claimants to live on a cashless basis and instead rely on an in-kind humanitarian assistance package. However, the provisions in this package are piecemeal and do not

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<sup>27</sup> See, for example: Danny Lee, "U.N. concern at plight of Hong Kong asylum seekers living in squalor, South China Morning Post, 8 September 2013, <http://www.scmp.com/news/hong-kong/article/1305929/un-concern-plight-hong-kong-asylum-seekers-living-squalor?page=all>, "Asylum Seekers in Hong Kong Face Slum-like Conditions, Wall Street Journal, 16 July 2013, <http://online.wsj.com/news/articles/SB10001424127887323394504578608760287223132>, Lam, Oiwan, "Hong Kong: Refugees living in slums", Global Voices, 8 September 2013, <http://globalvoicesonline.org/2013/09/08/hong-kong-refugees-living-in-slums/#>; Lai, Samuel and Tjhung, Mark, "Hong Kong's Refugee Shame", Timeout Hong Kong, 19 June 2013, <http://www.timeout.com/hk/big-smog/features/59068/hong-kongs-refugee-shame.html>

<sup>28</sup> HKSAR, Humanitarian Assistance for Non-refoulement Claimants in Hong Kong, Legislative Council Panel on Welfare Service, LC Paper No.CB(2)626/13-14(06) , 13 January 2014, available at: <http://www.legco.gov.hk/yr13-14/english/panels/ws/papers/ws0113cb2-626-6-e.pdf>

address the totality of even their most basic living needs, nor is it flexible enough to adapt to women's needs or differentiated individual needs.

The Government notes in the State Party report that "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." Justice Centre finds that the assistance fails to prevent destitution and that the HKSAR Government's rationale for providing in-kind assistance to be unreasonable and based on unfounded arguments about "magnet effects" for which it has never been able to produce empirical evidence. We urge the CEDAW Committee to inquire to the Hong Kong Government about the situation for protection claimant women at this important time when the USM has just come into effect and when the humanitarian assistance contract is up for renewal.

## RECOMMENDATIONS

- 1. The HKSAR Government should take positive measures in law and policy to address the particular vulnerabilities of women during the USM legal process. In this regard, Justice Centre Hong Kong recommends that acceleration criteria for vulnerable people be incorporated into procedures to prioritise their claim and offer them support.**
- 2. The HKSAR Government must respect, protect and fulfill protection claimants' basic human rights. It should explicitly incorporate human rights standards into its policy, as well as gender-mainstreaming and recognition of the interdependence of the rights to health, food and housing. The assistance provided should cater to women's needs and allow recipients to live a dignified existence while they await a determination on their claim. The HKSAR Government should also allow protection claimants to have access to livelihood opportunities.**
- 3. The HKSAR Government must provide long-term solutions – such as resettlement, local integration and voluntary repatriation – for all successful claimants in the USM system beyond mere "non-refoulement", which leaves claimants with proven claims in legal limbo and does not offer them any additional protection. The HKSAR must make more proactive efforts to ensure their social inclusion and to combat discrimination by raising awareness among the public and providing adequate training to frontline workers.**