

Social Welfare Department

8/F, Wu Chung House
213 Queen's Road East
Wanchai

14 November 2016

Attn. Ms. CHIU Sau-may Venus

Dear Ms. Chiu,

Ref. Request for the urgent increase in levels of assistance to refugees

We refer to your letter dated 5 September 2016, in reply to ours dated 8 August 2016, which stated, *"We are looking into the matter and will revert to you soon."*

Regrettably we have not received a substantive reply from you. It has been over 3 (three) months' time during which the refugee community remains destitute, our basic needs not being fully met, and for new arrivals into Hong Kong often not being met at all.

There are a few cases of refugees never having had any assistance from ISS-HK or SWD at all despite having repeatedly applied to both SWD and ISS-HK since 2013. SWD and its sole government contractor ISS-HK have failed to meet the basic needs of the refugee community in Hong Kong. That is a systemic failure on an enormous scale and the culpability rest squarely on the SWD and ISS-HK shoulders.

The Refugee Union reiterates that the current levels of assistance, as defined in your letter to ISS-HK on 24 January 2014 (copy attached), are categorically inadequate to meet our most basic expenses for shelter, utilities (electricity, water and cooking gas), food, clothing, hygiene products (including diapers) and transportation costs. These are the most basic needs of any person in a civilized society. SWD and ISS-HK are duty bound to cover these costs in full based on both domestic constitutional law and international law.

Further, we maintain that the current levels of assistance have been designed to ensure we refugees are destitute at all material times. Such conditions have been designed to compromise our physical and psychological well-being. This system of control thus compromises us to the extent that some refugees embark onto self-remedies such as illegal work, theft, etc. in order to pay for food and rent putting their liberty rights at risk.

This situation has even caused some refugees to give up their asylum rights and risk the return to their home country to face persecution, ill-treatment and torture – which is arguably a desired government outcome.

As such, the Social Welfare Department is blatantly subjecting refugees to living conditions that amount to inhuman and degrading treatment owing to your department's obstinate failure to meet our basic needs as required by jurisprudence, including:

- Usman Butt vs. HKSAR (HCMA 70/2010)
- MA v Director of Immigration (CACV 44/2011)
- Art. 3 HKBORO
- Art. 39 Basic Law
- Art. 7 ICCPR

Your attention is yet again drawn to the High Court judgment in Usman Butt vs. HKSAR which clearly states that:

"A genuine torture or refugee claimant deserves sympathy and should not be left in a destitute state during the determination of his status. His basic needs such as accommodation, food, clothing and medical care are provided by the Government ... The provision of that assistance clearly removes the need of a genuine claimant to seek employment pending the determination of his claim."

We also draw your attention to the plight of refugee children who have been left destitute by SWD and ISS-HK and the implication that the Hong Kong Government has arbitrarily and disproportionately infringed upon their rights under article 20(1) HKBORO. We set out that fundamental right of a child, which includes refugee children, below.

**"Article 20
Rights of children**

(1) Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State."

In the 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 (16 September–4 October 2013)" dated 29 October 2013, at paragraph 13:-

"13. The Committee is further concerned that:

- (c) **In Hong Kong, China, resource allocations to education and social welfare remain inadequate and do not effectively target the most vulnerable groups, particularly children of ethnic or linguistic minorities, asylum-seeking children, children living in poverty and children with disabilities."**

And

- “29. The Committee reiterates its concern about the persistence of discrimination against children with disabilities, refugee and asylum-seeking children and undocumented children of migrant workers in Hong Kong, China.*

And

- “30. The Committee recommends that Hong Kong, China intensify measures, including awareness-raising, identification of discriminatory policies and timely implementation of relevant programmes, to combat discrimination against children with disabilities, undocumented children of migrant workers, and refugee and asylum-seeking children, and to ensure that these children have equal access to basic services, including health, education and other social services.*

And

- 73. While welcoming the plan of Hong Kong, China to increase its supply of public housing, the Committee is concerned about the housing conditions in certain poor areas. Furthermore, the Committee is concerned about the increasing child poverty in mainland China and Hong Kong, China and that children of migrants, children of ethnic minorities and asylum-seeking children are disproportionately represented among the poor and live below the poverty line.*
- 74. The Committee urges Hong Kong, China to expedite the implementation of its public housing programme. It further recommends that mainland China and Hong Kong, China adopt a multidimensional set of criteria for assessing and addressing child poverty and take all necessary measures to eliminate regional, ethnic and urban-rural disparities in children’s standard of living through, inter alia, 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 situation has not improved for refugees and their children since the UNCRC Report and in fact has only deteriorated. The United Nations Committee against Torture found in its “Concluding observations on the fifth periodic report of China with respect to the Hong Kong Special Administrative Region” dated 9 December 2015 at paragraph 6:-

“The Committee also notes with concern that the lack of recognition of refugee status to USM claimants denies them access to legal work, compelling them to live on in-kind assistance below the poverty line for long periods of time (art. 3).”

Finally, the Refugee Union reiterates, in the strongest possible terms, its demand that the Social Welfare Department immediately review the current levels of assistance that have not been increased for over two and a half years. The health, safety, security and liberty of many refugees are jeopardized by any assistance levels below the minimum necessary to meet our realistic basic needs.

It is highlighted that the minimum assistance provide to refugees is significantly less than assistance provided by SWD to Hong Kong residents. That is a benchmark that provides overwhelming evidence that refugees are destitute in Hong Kong.

The Refugee Union demands that the Social Welfare Department forthwith:

1. Arrange our Tenancy Agreements be signed by ISS-HK case-workers with the rental burden shifted to Hong Kong Government because we refugees are destitute and don't have the right to seek employment;
2. Arrange that ISS-HK pay the full rental deposit, advance rent, rental amounts;
3. Arrange that ISS-HK pay the full utility bills and that the original power company invoices be shown by the landlords and copies provided to both ISS-HK and refugees;
4. Increase the value of monthly food coupons to HK\$2,000 per month per person;
5. Replace the wasteful distribution of substandard toiletries with one HK\$200 coupon per person per month;
6. Provide a separate coupon for monthly diaper supply for babies and very young children to cover the full costs of such a necessity;
7. Provide a sum of money per month for clothing purchases for refugees; and
8. Include a broader dental program for the refugee community.

We look forward to collaborating with your department to rectify and resolve these pressing problems without further delay.

Sincerely Yours,

Refugee Union



社會福利署
Social Welfare Department

Our ref : SWD/CR/1-150/001/2
Tel No. : 2892 5172
Fax No. : 2833 5840

24 January 2014

Mr Stephen H B Yau
Chief Executive
International Social Service Hong Kong Branch
6/F, Southorn Centre
130 Hennessy Road
Wan Chai
Hong Kong

Dear Mr Yau,

**Tender Reference No.: SWD/T002/2011
Provision of Assistance for
Asylum Seekers and Torture Claimants**

The Administration introduced a proposal on enhancing the humanitarian assistance for non-refoulement claimants (claimants) in the meeting of the Legislative Council Panel on Welfare Services held on 13 January 2014.

I am pleased to inform you that approval has been obtained to implement the following service enhancements with effect from 1 February 2014 -

Accommodation

- To increase the monthly rent allowance grid per adult claimant from \$1,200 to \$1,500; and per child claimant from \$600 to \$750.
- To provide rental deposits up to two months of rent or two months of the eligible rent allowance grid, whichever is the less. Each claimant/family may apply for the deposit once throughout the entire assistance period. ISS is expected to pay the deposits directly to the landlord and enter into a separate agreement with them on the recoverability.

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- To provide property agent fees up to half the monthly rent or half the eligible rent allowance grid, whichever is the less. Each claimant/family may apply for the agent fees once a year as necessary. ISS is expected to pay the fees directly to the agents.

Food

- To increase the average budget for food for each claimant from \$1,060 to \$1,200 per month in order to implement the recommendations of the Department of Health (DH). To this end, ISS is encouraged to instruct case workers to increase claimants' food consumption with the additional budget having regard to DH's recommendations.

Transportation

- To provide cash allowance in advance for regular trips (e.g. appointments with the Immigration Department, duty lawyers, food collection, etc.) (i.e. instead of reimbursement) with the allowance amount being subject to the location of residence.

Utilities

- To adjust the utilities allowance for each claimant to \$300 per month (same rate for children and adults) which may be used to meet different utilities charges (i.e. water, gas, electricity, etc.).

I would be grateful if you could inform claimants of the above service enhancements as soon as possible, and no later than 27 January 2014. If you have any enquiries, please contact me or Ms Fanny Fung, Senior Social Work Officer (Family)1, at 2892 5169.

Taking the opportunity, I would like to thank for your unfailing support and endeavours in providing the humanitarian assistance for the needy claimants.

Yours sincerely,



(Wong Kwok-chun, Alex)
for Director of Social Welfare