

HONG KONG'S refugee SHAME

But wait, there's hope...

Our long-broken asylum system is on the brink of the most important changes it has ever seen. To coincide with World

Refugee Day on June 20, **Samuel Lai** and **Mark Tjhung** explore the hope in the darkness.

Photography by **Calvin Sit**

The Ping Che Rural Area in the New Territories has turned into refugee shanty village





ramshackle hut, thrown together out of scrap metal and waste wood, gives out a long groan as Yousuf grimaces to wrench open the door to his home. A smell of urine and faeces lingers in the air, a result of the shack's lack of proper sewerage, which makes it a breeding ground for rats, pests and insects. This barely inhabitable place is exposed to the elements – heavy rain could clearly cause electrocution and the tree which rests up against the hut is vulnerable to lightning strikes – and, as we walk the dark corridors within, the iron sheets which make up the structure clatter ominously. "The roof fell down on my head the other night when I was sleeping," says Yousuf, a Bangladeshi man who calls this grim haven his home. "Imagine what it's like when there's a storm."

We are in Ping Che, a rural area on the northern edge of the New Territories which has been transformed over time into a shanty village for asylum seekers. And, indeed, Yousuf is not alone in calling this home. More than 150 other asylum seekers – mainly Bangladeshis – live in the area, some for a shorter period than Yousuf's two-year stint; others, for much longer.

"These dirty and dangerous shacks

are unfit for living in," says Cosmo Beatson, executive director of Vision First, an NGO that advocates rights for people seeking protection. Despite his assessment, this shack houses 12 Bangladeshi asylum seekers, all of whom have fled their native home for fear of torture. Yousuf, for example, was the victim of blindfolding, kidnapping and severe beatings by terrorists, before threats were made on his life. "The terrorists came to my home demanding money under the threat of death," he says. "I reported the matter to the local police but they took no action. I was forced to depart my country and I came to Hong Kong. If I go back to Bangladesh, I will be killed."

The hundreds in Ping Che – a mere fraction of the more than 4,000 people presently seeking asylum protection in Hong Kong – are just the tip of the iceberg. There are other shanty towns scattered across the SAR, from Nai Wai to Kam Tin and Pat Heung, housing hundreds more asylum seekers from across the world, trapped in a system that has given them few other choices.

This lack of choices, however, may soon change. In recent months, there have been glimmers of hope for asylum seekers – developments which may prove to be the first step in helping people trapped in these conditions into a better life.

A SHAMEFUL SYSTEM

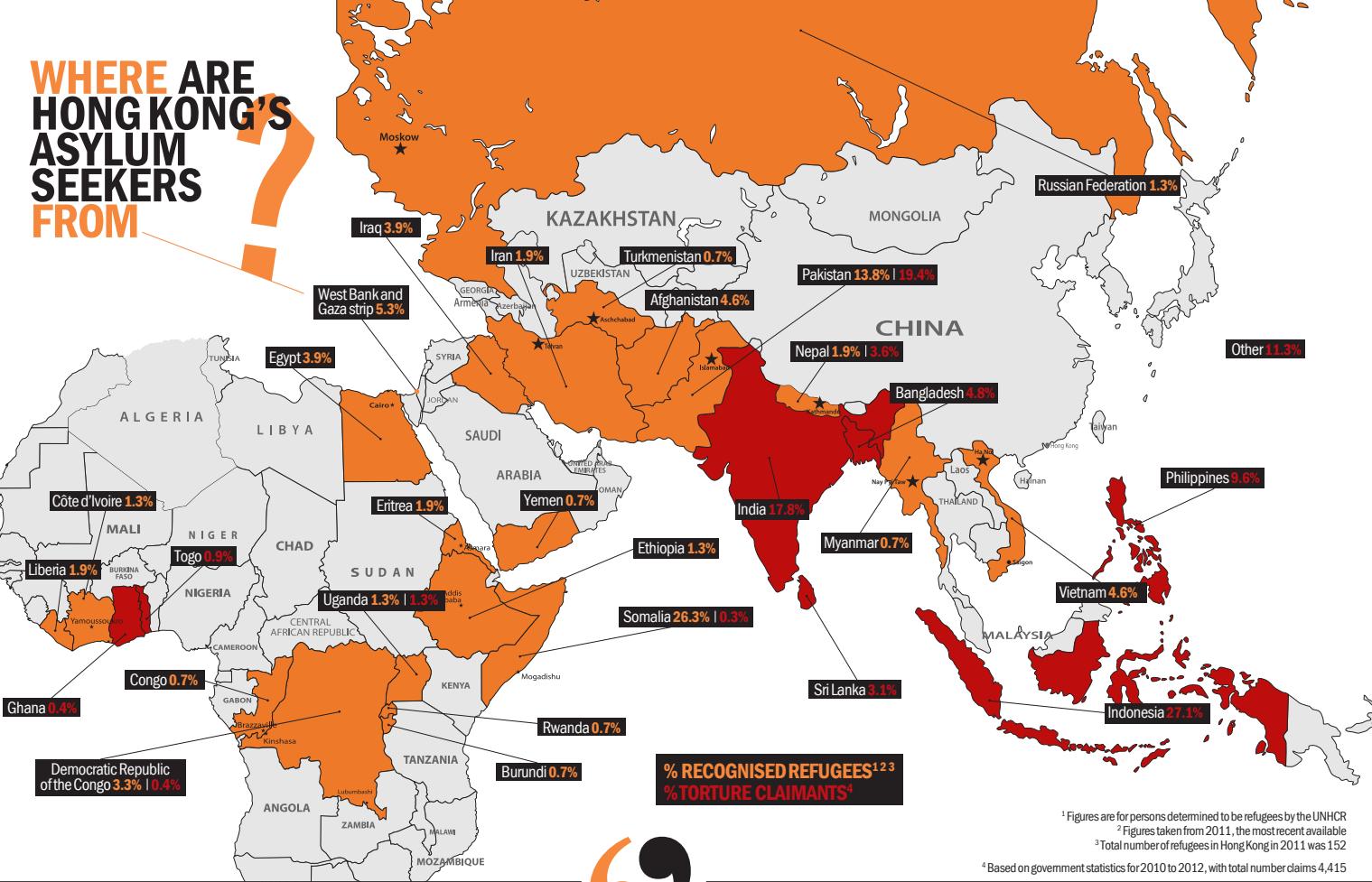
To fully appreciate the prospects for change, it's necessary to understand the dire situation asylum seekers in Hong Kong currently endure. When a person comes to Hong Kong and is registered as either a refugee claimant or a torture claimant – a distinction we'll come to later – they become eligible for a monthly accommodation subsidy of up to \$1,200, which is paid directly to the landlord from ISSHK, the government-contracted NGO responsible for the welfare payments; a bag of food every 10 days; and occasional financial assistance to cover transportation to government appointments. It's a level of assistance which the Social Welfare Department says is designed 'to provide support which is considered sufficient to prevent a person from becoming destitute while at the same time not creating a magnet effect which can have serious implications on the sustainability of our current support system'.

Part of the difficulty many asylum seekers face is that the assistance doesn't, they say, in practice, quite meet this level, particularly when coupled with the fact that asylum seekers are not permitted to work. "Such levels of assistance are insufficient for daily survival," says Aleta Miller, executive director of Hong Kong Refugee

Advice Centre (HKRAC), an NGO that provides legal services to refugees. "The rental allowance is grossly inadequate in the city's housing market. The amount of food is insufficient. Asylum seekers are not allowed to work. At the same time, they do not receive enough aid to maintain a basic standard of living. As a result, they are forced into situations of poverty and deprivation."

Consider that Yousuf's rent is \$1,400 a month, \$200 more than his housing allowance. Vision First also estimates asylum seekers must find at least \$800 per month extra to pay for water, electricity, gas cylinders and

WHERE ARE HONG KONG'S ASYLUM SEEKERS FROM?



¹ Figures are for persons determined to be refugees by the UNHCR

² Figures taken from 2011, the most recent available

³ Total number of refugees in Hong Kong in 2011 was 152

⁴ Based on government statistics for 2010 to 2012, with total number claims 4,415

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If we work, we are doomed. If we don't work, we are doomed

other cooking facilities, topping-up food, and rent and medical expenses – basic necessities not covered by the in-kind assistance. That \$800 is difficult to come by when you can't work – and the penalties imposed on asylum seekers caught working are significant: a maximum of three years in prison.

Beatson tells the story of Kasun, a Sri Lankan asylum seeker, who risked working as a restaurant dishwasher to obtain medication for his pregnant diabetic wife. He was caught and sentenced to 15 months in jail. Ten days later, his wife's waters broke and she fell unconscious for hours. By the time she reached the hospital, her womb was infected and the baby's life hung in the balance. "They are forced into chronic, desperate poverty out of which there is no pathway but that of working illegally," says Beatson. "Doesn't this policy effectively criminalise asylum seekers?"

Or, as Yousuf puts it: "If we work, we are doomed. If we don't work, we are doomed."

THE WAITING GAME

The conditions faced by asylum seekers when they arrive in Hong Kong are tough, to say the least. And then there's the waiting. While neither the UNHCR nor the government have been able to provide us with any average application processing times, we've heard of refugees waiting anything from under a year to eight years.

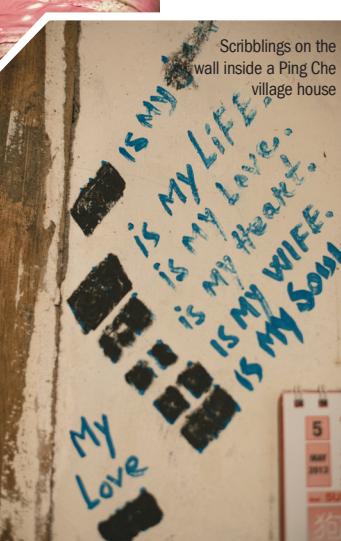
One of the fundamental problems in Hong Kong's system is that the city never signed the UN's 1951 Refugee Convention. "Our unique situation," says a government spokesman, "set against the backdrop of our relative economic prosperity in the region and our liberal visa regime, makes us vulnerable to possible abuses if the 1951 Convention were to be extended to Hong Kong." This basically means that the Hong Kong government

By 'fair', Loper may be referring to the fact that the government has a near zero recognition rate for torture claims. Since the authority implemented an enhanced screening mechanism for torture claims in December 2009, only five out of 3,110 have been recognised. "The Hong Kong government is operating a refugee policy of rejection, not protection," says Beatson. "Countless cases have been hastily rejected, no matter how credible the story, hard the evidence or outstanding the lawyer."

But an Immigration Department spokesperson has a different view: "Under the current mechanism, claimants have every reasonable opportunity and all the necessary support to establish their claim. The only reason that a torture claim is rejected is that there is no substantial ground to justify that the claimant will be in a danger of being subjected to torture."

Indeed, some critics have questioned the effectiveness of the screening system, particularly in cases where determinations have had severe consequences. Muhammad Adrees, a Pakistani asylum seeker, chose to commit suicide over deportation after his torture claim was rejected by the government in October last year. Before his death, he explained to the immigration officers that he faced a serious risk of violence if repatriated. Fearful of violence in Pakistan, he chose to end his own life.

In terms of recognition rates, the UNHCR's determination process isn't much more lenient on refugees either. On average, nine out of 10 asylum applicants are rejected – an alarmingly low number compared to other countries, far below the global acceptance level of around 30 percent (taken from 2011 figures). "Since the UN has diplomatic immunity, its decisions cannot be challenged by the courts in Hong Kong's judicial system," says Loper. "It does not have an independent appeal process either." ▶



The interiors of one of the shanty houses in Ping Che

Refugees: the number game

91

The number of recognised refugees in Hong Kong

*recognised by the UNHCR, as at May 31, 2013

1,243

The number of refugee claims awaiting determination

*as of May 31, 2013

4,230

The number of torture claims awaiting determination

\$0

Amount of cash assistance provided to asylum seekers and refugees

As of June this year, neither asylum seekers nor recognised refugees receive any direct financial assistance from the Hong Kong government or the UNHCR

\$1,200

The monthly rental subsidy from ISSHK

It is paid directly to the landlord and does not cover utilities or other expenses

960/581

Number of new UNHCR applications/ determinations in 2012



This mother and child are some of the 150-plus living in Ping Che village



This bottom part of this bug-infested fridge doesn't work; the freezer compartment now functions as the fridge

processes of being able to lobby and to advocate. It gives us more tools for accountability."

The government is yet to commit to the fused system. However, it has suggested that it will be studying the judgement and seeking legal advice on the way forward. But despite what is widely seen as a positive development for refugees, there remains a huge cloud in their future under a fused system – and it's best summed up by what some have termed the 'culture of rejection'.

THE CULTURE OF REJECTION: CAN IT CHANGE?

Indeed, back in 2009, the Law Society and Bar Association noted that 'the UNHCR assessment process, if it was amenable to the jurisdiction of the Hong Kong courts, would not meet the high standards of fairness and would most likely be declared unlawful'. And given the developments of the last few months, they were quite prophetic words...

THE GAMECHANGERS

'Landmark' developments. 'Seismic' shifts. These are the terms refugee advocates are using to describe how Hong Kong's asylum landscape has changed since late last year. That's because of two recent landmark legal cases – the first in December called *Ubamaka* and the second in March named C. Without labouring on the legal intricacies involved, these decisions had the joint effect of requiring the Hong Kong authorities to protect asylum seekers who face the threat of 'cruel, inhuman or degrading treatment or punishment' (CIDTP) if returned to their native country – a much broader ground than any torture claims (and a claim that some have said may be open to Edward Snowden) – and to determine a person's refugee status independent of the UNHCR's assessment.

The upshot, according to human rights lawyer Mark Daly, is that the two parallel, half-baked screening mechanisms must now be fused to 'set up a unified system, a one-stop shop for all three claims: torture, CIDTP and refugee claims'. And this is, according to refugee rights advocates, a good thing.

"These are landmark developments in refugee rights' protection," says Aleta Miller of the HKRAC. One of the main points that has refugee advocates upbeat – which is another dry yet vital legal point – is that the decisions made by the government would be subject to review by the courts, a quality currently lacking from the UNHCR determinations. Continues Miller: "The government will be forced to take responsibility. Just by having it in the government's system gives us access to the proper

Not all refugees subscribe to the theory of the ▶



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MARK, 33

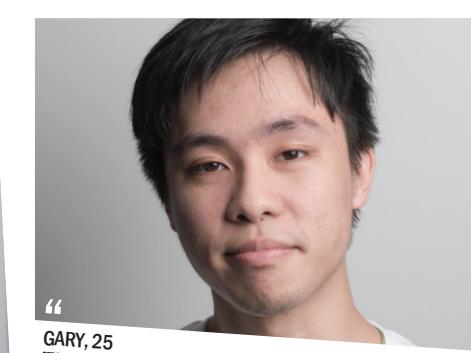
They should never stay in Hong Kong. Never. There are already enough new immigrants in HK and they've been using up many resources. If refugees keep coming to HK, there won't be enough resources for us, and the gap between the rich and the poor will widen.



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MR WONG, 29

My only concern is that refugees will start a riot.



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GARY, 25

They should never stay in Hong Kong. Never. There are already enough new immigrants in HK and they've been using up many resources. If refugees keep coming to HK, there won't be enough resources for us, and the gap between the rich and the poor will widen.



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KK, 27

I feel okay about the refugees staying in HK, but it really depends on whether they want to stay in Hong Kong or have other destinations in mind.



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ANONYMOUS

It is difficult to say because you can see things from two different perspectives. From the humanitarian perspective, you want to help them and let them stay in Hong Kong. But if you are seeing things from the perspective of an HK citizen, if there is an influx of refugees, it will cause problems such as unemployment, space and quality of living. Can we, the Hong Kong people, deal with that?



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YUKO YOSHIDA, 25

I am new to Hong Kong and I know nothing much about the refugees in Hong Kong. But I feel like Hong Kong is a more equal place. People won't judge you by your skin colour – I lived in Brooklyn before I come to Hong Kong, and the black people there will call me 'the yellow girl who is probably faced anything like this when I am in Hong Kong.'

THE PUBLIC SENTIMENT

The view of everyday Hongkongers on refugees in the SAR



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INGRID, 35

It depends on why they came to Hong Kong, and the resources Hong Kong has right now. Of course, we should take care of them for humanitarian reasons, but Hong Kong is not the only place in the world that has abundant resources to take in refugees.



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MARK, 28

I don't agree that they should stay. Resources in Hong Kong, like housing, education and welfare, are very limited. If we don't control the influx of refugees, there are possibilities for instability.



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ESTHER, 30s

I am totally against the refugees in Hong Kong. The problem is not caused by Hong Kong people. The problem is caused by the US. I have no idea why they send all the refugees to Hong Kong and force Hong Kong people to pay for all these expenses.



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AFZEL SHAH, 40s

This is a big problem for Hong Kong people. Refugees are granted to stay in Hong Kong but I see some of them don't behave well. My personal feeling is it should be stopped. Because of their refugee status, they are getting money from social welfare. However, they also work illegally. The local people are deprived the opportunities of those jobs.



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MR HO, 20

The refugees can stay in Hong Kong but just not too much. If they've already stayed here for long, then let them be, as they left their home country with difficult reasons.



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GUILLAUME, 25

I think there are some organisations that exist in Hong Kong which can help the refugees and take care of them. There are NGOs that can help them. They should stay or else they will have nowhere else to go.

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The truth is nobody cares about me

‘culture of rejection’. Many, however, including Loper, Miller and the official government line, agree that, in setting the asylum policy, the authority is cautious of pull factors which, as Loper says, “[the government] assumes would attract waves of asylum seekers’.

In changing this long-entrenched philosophy, advocates almost universally agree that the public has a role to play. Says Miller: “The government will be more susceptible to change if the people in Hong Kong demanded it.”

THE PUBLIC PERCEPTION

“Opening a floodgate to refugees would be a big mistake,” cried the title of an article written by scholar Victor Fung in *China Daily* last year. “The majority of refugees come to Hong Kong to dig gold,” accused a feature story in 2011 from *East Week*, a local weekly magazine. In a way, these stories sum up the Hong Kong public’s wider perception on refugees – a largely negative perception fuelled by previous experiences with the Vietnamese boat people, suggestions (like the above) that most refugees are economic immigrants, and just a basic lack of accurate information. (See p21 for some of the thoughts from Hongkongers on the streets.)

While the general attitude is still quite negative, though, there are signs of a small shift in opinion. Chinese media had scarcely reported on refugees and asylum seekers in Hong Kong before. But when more than 500 of these people took to the streets in April to protest against the current asylum system, media such as *Oriental*



One of the residents of Ping Che



Inside one of the tiny Ping Che village spaces

Daily, Apple Daily and TVB covered the demonstration. Says Beatson: “The reports were quite positive – and that’s encouraging.”

Miller also sees perceptions changing significantly within the younger generation – an incremental development, she believes – together with more education for the public about the refugee situation, as having the potential to dramatically change attitudes in the wider community.

“What we find is that a lot of the time, people simply don’t know,” she says. “When we tell people what the situation is like for refugees in Hong Kong, they are quite shocked.”

THE FUTURE HOPE

Even after the recent landmark developments, asylum seekers in Hong Kong by no means face an easy existence. But the current refugee landscape is about as bright as it has ever been for those seeking protection in our city.

Indeed, refugee advocates and human rights lawyers are optimistic about the future, seeing the recent cases as providing momentum for a number of further incremental changes. Lawyer Mark Daly is currently pushing to give asylum seekers the right to work through strategic litigation. The HKRAC recently made a submission to the UN Committee on Economic, Social and Cultural Rights, which will review Hong Kong’s human rights record. The UNHCR is currently negotiating with the government on the transition of refugees screening responsibilities. The Law Faculty of HKU is working with Vision First to promote human rights consciousness among today’s law students and tomorrow’s asylum lawyers. Says Miller: “I am feeling really optimistic. We have a real opportunity here. If we can create this movement, then somebody will have to listen to us.”

Which brings us back around to Yousuf. After two years, even living in exceptionally difficult conditions in Ping Che, for him there remains a certain hope for the future. “Even if we are refugees, I think we have the right to live. I think we have the right to do something for our future,” he says. ■

Editorial note: for the protection and privacy of the individuals involved, all the names of the asylum seekers and refugees quoted in this story are pseudonyms

A history of refugees in Hong Kong

The busy metropolis that is Hong Kong – with its geo-centric location, booming economic system and general temperament for peace and safety – has long had a history of being a safe haven for refugees from all over the world. Indeed, much of Hong Kong’s population today are direct descendants of significant refugee migration over the last 80 years.

The first wave of refugees came to Hong Kong in the 1930s to escape from the Chinese Civil War and the Sino-Japanese War, but it wasn’t until 1949, during the Chinese exodus, when an estimated one million-plus mainland Chinese started coming into the city via the northern borders. Many people, mostly anti-communist Kuomintang officials and capitalists, rushed to Hong Kong in search of refuge. Even though these refugees were considered illegal immigrants, the massive need for labour in Hong Kong at the time prompted their stay. The Chinese refugees lived in near anonymity in Hong Kong until the Touch Base Policy – which gave only migrants who reached urban areas immunity from repatriation – was adopted in 1974 as an attempt to cap the number of illegal immigrants to Hong Kong. The policy was not a success, leading to a new policy introduced on October 24, 1980 where all Chinese illegal immigrants would be immediately repatriated.

Between 1975 to 2000, an estimated 200,000 Vietnamese ‘boat people’ entered Hong Kong. Many of them came to Hong Kong to escape the war. However, there was also a view that many of the arrivals during the 1980s and onward were ‘economic refugees’. Between 1975 and 1999, 143,000 were resettled in other countries while almost 70,000 were repatriated. Since 1986, there was also a Local Integration Scheme, which saw a small number of Vietnamese refugees to be eligible to apply for settlement in HK. This was expanded in 2000 to allow for 1,400 refugees to be eligible to apply. Up until 2006, there were still 1,829 Vietnamese refugees in Hong Kong, but by the following year, all but seven had been ‘integrated’, ‘repatriated’ or ‘resettled’.

Over the last decade, the demographics of asylum seekers entering Hong Kong has changed. Of the asylum seekers in Hong Kong today, the vast majority are citizens of countries in South Asia or Africa, where they have often faced political suppression or human rights abuses. **Athena Chiu**

HOW YOU CAN GET INVOLVED

VOLUNTEER AT:

Vision First

An NGO advocating for the rights of refugees as well as raising awareness of their plight. They provide facilities, care and education programmes and organise fundraising events for asylum seekers. visionfirstnow.org

UNHCR

The UN High Commissioner for Refugees in Hong Kong provides both fundraising support for its operations worldwide as well as, under current arrangements, processing refugee claims. In addition to donating funds for this organisation, the UNHCR also seeks clerical, communications and events volunteers. unhcr.org.hk

Hong Kong Refugee Advice Centre

A legal aid provider for asylum seekers looking for protection under the UNHCR. The organisation seeks volunteers for various fields, from casework and advocacy to office support.

Christian Action

This Christian-based organisation runs comprehensive service centres to provide refugees and asylum seekers care and development education as well as offering professional advice and assistance from case workers and counsellors. christian-action.org.hk

NOT FOR CONSIDERATION

ATTEND:

Speak

Christian Action, UNHCR and Hong Kong Refugee Advice Centre join forces on World Refugee Day in this fundraiser, an evening of stories and songs, sharing personal stories and celebrating their unique, brave journeys as survivors of some of the world’s most harrowing darkness. **Thu Jun 20, 7pm, The Fringe Club, 2 Lower Albert Rd, Central, 2716 8810; christian-action.org.hk/worldrefugeeday**, SPEAK, \$600.

Telema!

In this musical production, asylum seekers

from a number of African states like Congo, Rwanda, Togo, Cameroon, Uganda and Kenya take to the stage to tell their tales of triumphing in the face of struggle and hardship in a foreign land. **Thu Jun 20, 7.30pm, The Vine Ctr, 29 Burrows St, telema.eventbrite.hk, \$150.**

6th Refugee Film Festival

This week-long festival features six movies – including the award-winning opening film, *Pray the Devil Back to Hell* – including a fascinating array of stories and perspectives of refugee’s lives. **Jun 20-26, Broadway Cinematheque, 3 Public Square St, Yau Ma Tei, unhcr.org.hk/filmfestival.**