

THE HONG KONG

REFUGEE ADVICE CENTRE LIMITED

Third Annual Report

1 July 2009—30 June 2010

Hong Kong  
Refugee Advice  
Centre



## Hong Kong Refugee Advice Centre Ltd

Annual Report July 2009 – June 2010

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### Opening Statement

The Hong Kong Refugee Advice Centre Ltd (HKRAC) recruits, trains and supervises volunteer lawyers and interpreters in the protection and promotion of refugee rights. We provide crucial assistance to refugees lodging asylum claims with the United Nations High Commissioner for Refugees (UNHCR) in the form of legal aid and support services.

Although the Refugee Convention and its 1967 Protocol have been widely ratified by states, many Asian nations have been generally resistant to committing to refugee protection and have been relatively critical of the development of international refugee law. In spite of this, the Asia-Pacific Region is currently home to between one-third and one-half of the world's refugee population.

Hong Kong became a Special Administrative Region of the People's Republic of China (PRC) in 1997. Under Basic Law, Hong Kong maintains control over its own Immigration policies and thereby has the right to develop its own laws and policies with regards to refugees. The PRC has signed onto the Refugee Convention but ratification of these treaties has not been extended to Hong Kong, and Hong Kong neither provides legal status nor even recognition to refugees.

As the local Government does not carry out its own Refugee Status Determination (RSD) procedures, UNHCR is filling in the gap by assessing asylum-claims in Hong Kong and resettling recognized refugees to other countries. Unfortunately, asylum-seekers in Hong Kong frequently have to wait several years for their RSD interviews, during which they have to survive on social service provision from local NGOs, have no legal status, have no right to employment, and have extremely limited access to education and healthcare. Most refugees are also torture survivors, and during the lengthy waiting period in Hong Kong they can experience re-traumatization and their psycho-social well-being can suffer from distress that is exacerbated by isolation from their communities and support networks, and by feelings of loss of agency.

The Hong Kong Government neither provides legal aid services to refugees making asylum claims with UNHCR, nor contributes to private representation for them. However, without legal representation, the possibility of mistaken rejections are high because most asylum-seekers are a) unfamiliar with the intricacies of international refugee law, b) do not understand the bureaucratic RSD process and are subject to the procedural constraints of UNHCR procedures, and c) are often highly traumatized and unable to relate their claims in a coherent, chronological and legally relevant manner. The recognition rate for refugees in Hong Kong without access to legal assistance lies between 8-10%, which is much lower than the average recognition rate of 40-50% in countries where legal aid is readily available. The stakes are incredibly high as rejection means deportation and possible return to persecution in the form of human rights abuses such as arbitrary imprisonment and torture.

HKRAC is currently the sole dedicated provider of pro bono legal assistance to refugees. The past year has seen remarkable success achieved. With a full-time staff of only six, HKRAC has mobilized over 250 volunteers and has assisted 500+ refugees to date. This Annual Report

describes HKRAC's activities and progress over the past 12 months between 1 July 2009 to 31 June 2010.

### Vision, Mission and Values

#### Vision

The Hong Kong Refugee Advice Centre ('HKRAC') strives to ensure that all refugees in Hong Kong have access to high-quality legal aid, fair refugee status determination procedures, and human rights so that they can begin to rebuild their lives.

#### Mission

To provide high-quality, pro bono legal advice to refugees in Hong Kong; protect their rights, and generate awareness

#### Values

To put the interests of refugees first, and at the core of all our endeavours

To maintain professional and ethical excellence

To be fearless, competent, collaborative and diligent in representing the interests of refugees

To raise awareness about refugee rights and promote a pro bono and volunteer culture within the Hong Kong Community

## Board Chair's Report

It has been a productive and exciting twelve months for HKRAC. “HKRAC: Phase One” came to a close on 31 December 2009 and “Phase Two: Expansion of Services”, HKRAC's capacity-building stage, commenced on 1 January 2010. HKRAC has established itself as the key, dedicated provider of pro bono legal aid for those seeking asylum at the United Nations High Commissioner for Refugees office in Hong Kong. We have built a solid reputation among asylum-seekers and refugee-serving agencies locally and throughout the Asia Pacific region by providing consistent, high-quality legal assistance and adhering to the highest ethical standards. We have worked collaboratively with all stakeholders to better ensure the rights of refugees and have served as a model in the region.

We owe an enormous debt of gratitude to those who have contributed volunteer hours and/or funding toward the protection of the most vulnerable population in Hong Kong. Our five law firm partners (Freshfields Bruckhaus Deringer, Latham & Watkins LLP, Linklaters, Shearman & Sterling LLP, and Skadden, Arps, Slate, Meagher & Flom) have set the standard and have set an impressive precedent for the continuing development of a pro bono culture in Hong Kong.

Continuing HKRAC's trend of setting precedents, HKRAC has collaborated with The University of Hong Kong and The Chinese University of Hong Kong to establish Hong Kong's first clinical legal education programmes. These clinical programmes have provided hands-on training to twenty top law students to date, and are playing an important role in instilling human rights values and a pro bono ethic among the future generation of lawyers.

Kelley Loper  
Board Chair

## Executive Director's Report

The 2009/2010 reporting year covers a period of 12 months during which HKRAC was run on a budget of 1.6 million Hong Kong dollars. Despite this lean budget, HKRAC was able to achieve some remarkable successes. HKRAC increased the number of Full Legal Representations given to 4-6 cases per month, and has assisted 150+ individuals in the past 12 months alone. Our clients enjoy a 1 in 2 recognition rate at the United Nations High Commissioner for Refugees, compared to the 1 in 10 rate for asylum claims lodged without legal counsel.

Due to massive demand, HKRAC also upped the number of caseworker training sessions to three per year, and was able to secure highly qualified experts to conduct these highly competitive trainings. HKRAC's pilot University Clinical Legal Programme was an astounding success, and HKRAC academic partners Hong Kong University and the Chinese University of Hong Kong have committed to collaborating towards the continuance of these innovative programs.

Amidst other network coordination and advocacy success, HKRAC sits on the Steering Committee of the Asia Pacific Refugee Rights Network, and chairs the East Asia Working Group. In addition, this year Hong Kong was chosen to launch a new Asia Refugee Legal Aid Network. Hong Kong was chosen for the launch because of the success of HKRAC as a model replicable throughout the rest of the region.

HKRAC has expanded its full-time staff to six. The second half of 2009 saw the recruitment of a new Legal Director, Christine Lin. Since Christine has come on board HKRAC's number of Full Legal Representation cases has increased by almost 20%. A new Staff Attorney was hired not long afterwards; Andrew Lillis joined the HKRAC legal team in November 2009. The HKRAC Board then approved the employment of a Development Officer to scout and tap new sources of funding and to diversify the organization's donor base. Laura Lee took on the role of Development Officer in March 2010.

In terms of budgeting, HKRAC successfully raised enough funds by June 2010 to sustain projects and programmes at current levels through to December 2011. HKRAC anticipates that additional funding will come through in the last half of 2010, allowing HKRAC to expand its scope and activities in 2011. A target budget of 4.9 million Hong Kong dollars has been set for 2011.

HKRAC prioritizes the launch of a new Psycho-Social Project within the next 12 months to address the pressing psycho-social needs of refugees which are currently neither being met nor even fully acknowledged here in Hong Kong. In addition to this, HKRAC aims to expand its legal counseling and support services program to reach a wider number of refugees, and to continue its advocacy, outreach and network coordination activities.

Brian Barbour  
Executive Director

## Background

Recognizing the gap in service provision for refugees in Hong Kong, two human rights lawyers approached Christian Action in 2005 with the intention of establishing a refugee legal aid program. The Refugee Advice Unit (RAU) was then formed in October of that year to provide legal advice to refugees lodging asylum claims before UNHCR. The RAU quickly gained a solid reputation in Hong Kong and a fast-growing client base. In the face of increasing demand, the founders decided to re-launch the RAU as an independent entity, and the Hong Kong Refugee Advice Centre Ltd was established on 1<sup>st</sup> July 2007.

Since its founding, HKRAC has strengthened its legal expertise and capacity. In July 2008, recognizing the strength and potential impact of the organization, five law firms embraced the work of the HKRAC and committed both funds and pro bono hours to the legal representation provided by the Centre. Shearman & Sterling LLP was the first law firm to form a partnership with the HKRAC. Building upon that relationship, the HKRAC then joined forces with Freshfields Bruckhaus Deringer; Latham & Watkins LLP; Linklaters; and Skadden, Arps, Slate, Meagher & Flom. The HKRAC has successfully expanded its reach over the years through fundraising and independent partnerships with law faculties and other NGOs. It will continue to evolve and grow to meet the needs of refugees in Hong Kong.

## Report of Activities

HKRAC surpassed all of the milestones set out in our 'Phase One' Strategic Plan. The Milestones identified included: (1) recruitment and training of volunteer caseworkers and interpreters; (2) casework (providing legal advice to refugees & asylum-seekers); (3) short-term fundraising and long-term development strategy; (4) development of operating procedures; and (5) local and international advocacy.

"Phase One" of our project is best viewed as a period of set-up and initiation. A kind of pilot period through which we sought to establish ourselves as a provider of pro bono legal assistance to asylum-seekers. "Phase Two" should be viewed as a period of institutionalization and capacity building. With a high level of good will towards our organization and heavy demand for our services, we are in a good position to seek additional support for Phase Two programming.

Throughout "Phase Two" we will continue to provide pro bono legal aid to asylum-seekers, inspire and guide lawyers to serve, generate awareness for refugees, and maintain superior standards of excellence and ethics. Phase Two's objectives will be to (a) build capacity to: increase the number of refugees served and enhance the legal aid services provided to refugees; and (b) ensure our sustainability by: diversifying our donor base and increasing our budget. The Milestones identified for "Phase Two" are detailed on the following pages.



## Legal Counseling and Support Services

HKRAC continues to provide four types of advice to refugees seeking asylum in Hong Kong: (1) Full Legal Representation; (2) Customized Legal Advice; (3) General Legal Advice; and (4) Information Dissemination and Empowerment. HKRAC is committed to maintaining the highest standards of quality and ethics in our legal representation.

### Full Legal Representation

Refugee Status Determination (“RSD”) at UNHCR is never as simple as applying a legal standard to a set of facts. Complete evidence is almost never available, and an applicant by virtue of having been forcibly displaced, is usually left with little more than the clothes on their back and a broken story of how they got here. It is for this reason that legal assistance is such a crucial part of due process. Refugees face socio-linguistic isolation, language difficulties, cultural barriers, fear of authority figures, varying levels of education, past trauma affecting a refugee’s current psycho-social state, and an overabundance of misinformation, not to mention the many struggles for basic necessities such as food, clothing, and shelter that can leave refugees exhausted. Moreover, refugee law is complicated, and it is one of the few areas of the law where a decision-maker must make an assessment of future risk rather than a judgment about past actions, events, or present circumstances.

Full representation entails 100-300 hours of work depending on the complexity of a particular case, and involves extensive client interviewing, testimony taking, preparation of legal argumentation, country of origin research, legal research and attendance at all UNHCR proceedings.

In the last fiscal year, HKRAC provided full representation to 59 clients from the following countries: Somalia, Pakistan, Sri Lanka, Mongolia, DRC, Afghanistan, Egypt, Uganda, Benin, Indonesia, Kenya, Myanmar, Nepal, Niger, Nigeria, Republic of the Congo, Rwanda, and Togo. HKRAC introduced new streamlined procedures in January of 2010, allowing our office to increase the number of representations engaged in each month: January (7), February (7), March (8), April (7), May (8), June (5).

Priority is given to those who will benefit the most from legal assistance. Namely, the following types of claimants and claims:

- Unaccompanied minors and separated children
- Female Heads of household
- Victims of sexual and gender-based violence
- Victims of torture
- Victims of trafficking
- Individuals with psycho-social needs
- Individuals with serious medical conditions or physical disabilities
- Individuals with serious security issues in Hong Kong
- Individuals from linguistically or socially isolated groups
- Claims involving complex legal issues
- Claims involving potential exclusion/cessation issues
- Claims involving military service evasion
- Claims with religious conversion issues

### Customized Legal Advice

In circumstances where full representation is not provided, HKRAC may provide customized legal advice to refugees. This includes detailed advice on self-representation at UNHCR, information on the UNHCR Refugee Status Determination process and procedural rights at UNHCR interviews, explanation of the refugee definition and its application to a client's claim, analysis of the merits of a particular claim including evidence and country of origin information, and assistance with document preparation. HKRAC believes that a substantial impact can be made in assisting asylum-seekers through customized legal advice.

Although, HKRAC does not have the capacity to provide full representation to everyone, we are able to reach a greater number of applicants through individualized advice to asylum-seekers who then know their rights, and know what they can expect when they approach UNHCR. Studies have shown that customized legal advice “can make a substantial impact in increasing unrepresented peoples' chances of achieving

their legal objectives.” (Michael Kagan, Frontier Justice: Legal Aid and UNHCR Refugee Status Determination in Egypt, Journal of Refugee Studies, Vol. 19 (No. 1),45-68 [2006]).

### General Legal Advice

HKRAC also provides General Advice in circumstances where we do not provide Full Legal Representation or Customized Legal Advice. This may include document preparation, the provision of basic information regarding HKRAC’s services, UNHCR processes, international refugee law, explanation of the refugee definition, and referrals to other organizations including UNHCR, Chungking Mansions Service Centre (“CKMSC”), Hong Kong law firms and other relevant service providers.

### Information Dissemination and Empowerment

Finally, HKRAC engages in Information Dissemination and Empowerment programmes to groups rather than just to individuals. These include information sessions where asylum-seekers are informed about what to expect in RSD interviews, the UNHCR RSD process, the refugee definition, the rights of refugees in Hong Kong and HKRAC’s services. These programmes can reach a large number of people with relatively few resources, can inform communities about their rights, and can combat misinformation. HKRAC also presents on these topics to the public upon request, including schools, universities, Government institutions, the press and other interested parties. As of July 2010, HKRAC has provided legal assistance to 550 individual refugees (this does not include the people reached during information dissemination and empowerment sessions).

Over the past 12 months, HKRAC has assisted 150+ people via Full Legal Representation, and Customized and General Legal Advice. January 2010 – June 2010 in particular has seen some remarkable achievements. Out of the UNHCR decisions we have received since January, we have achieved a 70% recognition rate for our Full Legal Representation cases. This is 7 times the Hong Kong average. Additionally, the average number of Full Legal Representations cases taken on every month has doubled from approximately 2-3 cases per month to a minimum of 5 cases per month.

HKRAC’s clients include individuals and families from war-torn countries such as Somalia and Afghanistan, post-conflict nations such as Sri Lanka, and countries with an unstable political arena or extreme religious environment such as Pakistan, Bangladesh and Zimbabwe.



Currently, approximately 25% of HKRAC's clients are women, over 65% were victims of torture, and 18% are under the age of 21. All of HKRAC's services are offered pro bono (free of charge).

## Network Coordination, Advocacy and Outreach

Beyond providing vital pro bono legal assistance to refugees, HKRAC also works at improving public awareness and civil society engagement both locally in Hong Kong and abroad. HKRAC works to advocate for fairer, more transparent RSD processes at UNHCR, and campaigns for the establishment of State protection mechanisms for refugees in Hong Kong and throughout the region.

Our advocacy achievements include:

Advocating successfully for fairer, more transparent RSD procedures and ethics with UNHCR. Results include the issuance of written and itemized reasons for denial of refugee protection to rejected asylum-seekers which can then be used in Appeal; and the permission to be represented by an external lawyer in all UNHCR proceedings.

Being recognized and applauded by the HKSAR Government. Our work has resulted in requests to hold training sessions for the Hong Kong Judiciary, Immigration Department and the Hong Kong Police Force

Creating an international presence on the Steering Committee of the Asia-Pacific Refugee Rights Network and the Southern Refugee Legal Aid Network

Gaining international recognition and serving as an example to other refugee aid and advocacy organizations regionally. The success of HKRAC has led to Hong Kong being selected as the launch site of the new Asia Refugee Legal Aid Network (ARLAN).

Over the past 12 months HKRAC has participated in the following regional and international fora:

Asia Pacific Consultation on Refugee Rights (06-10 October 2009, Bangkok)

In October 2009, over 100 individuals representing 20 nations and 70 organizations met at the 2<sup>nd</sup> Asia-Pacific Conference on Refugee Rights, a program organized by the Asian Forum for Human Rights. A key outcome of the first APCRR was the establishment of the Asia Pacific Refugee Rights Network (APPRN), a community of civil society organizations committed to advancing refugee rights via information sharing, mutual capacity building and joint advocacy. At the 2009 conference, HKRAC's Executive Director was elected as Chair of the East Asia Working Group (holding a seat on the APPRN Steering Committee), and HKRAC's Legal Director was elected Deputy Chair of the Legal Aid and Advocacy Working Group.

Regional Consultation on Refugees' Mental Health (2 March, Bangkok)

HKRAC participated in a Regional Consultation on the detention of asylum-seekers and refugees in Bangkok in March. The meeting was the first of its kind and was crucial in starting a dialogue on regional strategies for change for people affected by immigration detention.

Sub-Regional Roundtable on Alternatives to Detention (26-28 April, Seoul)

Civil society organizations including HKRAC participated in a Sub-Regional Roundtable on Alternatives to Detention of Asylum-Seekers and Refugees in April in Seoul. The tripartite meeting was organized jointly by the Korean Government and UNHCR, and brought together UNHCR and Government representatives from Hong Kong, China, Korea, Japan, Australia and New Zealand. The Roundtable was followed by an East Asia Symposium co-organized by the Japan Association for Refugees, The Refugee P Nan, and the Institute for Legal Studies at Yonsei University.

ARLAN Launch (09-11 June 2010, Hong Kong)

The Asia Refugee Legal Aid Network (ARLAN) launched in Hong Kong on 9-11 June 2010. ARLAN seeks to assist local NGOs develop national networks of pro bono lawyers to provide legal services to refugees in 7 Asian countries: China (including Hong Kong S.A.R.), Indonesia, Japan, Malaysia, South Korea, Sri Lanka and Thailand. ARLAN will connect these national networks, allowing them to develop and share best practices. Hong Kong was selected for the launch because of HKRAC's success as a model for service provision

UNHCR Pre-ExCom Consultations (29 June – 01 July 2010, Geneva)

HKRAC attended the UNHCR Annual Consultations with NGOs in June 2010. The theme of this year's Annual Consultations was "National Partnerships", with both thematic and regional sessions held. Thematic sessions included the following topics: "Making it work: From policy to practice in urban settings," "Working together: Strategies for protection of xenophobia, racism, intolerance and bias-motivated violence," and "A harsh life in long-term exile – partnerships for overcoming vulnerabilities and empowering women."

Numerous side meetings on topics such as “Alternatives to detention,” “UNHCR’S mandate status determination (RSD) procedures,” and “Advocacy for the Rights of Refugees through Domestic Legislation,” were also held.

HKRAC was also invited to attend a UNHCR-NGO retreat following the NGO Consultations. The retreat had a limited number of participants to enable in-depth discussion and was led by the Director of the Department of International Protection, Volker Turk. HKRAC’s presence gave voice to the concerns of refugees in Hong Kong in a forum that allowed for open discussion of challenges and solutions.

In addition, HKRAC also attended the Annual Planning Meetings of the International Detention Coalition (IDC), the Southern Refugee Legal Aid Network (SRLAN), and the Asia Pacific Refugee Rights Network (APPRN). HKRAC is a founding member of both SRLAN and APPRN.

### University Legal Clinics

HKRAC ran a pilot legal clinic program with the law faculties of Hong Kong University (HKU) and the Chinese University of Hong Kong (CUHK) in the summer of 2009. The program was a success but was put on hold until the spring of 2010 when 10 more law students from both universities participated in the HKRAC-run clinical programs. The success of the Spring semester and the popularity of the program amongst the legal students enabled HKRAC and HKU and CUHK to renew and solidify their partnership for the following year, and agreements have been drawn between the involved parties to continue and extend the clinical programs. HKRAC’s Summer Clinic program has just ended, and the Fall program will commence in September with two students each from HKU and CUHK.

The Clinics are intended to fulfil five main objectives:

1. To instruct students in the theory and practice of domestic and international refugee law
2. To give students an opportunity to practice their professional skills and ethics
3. To encourage critical analysis of the law, the legal system, clients’ place in the legal system and the lawyer’s role
4. To provide service for unmet legal needs in the community
5. To cultivate a pro-bono ethic and long-term commitment to public service

HKRAC’s clinical legal program is the first of its kind in Hong Kong, and its success has also led to requests from other universities abroad for HKRAC to expand its teaching program (including Brooklyn Law School and the University of New South Wales). Brooklyn Law School has initiated collaboration by sending 2 law students to HKRAC for summer legal internships. HKRAC is considering reaching out to other universities both locally and abroad to establish further partnerships.

### Psycho-Social Services

HKRAC had aimed to establish a Psycho-Social project in 2010 to address the gaps in service provision for refugee sufferers of trauma and associated psycho-socio conditions; however the launch was delayed due to a funding shortfall. In preparation, HKRAC has successfully recruited a highly respected Psycho-Social Advisory Committee and continues to seek funding for the planned launch. Dependant on funding, HKRAC aims to commence the project in 2011.

### Training

HKRAC conducted 3 caseworker training weekends in the 12 months between July 2009 and June 2010. These were held in September 2009, January 2010, and June 2010 at the offices of Linklaters, Skadden Arps Slate Meagher & Flom, and Freshfields Bruckhaus Deringer respectively. HKRAC was able to secure trainers from not only its own staff, but also from UNHCR, its partner law firms, and internationally renowned legal experts such as Professor Stacy Caplow of Brooklyn Law School.

Participants at the training were screened before being guaranteed places and had to submit applications beforehand that included a CV, Statement of Interest, and Writing Sample. These training weekends entailed approximately 12 to 16 hours of instruction in international refugee law, UNHCR refugee status determination procedures, client sensitivities, working with interpreters, document preparation, ethics, and other critical considerations.

As a result of the training sessions held, an additional 114 volunteer caseworkers were trained over the past year. HKRAC's expertise as a training institution has received widespread recognition and has been in high demand this year. Some of the highlights include:

HKRAC has again trained over 100 lawyers this year alone.

We have been asked to coordinate a training for Hong Kong Immigration Convention Against Torture adjudicators alongside the University of Hong Kong.

The Hong Kong Police Force has requested a briefing on refugee rights and vulnerabilities.

We have been asked to contribute to interpreter training for Hong Kong Christian Services new interpretation project.

## Organizational Development and Sustainability

The success of HKRAC is thanks to the continuing support of our donors and partners. 5 founding law firm partners continue to contribute funding each year along with an incredible number of pro bono hours. This year two academic partners join the family to launch refugee legal clinical programmes, the first of their kind in Hong Kong and Asia. Funding received from individual donors, schools, and religious institutions has kept our doors open; sustained legal aid and advocacy programmes; and most importantly, saved individual lives.

To highlight one incredible example, lawyers from our partner firm Shearman and Sterling represented a South Asian woman victim of sexual and gender-based violence. Ms. W was the wife of a pro-government activist who fled the country after he was kidnapped and tortured by anti-government soldiers. After her husband's escape, soldiers came to her home looking for her husband. They beat her severely in front of her sons, and twenty soldiers took turns raping her. When they were finished they threw her unconscious into the jungle, leaving her for dead. Neighbors, alerted by her children, found her and brought her to a local health post. When she had recovered, she returned to her home and learned that the soldiers had seized the house and all of their property. With her children, she left the village. Weeks later, after she learned that she was pregnant, she had an abortion. She would spend the next three years seeking safety, before arriving in Hong Kong. HKRAC and Shearman and Sterling provided legal assistance to Ms. W asking UNHCR to provide her with refugee recognition and resettlement to a safe third country. UNHCR granted her and her family refugee status. With donor support we provided interpretation services, psycho-social counseling, medical evaluation, and full legal support to Ms. W. She has now been reunited with her husband, and their family has begun to rebuild their lives in Canada.

In order to continue saving lives, our organization understands that fundraising and awareness raising are not a bottom tier priority. Fundraising and awareness-raising are both a fundamental part of our jobs. Everyone on our team understands this and makes sustainability a priority for our organization, so that we do not rest on our laurels, but can continue to save lives one person at a time.

HKRAC submitted a number of grant applications in 2009, and with UNHCR endorsement, HKRAC was able to secure funding from the United Nations Voluntary Fund for Victims of Torture towards the end of November for use in 2010. HKRAC has also secured funding from the Taiwan Foundation for Democracy, and expects to hear back from a number of grant-makers by the third and last quarters of 2010.

Our five law firm partners (Shearman & Sterling; Freshfields Bruckhaus Deringer; Linklaters, Latham & Watkins; and Skadden Arps Slate Meagher & Flom) all renewed their partnership with HKRAC in the summer of 2009, committing both funding and pro bono hours for the next fiscal year.

HKRAC is constantly looking to diversify its donor base, and in March 2010 hired a new Development Officer to scout and tap new sources of support.

Additionally, HKRAC has developed new academic partnerships with HKU and CUHK for the Clinical Programs. Both universities have committed to funding the program implemented by HKRAC and providing credit to 12 students per semester (Fall, Spring, and Summer).

A number of donors have invested in HKRAC through small and sizeable donations that are responsible for saving refugee lives. Some of these donations came from individual supporters, others from schools and religious institutions via a series of presentations and appeals. HKRAC also raised money from planned events such as the Kassia Women's Choir concert in April 2010, and the HKRAC-organized Refugee Run simulation and lunch reception in commemoration of World Refugee Day in June 2010.

Finally, HKRAC has made significant progress over the past 12 months in raising its public profile. The organization was featured in interviews spanning radio broadcast, television and print media. We have been acknowledged in several high-profile events such as the HK Singers' summer blockbuster production of the musical "Oliver!"; and were present in a series of conferences ranging from the UNHCR pre-ExCom consultations in Geneva, to the Alternatives to Detention round-table in Seoul, to the EU Conference on Human Rights in Hong Kong. In addition, since 2010 HKRAC has prioritized raising awareness amongst Hong Kong's future generation and has presented at a large number of academic institutions in Hong Kong. The response has been positive, with students wanting to get involved in awareness and fundraising and more and more schools are requesting HKRAC speakers.



## Recent Developments

Two separate screening mechanisms for international protection still exist in Hong Kong. The first was established by the Hong Kong government in response to the Prabakar judgment (2004 Hong Kong Court of Final Appeal), and revised according to the case of FB in 2009. This process sees the Hong Kong Immigration Department considering claims under the United Nations Convention Against Torture ('CAT Claims'). A CAT claimant applies to stay in Hong Kong on the grounds that their deportation could lead to them becoming a victim of torture. The second is refugee status determination administered by the Hong Kong Office of the UNHCR. The HKRAC only provides legal advice in relation to refugee status determination, but the HKRAC takes an active interest in CAT Claims under Hong Kong law, because these impact our clients' rights. The 09/10 Reporting Year has seen continuing developments in how CAT Claims are dealt with in Hong Kong.

In January of 2010, the Hong Kong Government restarted CAT screening procedures attempting to address the Court's concern in the FB case about ensuring high standards of fairness. In attempting to meet the high standards of fairness required in CAT cases, the government sponsored an initial training for lawyers and adjudicators, redrafted its systems and procedures, sent these around for comment, and now provides publicly funded legal aid through the Duty Lawyer Scheme. Since the FB Case was handed down, the CAT system was shut down for a year, and the backlog now sits at over 6,000 pending applications. 300 new applications continue to be made each month, and since the procedures restarted in January, less than 100 first instance decisions have been made, and no appeal decisions have been reached.

In addition to rehabilitation of the CAT system in Hong Kong, a number of other developments have taken place. The appeal in the landmark "C" case was heard in February. This case argues that non-refoulement (the rule that refugees cannot be sent back to persecution) is a principle of customary international law, and is therefore binding on Hong Kong whether or not they have signed the 1951 Refugee Convention. Decision in the case remains pending.

A lower court decision in *Iqbal Shahid v. Secretary for Justice* had found that CAT claimants and asylum-seekers released on recognizance could not be prosecuted for taking up employment. The decision saw government backlash in the form of the Legislative Council passing the Immigration (Amendment) Bill 2009 make it an offence for such individuals to take up employment or establish or to join a business in Hong Kong. The Amendment, far from serving as a solution, stands to exacerbate an already unsustainable situation in Hong Kong. CAT claimants whether successful or pending, asylum-seekers, and even recognized refugees will remain in limbo without any recognized legal status in Hong Kong. The slow procedures that do exist and the general lack of any established system or solution in Hong Kong are more likely to leave this population in limbo for several years, and thereby cause problems rather than find effective solutions. HKRAC believes that effective and fair procedures are not only the right thing to do, but are actually cheaper and more efficient than refusing to adopt any system at all. Allowing the right to work, at least in cases where the government has been unable to come to a decision within 6 months or a year, would provide the necessary motivation for the Government to work more efficiently and ensure that the most vulnerable population in Hong Kong is not ignored and left destitute.

Acknowledgements

HKRAC would like to acknowledge and thank the following supporters and partners:

HKRAC Board of Directors:

Chair: Kelley Loper, University of Hong Kong Faculty of Law

First Vice Chair: Farzana Aslam, University of Hong Kong Faculty of Law

Second Vice Chair: Michael Vidler, Solicitor, Vidler & Co.

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Andrew C. Compton, Latham & Watkins LLP

Jelita Gardner-Rush, Linklaters

Matthew Bersani, Shearman & Sterling LLP

Alan Schiffman, Skadden, Arps, Slate, Meagher & Flom

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Jack Hoysted, Moloney Hynes Australian Lawyers

Simon Young, Centre for Comparative & Public Law, Hong Kong University

HKRAC Psycho-Social Advisory Committee:

Dr. Philip Beh, Forensic Pathologist, Hong Kong University

Dr. Sarah Borwein MD, MSc in Infectious Diseases, Central Health Medical Practice

Dr. Susan Mistler, Board Licensed Psychologist, Central Health Medical Practice

Dr. Mark L. Gandolfi, Clinical Psychologist, Director, St. John's Counselling Service

Dr. Sandra Laujin, Clinical Psychologist, Delphes Practice

Dr. Ahmed Fahmy MD, International SOS Ltd

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Linklaters

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United Nations High Commissioner for Refugees  
Taiwan Foundation for Democracy  
Goldman Sachs  
Pearson  
University of Hong Kong  
Chinese University of Hong Kong  
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