



COUNTRY REPORT

IMMIGRATION DETENTION IN HONG KONG (SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA)

SEVERE DETENTION REGIMES AND PALTRY CONDITIONS

MARCH 2024

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ABOUT THE GLOBAL DETENTION PROJECT

The Global Detention Project (GDP) is committed to ending arbitrary and harmful migration-related detention practices around the world, and to ensuring respect for the fundamental human rights of all migrants, refugees, and asylum seekers. To achieve this, we seek to:

- Increase public knowledge and awareness of immigration detention policies.
- Expand coverage of immigration detention by human rights monitoring bodies and other international agencies.
- Expand partnerships with local and international civil society organisations working to end arbitrary and harmful immigration detention practices.
- Strategically target research and advocacy so that it effectively challenges arbitrary and harmful detention laws and policies.

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Front cover images: Castle Peak Bay Immigration Detention Centre, Hong Kong © Alamy

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EXECUTIVE SUMMARY

Hong Kong has long played a critical role in addressing migration and refugee challenges in Southeast Asia, dating back to the 1970s when it served as a primary destination for thousands of Vietnamese “boat people.” Since China assumed control of the Hong Kong “Special Administrative Region” in 1997, its immigration policies have been shaped by often competing trends, including a need for migrant labour and tensions over increasing migration flows from mainland China and neighbouring countries in Southeast Asia. Although the use of immigration detention has remained comparably low since the onset of the COVID-19 pandemic, detention remains a key immigration enforcement measure even as many of Hong Kong’s detention centres have been criticised for their poor conditions and complaints of mistreatment.



GLOSSARY

BOR	Bill of Rights
CAT	UN Convention Against Torture
CIC	Castle Peak Bay Detention Centre
CIDTP	Cruel, inhuman and degrading punishment
ICCPR	International Covenant for Civil and Political Rights
ImmD	Immigration Department
JCHK	Justice Centre Hong Kong
JP	Justice of the Peace
MTKDC	Ma Tau Kok Detention Centre
NKCI	Nei Kwu Correctional Institution
SAR	Special Administrative Region
TCAB	Torture Claims Appeal Board
TMCJH	Tuen Mun Children and Juvenile Home
TTGCI	Tai Tam Gap Correctional Institution
UNHCR	UN High Commissioner for Refugees
USM	Unified Screening Mechanism



KEY FINDINGS

- Although immigration detention numbers have fallen since the COVID-19 health crisis, in the years preceding the pandemic the use of detention remained steadily high, with generally more than 10,000 orders annually.
- Hong Kong SAR operates four main dedicated detention facilities: **Castle Peak Bay Detention Centre, Ma Tau Kok Detention Centre, Nei Kwu Correctional Institution, and Tai Tam Gap Correctional Institution**. Immigration detainees can also be kept in prisons, police stations, hospital custodial wards, and juvenile centres.
- Migrants detained in Nei Kwu and Tai Tam Gap correctional facilities are under the authority of the Correctional Services Department and are governed under the Prison Rules.
- There is no maximum length of administrative migration-related detention; criminal prosecution of certain immigration offences can lead to prison sentences of up to three years.
- Vulnerable groups, including children and victims of trafficking, are not protected from detention.
- Although the Refugee Convention is not applied in Hong Kong SAR, non-nationals can apply for non-*refoulement* protection—but only after they have overstayed their visa, creating a situation of “enforced illegality.”
- In 2020, the government introduced important amendments to the Immigration Ordinance, including affirming administrative detention powers, authorising the use of weapons by immigration officers, and accelerating the removal of failed non-*refoulement* claimants even in cases where the applicant appeals the decision.
- Detainees, NGOs, and politicians have criticised detention centres for inadequate conditions and alleged mistreatment of detainees.
- Hong Kong has a detention monitoring procedure, the Justice of the Peace (JP) system, allowing individuals appointed as JPs to visit detention facilities. However, the system has been criticised for leading to punishment of detainees who criticise detention conditions to JPs.
- In 2022, the government introduced changes to its immigration policy, including increasing the maximum length of solitary confinement to from 7 to 28 days and allowing immigration officers to conduct intimate body cavity searches at Castle Peak Bay.
- Key human rights treaties have not been signed by China and extended to Hong Kong—including the Optional Protocol to the Convention against Torture and the Convention on the Protection of the Rights of All Migrant Workers.



1. INTRODUCTION

Immigration detention policies in the Hong Kong Special Administrative Region (Hong Kong SAR) have been driven by concerns over migration flows from mainland China and neighbouring countries in Southeast Asia, in particular Vietnam. For many years starting in the 1970s, Hong Kong was the “first port of refuge” for people fleeing Vietnam, even though most arriving Vietnamese “boat people” were held in deplorable conditions in secure detention camps. After China resumed sovereignty over it, Hong Kong ended its practice of accepting Vietnamese migrants and refugees and has defended its policy of denying them asylum.

Although detention numbers fell after onset of the COVID-19 pandemic—from 11,000 in 2018 to less than 4,000 in 2022—there are persistent reports of abuse in detention centres and paltry condition in some facilities. In **Castle Peak Bay Detention Centre**, where conditions have been regularly criticised and described as “miserable,”¹ observers have highlighted excessive use of force, the regular use of solitary confinement, and overcrowding, as well as strip searches resulting in injuries and verbal abuse. Numerous deaths, suicides, and cases of self-harm have also been reported in the facility.

Other recent developments reveal a trend towards using immigration detention as a punitive measure despite its officially administrative role. Two new facilities opened since 2021—the **Nei Kwu Correctional Institution** and **Tai Tam Gap Correctional Institution**—are operated by the prison system, rather than the Immigration Department, and employ prison operational rules. Law and policy amendments adopted since 2020 include authorising the use of weapons by immigration officers, extending the maximum length of solitary confinement from one to four weeks, and allowing immigration officers to conduct intimate body cavity searches in some centres.

This penalisation of immigration detention adds to an already comparatively severe immigration detention regime. There is no maximum limit to the length of immigration detention in Hong Kong; children and other at-risk non-citizens are not protected from detention; violations of some immigration violations can lead to prosecution and lengthy prison sentences; there are no specific judicial oversight or procedural safeguards to review cases of immigration detention, such as a bail application process or an independent review mechanism; and for many years preceding COVID-19, there were as many immigration detainees as there were convicted prisoners.

¹ Stand News, “Violent Strip Search, Denied Medication - Former Detainees Speak Out against Abuse in Castle Peak Bay Immigration Centre,” 13 July 2020, <https://www.thestandnews.com/society/violent-strip-search-denied-medication-former-detainees-speak-out-against-abuse-in-castle-peak-bay-immigration-centre/>



2. KEY STATISTICS AND TRENDS

DETENTION AND DEPORTATION DATA	
Number of dedicated immigration detention centres	4 (Castle Peak Bay, Ma Tau Kok, Tai Tam Gap, Nei Kwu)
Total immigration detention capacity	983 (2023) ²
Number of detention cases ³	2017: 10,948 2018: 11,510 2019: 10,053 2020: 4,861 2021: 4,756 2022: 3,819 ⁴
Average daily population in Castle Peak Bay Detention Centre	261 (2022) ⁵
Average daily population Ma Tau Kok Detention Centre	54 (2022) ⁶
Number of detained children at Tuen Mun Children & Juvenile Home ⁷	24 (2020) ⁸
Detainee top countries of origin (Castle Peak Bay and Ma Tau Kok)	Mainland China, Indonesia, Vietnam, India, Philippines ⁹

POPULATION DATA	
Number of recognised refugees in the country	285 (2022)
Number of international migrants in the country	2,962,491 (2020)
International migrants as percentage of population	39.52% (2020)
Number of new asylum applications (non-refoulement claims) ¹ (January - September 2023)	1,149 ¹

² Castle Peak Bay Immigration Centre (Capacity: 500) Ma Tau Kok Detention Centre (Capacity: 87) Nei Kwu Correctional Institution (Capacity: 236) Tai Tam Gap Correctional Institution (Capacity: 160)

³ The number of 'detention cases' refers to the 'Detention' statistic in Appendix 13 of the Immigration Department Annual Reports. Immigration Department responses to ATIs sent by researchers at The Chinese University of Hong Kong have indicated that the 'Detention' statistic does not refer to admittances nor 'per person'. It appears that the number of 'detention cases' refers to detentions beyond CIC and MTKDC. So far it appears that this is the most accurate number in answering 'how many people are detained in Hong Kong under immigration powers'.

⁴ Immigration Detention in Hong Kong, "Data Visualizations," <https://immigrationdetentionhk.net/en/>

⁵ Immigration Detention in Hong Kong, "Data Visualizations," <https://immigrationdetentionhk.net/en/>

⁶ Immigration Detention in Hong Kong, "Data Visualizations," <https://immigrationdetentionhk.net/en/>

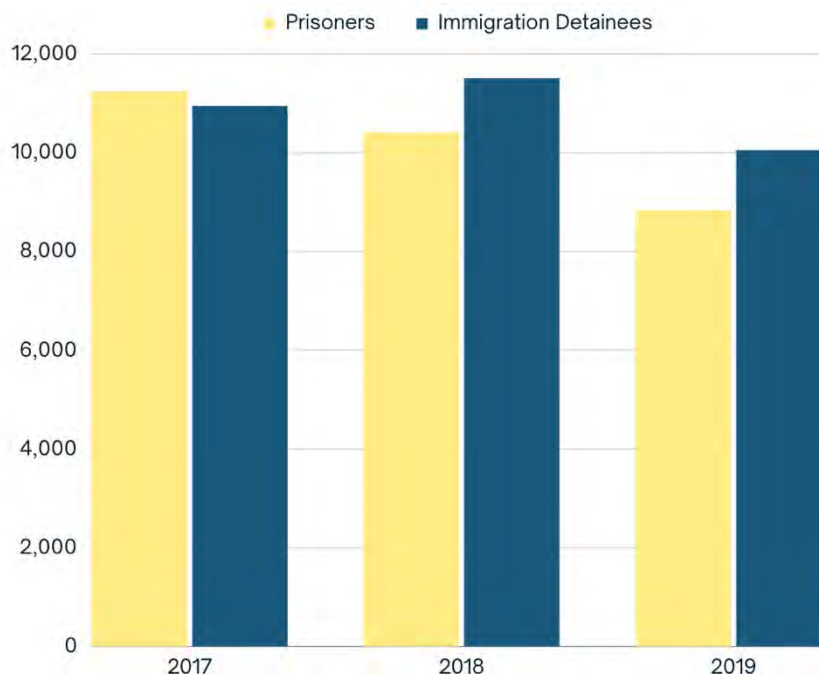
⁷ Tuen Mun Children & Juvenile Home is the only listed institution for detaining children under immigration powers under the Immigration (Places of Detention) Order (Cap. 115B). However, given that children can be detained with their guardians at institutions run under the Prison Rules (Cap. 234A), the total number of detained children is unknown.

⁸ Immigration Detention in Hong Kong, "Data Visualizations Section 1: Immigration detention numbers and demographics – Tuen Mun Children & Juvenile Home (TMCJH)," <https://immigrationdetentionhk.net/en/data-viz-tmcjh/>

⁹ Immigration Detention in Hong Kong, "Data Visualizations," <https://immigrationdetentionhk.net/en/>

Over the past decade (excluding 2020-2022 when Hong Kong SAR was subject to stringent travel restrictions as a result of the COVID-19 pandemic), almost as many people were confined in immigration detention centres as were imprisoned in the criminal justice system—and in 2018 and 2019, there were more immigration detainees than prisoners. Between 2015 and 2019, Hong Kong SAR detained between 10,000-12,000 non-nationals annually for migration-related reasons in two facilities.¹⁰ Since the start of the pandemic however, the number of immigration detainees has decreased—to 4,861 in 2020, 4,756 in 2021, and 3,819 in 2022.¹¹

Figure i: Prisoners vs. Immigration Detainees in Hong Kong SAR, 2017 – 2019¹²



Historically, the majority of detainees were confined in Castle Peak Bay Immigration Centre (CIC): in 2018, 6,277 people were detained in the facility compared to 5,069 in Ma Tau Kok Detention Centre (MTKDC),¹³ and 5,353 in 2019 compared to 3,936 in MTKDC.¹⁴ However since 2020 both the CIC and MTKDC have confined similar numbers of detainees: 3,988 (CIC) and 3,893 (MTKDC) in 2020; 3,066 (CIC) and 3,783 (MTKDC) in 2021; and 2,793 (CIC) and 2,566 (MTKDC) in 2022.¹⁵ Since opening in 2021, the Tai Tam Gap Correctional Centre also confined 131 detainees in 2021 and 190 detainees in 2022.¹⁶

¹⁰ Immigration Detention in Hong Kong, “Data Visualizations,” 2023, <https://immigrationdetentionhk.net/en/data-viz/>

¹¹ Immigration Detention in Hong Kong, “Data Visualizations,” 2023, <https://immigrationdetentionhk.net/en/data-viz/>

¹² Immigration Detention in Hong Kong, “Data Visualizations,” 2023, <https://immigrationdetentionhk.net/en/data-viz/>

¹³ Immigration Department, “Annual Report 2018 - Enforcement,” 2018, https://www.immd.gov.hk/publications/a_report_2018/en/chapter05.html

¹⁴ Immigration Detention in Hong Kong, “Data Visualizations,” <https://immigrationdetentionhk.net/en/data-viz/#s1>

¹⁵ Immigration Detention in Hong Kong, “Data Visualizations,” <https://immigrationdetentionhk.net/en/data-viz/#s1>

¹⁶ Immigration Detention in Hong Kong, “Section 1: Immigration detention numbers and demographics – Tai Tam Gap Correctional Institution (TTGCI or TTG),” <https://immigrationdetentionhk.net/en/data-viz-ttgc/>

With a capacity for 87 people, MTKDC detained an average of 54 persons on a daily basis in 2022. In comparison, CIC, with a capacity for 500 detainees, detained an average of 261 people on a daily basis in 2022.¹⁷ Government data suggests that between January 2021 and May 2022, 10 to 20 percent of detainees in Hong Kong’s largest immigration detention centre, CIC, had been detained for six months or more.¹⁸

According to the Immigration Department (ImmD), 745 removal orders were executed in 2022, 608 in 2021, and 500 in 2020.¹⁹ (Removal orders are orders of the Director of Immigration requiring a person to leave Hong Kong SAR if they have violated certain provisions within the Immigration Ordinance, including if they have landed in Hong Kong SAR unlawfully or if they have violated a condition of stay (s.19(1)(b) Immigration Ordinance)).

Deportation orders, issued by the Director of Immigration, require the sanctioned individual to leave Hong Kong SAR and prohibit them from being in Hong Kong SAR at any time thereafter or during such period as may be specified in the order. Deportation orders may be made if the individual has been found guilty in Hong Kong SAR of an offence punishable with imprisonment for not less than two years (Section 20, Immigration Ordinance). In 2016, 443 deportation orders were executed; followed by 537 in 2017, and 501 in 2018.²⁰

The number of non-*refoulement* claims in Hong Kong SAR has gradually decreased over recent years. Statistics on the number of claims made, the number of claims determined, and the number of claims withdrawn or on which no further action has been taken, are available on the ImmD website.²¹

Figure ii: Number of non-refoulement claims made to the Immigration Department²²

YEAR	NUMBER OF NON-REFOULEMENT CLAIMS MADE
2022	1,257
2021	2,528
2020	1,223
2019	1,213
2018	1,216
2017	1,843

¹⁷ Immigration Detention in Hong Kong, “Data Visualizations,” <https://immigrationdetentionhk.net/en/data-viz/#s1>

¹⁸ Immigration Detention in Hong Kong, “Section 1: Immigration detention numbers and demographics – Length of detention periods,” <https://immigrationdetentionhk.net/en/data-viz-length-detention/>

¹⁹ Immigration Department, “Annual Report 2022: Appendix 13 – Enforcement Branch Statistics,” 2022, https://www.immd.gov.hk/publications/a_report_2022/en/appendix13.html

²⁰ Immigration Department, “Annual Report 2018: Appendix 13 – Enforcement Branch Statistics,” 2018, https://www.immd.gov.hk/publications/a_report_2018/en/appendices-13.html

²¹ Immigration Department, “Enforcement: Statistics on Non-Refoulement Claim,” accessed 18 May 2021, <https://www.immd.gov.hk/eng/facts/enforcement.html>

²² Immigration Department, “Enforcement: Statistics on Non-Refoulement Claim,” accessed 18 May 2021, <https://www.immd.gov.hk/eng/facts/enforcement.html>

Between January and September 2023, the ten countries of origin of all substantiated non-refoulement claimants were: Pakistan, Yemen, Rwanda, Egypt, Somalia, Sri Lanka, Bangladesh, Democratic Republic of Congo, Burundi, and Cameroon.²³

²³ Immigration Department, “Enforcement: Statistics on Non-Refoulement Claim,” accessed 18 May 2021, <https://www.immd.gov.hk/eng/facts/enforcement.html>



3. WHO CAN BE DETAINED AND WHY?

	DOES HONG KONG LAW PROVIDE FOR THEIR DETENTION?	ARE THEY DETAINED IN PRACTICE?	MAXIMUM LENGTH OF DETENTION	ARE THERE REPORTS OF THIS MAXIMUM LIMIT BEING EXCEEDED IN PRACTICE?
ASYLUM SEEKERS	Yes	Yes	Unlimited	Not applicable
IRREGULAR MIGRANTS	Yes	Yes	Unlimited	Not applicable
ACCOMPANIED CHILDREN	Yes	Yes	Unlimited	Not applicable
UNACCOMPANIED CHILDREN	Yes	Yes	Unlimited	Not applicable
TRAFFICKING VICTIMS	Yes	Yes	Unlimited	Not applicable

Core pieces of national legislation providing a framework for immigration detention	Immigration Ordinance (Cap. 115)
Are grounds for administrative migration-related detention provided in law?	Yes
Does the country provide specific criminal penalties for immigration-related violations?	Yes
Can these penalties include prison sentences?	Yes
Are prison sentences imposed in practice?	Yes

There are two key sources of law concerning the rights of detainees and the reasons for imposing immigration detention measures: Article 5 of Section 8 of the Hong Kong Bill of Rights Ordinance (Cap. 383) and the Immigration Ordinance (Cap. 115).

Article 5 of Section 8 the [Hong Kong Bill of Rights Ordinance \(Cap. 383\)](#) provides that “everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

The [Immigration Ordinance \(Cap. 115\)](#) regulates issues related to the entry, stay, and exit of people to, in, and from Hong Kong SAR. There are two sections in the Immigration Ordinance. The first deals specifically with Vietnamese boat refugees and the second concerns other non-nationals. The ordinance also includes provisions for the establishment of a non-*refoulement* screening mechanism and for immigration detention (for more on non-*refoulement* claimants, see “3.c Asylum Seekers” below).

The Immigration Ordinance provides various grounds for detention. Section 32 authorises officers of the Immigration Department (ImmD) and the police to issue detention orders to:²⁴

- Non-citizens suspected of having violated the ordinance for the purposes of investigation;
- People suspected of having arrived in Hong Kong SAR without appropriate authorisation;
- People whom the Secretary of Security deems there are reasonable grounds for suspecting that the person is deportable because they have been found guilty in Hong Kong SAR of an offence punishable with imprisonment for not less than two years; and
- People who have been issued a deportation or removal order.

Section 37ZK of the Ordinance also provides that a non-*refoulement* protection claimant may be detained under the authority of the Director of Immigration, the Deputy Director of Immigration, or any Assistant Director of immigration pending final determination of the claimant's torture claim.²⁵

In 2020, the government introduced the controversial Immigration Ordinance Amendment Bill (which took effect on 1 August 2021). Amongst the amendments introduced by this bill are the right for immigration officers to carry guns in detention centres, and an expansion of the factors to be considered when deciding whether detention is reasonable and lawful.

3.a Length of Detention

There is no legal limit to the length of migration-related detention in Hong Kong SAR.

Non-citizens suspected of having violated the Immigration Ordinance can be detained for investigation for an initial period of 48 hours, which can be extended for five additional days (s.26, Immigration Ordinance). People suspected of having arrived in Hong Kong SAR without appropriate authorisation can be held “for not more than 24 hours pending the examination; and ... for not more than a further 24 hours pending a decision to give or refuse him permission to land” (s.27, Immigration Ordinance).

The Secretary for Security can issue a detention warrant to hold a foreigner for up to 14 days if there are reasonable grounds for suspecting that the person is deportable because they have been found guilty in Hong Kong SAR of an offence punishable with imprisonment for not less than two years. Under certain conditions, this period of detention can be extended to a maximum of 28 days (s.29 and s.20, Immigration Ordinance).

Once a person has been issued a deportation or removal order, they can be detained, and there is no statutory limit on the length of this detention (s.32, Immigration Ordinance). With the passing of the 2020 Immigration Ordinance Amendment Bill, the following six factors justify the length of detention.²⁶

- 1) The number of *other* persons pending removal from Hong Kong;

²⁴ Immigration Department, “Detention Policy – Section 32 of the Immigration Ordinance (Ca-. 115),” https://www.immd.gov.hk/pdf/Detention%20Policy_S.32_e.pdf

²⁵ Immigration Department, “Policy for Detention,” https://www.immd.gov.hk/pdf/Detention_policy_en.pdf

²⁶ Hong Kong Government, “Immigration (Amendment) Bill 2020,” <https://www.legco.gov.hk/yr20-21/english/bills/b202012041.pdf>

- 2) Manpower and financial resource considerations for removal;
- 3) The extent to which arranging removal is possible;
- 4) The action or inaction of the person in question—including not providing assistance to obtain documents needed to re-enter their country of origin;
- 5) The time required to obtain said documents or authorisation in 4);
- 6) Any other factors that prevent or delay the person’s removal that are not in the control of the Director of Immigration.²⁷

Lawyers and civil society advocates have voiced concerns that expansion of powers of detention are incompatible with the *Hardial Singh* principles, established in a key 1983 UK immigration case, *R (Hardial Singh) v Governor of Durham Prison*. According to the Hong Kong Justice Centre: “The *Hardial Singh* principles provides that given the fundamental importance of the right to liberty any interference by way of immigration detention is only justifiable for a reasonable period for the purpose of deportation, and the authorities must act with reasonable diligence and expedition to effect removal. Justifying prolonged detention on the basis of administrative and bureaucratic inefficiency, or factors beyond the authorities or the person concerned’s control, is thus potentially arbitrary and unlawful.”²⁸

Significant numbers of detainees are held for extended periods. Of the four dedicated immigration detention centres in Hong Kong SAR, one—Ma Tau Kok Detention Centre (MTKDC)—has been described as a short-term detention facility where detainees are “normally detained for less than 48 hours.”²⁹ However, official government data shows that during the COVID-19 pandemic, proportions of detainees being held for two weeks and more increased to up to 60 percent.³⁰ Moreover on 31 August 2023, of the 73 detainees in the centre that day, 42 had been held for 7 days or more (see Figure iv). That same day, 112 of the 408 detainees in Castle Peak Bay Detention Centre (CIC) had been confined for more than 60 days and 26 had been detained for 180 days or more (see Figure iii).

Instances of excessively lengthy detention have raised concerns. As of Dec 2021, one Vietnamese asylum seeker had been reportedly detained³¹ for nearly five years.³²

²⁷ “f) factors that directly or indirectly prevent or delay the person’s removal that are not within the control of the Director”

²⁸ Refugee Concern Network, “Submissions to the Bills Committee on Immigration (Amendment) Bill 2020,” February 2021, <https://www.justicecentre.org.hk/framework/uploads/2021/02/Refugee-Concern-Network-Submissions-on-the-Immigration-Amendment-Bill-2020.pdf>

²⁹ Government of Hong Kong, “Press Releases,” <https://www.info.gov.hk/gia/general/201004/15/P201004150173.htm>

³⁰ Immigration Detention in Hong Kong, “Data Visualizations - How long are MTK detainees held for? (2017 - Aug 2023),” <https://immigrationdetentionhk.net/data-viz-length-detention/#length-det-mtk-percentage-comparison>

³¹ C. Tze Yu, “海上出世的越南難民「金鷹」 出獄後的「第二次」終身監禁 [Vietnamese Refugee ‘Golden Eagle’ Suffered a Second Life Sentence After Escaping from Prison],” *Ming Pao Weekly*, 28 July 2018, <https://bit.ly/3iUHMwe>; AFP, “Convicted Vietnam Refugee Fights Deportation After 30 Years in Hong Kong SAR,” *Hong Kong SAR Free Press*, 4 May 2020, <https://hongkongfp.com/2020/05/04/convicted-vietnam-refugee-fights-deportation-after-30-years-in-hong-kong/>

³² Hong Kong Free Press, “Vietnamese Refugee Abandons Fight Against Deportation After 27 Years Behind Bars in Hong Kong,” 4 December 2021, <https://hongkongfp.com/2021/12/04/vietnamese-refugee-abandons-fight-against-deportation-after-27-years-behind-bars-in-hong-kong/>

Figure iii: Detainees at Castle Peak Bay Detention Centre on 31 Aug 2023 and the length of their detention period³³

NUMBER OF DAYS HELD AT CASTLE PEAK BAY DETENTION CENTRE	NUMBER OF DETAINEES
1 to 6 days	78
7 to 13 days	58
14 to 20 days	36
21 to 29 days	29
30 to 59 days	95
60 to 89 days	27
90 to 179 days	59
180 to 270 days	14
270 days or above	12

Figure iv: Detainees at Ma Tau Kok Detention Centre on 31 August 2023 and the length of their detention period³⁴

NUMBER OF DAYS HELD AT MA TAU KOK DETENTION CENTRE	NUMBER OF DETAINEES
1 to 3 days	18
4 to 6 days	13
7 to 14 days	24
15 days or above	18

³³ Access Info, "Length of Detention at CIC (Jan - Aug 2023, end of month date)," https://accessinfo.hk/en/request/length_of_detention_at_cic_jan_a?nocache=incoming-4252#incoming-4252

³⁴ Access Info, "Length of Detention at MTKDC (Jan - Aug 2023, end of month date)," https://accessinfo.hk/en/request/length_of_detention_at_mtkdc_jan

IN FOCUS: Harjang Singh v Secretary for Security and Another

In 2021, a landmark judgement was delivered in the case of *Harjang Singh ("Applicant") v Secretary for Security and Another*.³⁵ It is the first known successful *habeas corpus* immigration detention case.³⁶ The applicant had been held in detention for over three years and three months.³⁷ The Court of Appeal found that the applicant's detention was in breach of the *Hardial Singh Principles* because his detention a) had continued for a period of time that was unreasonable in all circumstances and b) his removal could not be implemented in a reasonable timeframe. Thus, the applicant was to be released immediately. The case includes notable developments in how the *Hardial Singh* principles are applied.³⁸

The *Harjang Singh* case also revealed further information about the detention review process. Namely that detention reviews were conducted with a tick box form that the Court of Appeal described as a "highly reductive tool," which identifies only the presence or absence of certain features and does not consider the exact situation of the detained person. The Court of Appeal also noted that comments by senior immigration staff were copy pasted on several iterations and the form did not provide opportunity for recognising how the factors had been considered, what analysis went into the decision, and how certain factors may be more or less important as the period of detention lengthens.³⁹

3.b Criminal Penalties

Hong Kong SAR's Immigration Ordinance provides criminal penalties for various migration-related violations. According to Section 38(1)(a), a person who lands in Hong Kong SAR without the permission of an immigration officer or immigration assistant; or who landed in Hong Kong SAR unlawfully, remains in Hong Kong SAR without the authority of the Director of Immigration, is guilty of an offence and upon conviction, is liable to a level 4 fine (up to 25,000 HKD⁴⁰ [approximately 3,220 USD]) and to imprisonment for three years.

Under Section 41 of the Ordinance, any person who breaches a condition of stay has committed an offence and is liable to a level 5 fine (up to 50,000 HKD⁴¹ [approximately 6,435 USD]) and to imprisonment for two years.

³⁵ Hong Kong Legal Information Institute, "Harjang Singh v. Secretary for Security and Another," 28 July 2022, <https://www.hklii.hk/en/cases/hkca/2022/781>

³⁶ Refugee Concern Network, "Submissions to the Bills Committee on Immigration (Amendment) Bill 2020," February 2021, <https://www.justicecentre.org.hk/framework/uploads/2021/02/Refugee-Concern-Network-Submissions-on-the-Immigration-Amendment-Bill-2020.pdf>

³⁷ Prince's Chambers, "A Successful Appeal for Release on Hardial Singh Grounds," 6 August 2022, <https://princeschambers.com/elementor-6579/>

³⁸ Blackstone Chambers, "Harjang Singh v. Secretary for Security and Another," 8 August 2022, <https://www.blackstonechambers.com/news/harjang-singh-v-secretary-for-security-and-another/>

³⁹ Justice Centre, "Case Summary For: Harjang Singh v. Hong Kong SAR Government; Harjang Singh v. Secretary for Security and Another," <https://www.justicecentre.org.hk/framework/uploads/2023/06/JCHK-Case-Summary-Harjang-Singh-2018-2022.pdf>

⁴⁰ Hong Kong SAR Government, "Cap. 221 Criminal Procedure Ordinance: Section 8," <https://www.elegislation.gov.hk/hk/cap221>

⁴¹ Hong Kong SAR Government, "Cap. 221 Criminal Procedure Ordinance: Section 8," <https://www.elegislation.gov.hk/hk/cap221>

3.c Asylum Seekers

The Refugee Convention has not been extended to Hong Kong SAR. Instead, the government has claimed that the extension of the Refugee Convention would “subject its immigration regime to abuses and thus undermine public interest.”⁴² In response, the UN Committee Against Torture (CAT) has criticised this statement for “prima facie portray[ing] all claimants in need of protection as abusers of the system.”⁴³

Instead, Hong Kong SAR permits non-nationals liable to removal to apply for non-*refoulement* protection. This is provided in part VIIC of the Immigration Ordinance (Cap. 115), which provides for “torture claims” and “non-*refoulement* protection in Hong Kong SAR on the ground of a torture risk.” Significantly, the Ordinance does not use the word “refugee” to refer to Part VIIC protection claimants (even though it does refer to people fleeing from Vietnam as “refugees” in Part IIIA).

Today, the term “refugees and asylum seekers” in the Hong Kong SAR context usually refers to non-*refoulement* claimants.⁴⁴ These claims are assessed by the Immigration Department (ImmD) under the Unified Screening Mechanism (USM). However, to be eligible to file a claim, an individual must first overstay their visa—a policy described as “enforced illegality.” They are then required to submit a written signification, which states their reasons for applying for non-*refoulement*. Significantly, the written signification is not equivalent to the non-*refoulement* application; in other words, the written signification is a pre-application procedure that must be approved before the individual can even apply for the non-*refoulement* status.

Subsequently, they will be requested by the ImmD to attend an interview and to provide further information and evidence relevant to their claim. Claimants will then be issued a decision at first instance. If the claimant wishes to appeal, they must lodge an appeal (for claims based on torture) with the Torture Claims Appeal Board (TCAB), or a petition (for claims based on cruel, inhuman and degrading punishment (CIDTP)) with the non-*refoulement* Claims Petition Office (NRCPO), within 14 days of being notified of the decision, unless special circumstances apply.⁴⁵ A claimant may subsequently file for judicial review of the decision of the TCAB or the NRCPO.

Following the introduction of the 2020 Immigration Ordinance Amendment Bill, several notable changes were introduced relevant to non-*refoulement* applicants’ rights. These included removing the right to an interpreter during the screening interview if the immigration officer “reasonably considers the claimant being able to understand and communicate” in a

⁴² Government of Hong Kong, “Legislative Council Panel on Security – An Outline of the Topics in the Fourth Report of the Hong Kong Special Administrative Region Under the Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment,” <https://www.legco.gov.hk/yr20-21/english/panels/se/papers/secb2-797-1-e.pdf>

⁴³ UN Committee against Torture, “Concluding Observations on the Fifth Periodic Report of China with Respect to Hong Kong, China,” CAT/C/CHN-HKG/CO/5, 3 February 2016, <http://tinyurl.com/3sy83dce>

⁴⁴ Note that in the Global Detention Project database, the field “number of asylum seekers” for Hong Kong refers to non-*refoulement* claimants. This is because since Hong Kong does not formally recognise asylum seekers, according to the UNHCR statistics, there would be no asylum seekers in Hong Kong. However to recognise the asylum seeking population in Hong Kong despite the lack of legal recognition, GDP uses the number of non-*refoulement* claimants for this field of the database.

⁴⁵ Office of the High Commissioner for Human Rights and DLA Piper, “Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice,” December 2018, https://www.ohchr.org/Documents/Issues/Migration/OHCHR_DLA_Piper_Study.pdf

language the officer speaks.⁴⁶ Additionally, the bill provides that if a non-*refoulement* claim is rejected at first instance, immigration officers may initiate repatriation arrangements and liaise with countries of origin—even if the applicant appeals the decision.⁴⁷ The bill also deems detention reasonable if an applicant’s country of origin does not issue them a passport because their re-entry is deemed unwelcome by authorities—an issue that can lead to potentially indefinite detention.⁴⁸

Persons with non-*refoulement* status are permitted to remain in Hong Kong SAR temporarily and are protected from deportation. However, applicants are vulnerable to detention. Section 37ZK of the Immigration Ordinance provides that a non-*refoulement* protection claimant may be detained under the authority of the Director of Immigration, the Deputy Director of Immigration, or any assistant direction of immigration pending final determination of the claimant’s torture claim.⁴⁹

One particular vulnerability is the fact that applicants do not have the right to work while they await a decision while simultaneously receiving very limited social assistance. This opens the door to some seeking jobs in the informal sector, violating provisions and exposing them to arrest and detention.⁵⁰

In 2021, authorities arrested 438 non-*refoulement* claimants, many of whom were subsequently detained.⁵¹ In a written reply in the Legislative Council in November 2022, the Secretary for Security wrote that at the end of September 2022, 368 claimants were being detained in CIC, MTKDC, and TTGCI. The human rights organisation Justice Centre Hong Kong (JCHK), estimated that 30 to 40 percent of its clients, including children, have been detained during their asylum claims, of which approximately 26 percent were survivors of torture and/or cruel, inhuman and degrading treatment or punishment. On 31 Dec 2022, 175 non-*refoulement* claimants were detained at CIC⁵² and 18 at MTKDC.⁵³

Civil society organisations have long criticised the Hong Kong SAR government’s approach to dealing with refugees and asylum seekers. Many highlight the territory’s extremely low substantiation rate of non-*refoulement* protection claims—particularly in comparison to the refugee recognition rates of other developed countries. Between 2009 and September 2020,

⁴⁶ Hong Kong SAR Government, “Immigration (Amendment) Ordinance to Take Effect From August 1,” 19 July 2021, <https://www.info.gov.hk/gia/general/202107/19/P2021071900357.htm>

⁴⁷ Hong Kong SAR Government, “Legislative Council Panel on Security – Enhancing the Handling of Non-Refoulement Claims,” December 2022, <https://www.legco.gov.hk/yr2022/english/panels/se/papers/se20221206cb2-968-2-e.pdf>

⁴⁸ South China Morning Post, “Changes to Hong Kong Immigration Law Could Re-Victimise Those Fleeing Torture and Persecution, Human Rights Advocates Say,” 16 December 2020, <https://www.scmp.com/news/hong-kong/politics/article/3114094/changes-hong-kong-immigration-law-could-re-victimise-those>

⁴⁹ Immigration Department, “Policy for Detention,” https://www.immd.gov.hk/pdf/Detention_policy_en.pdf

⁵⁰ Hong Kong Free Press, “Driven by desperation: Without the right to work, refugees in Hong Kong face impossible choices,” <https://hongkongfp.com/2022/02/20/driven-by-desperation-without-the-right-to-work-refugees-in-hong-kong-face-impossible-choices/>

⁵¹ France24, “Hong Kong Asylum Seekers Fear Deportation Under Tightened Policy,” 20 March 2023, <https://www.france24.com/en/live-news/20230320-hong-kong-asylum-seekers-fear-deportation-under-tightened-policy>

⁵² Immigration Detention in Hong Kong, “Data Visualizations – End of Month Population at CIC by Immigration Status (2019-2022),” <https://immigrationdetentionhk.net/en/data-viz/#cic-imm-status-end-month>

⁵³ Immigration Detention in Hong Kong, “Data Visualizations – End of Month Population at MTKDC by Immigration Status (2017 – 2022),” <https://immigrationdetentionhk.net/en/data-viz-mtkdc/#mtk-imm-status-end-month>

determinations were made in 22,737 torture/*non-refoulement* claims. Of these claims, only 231 were deemed substantiated.⁵⁴ Annually, the rate of cumulative substantiation across all stages of the USM process is extremely low: 0.55 percent of claims were substantiated in 2017, 0.38 percent in 2018, and 0.59 percent in 2019.⁵⁵ The UN Committee Against Torture (CAT) has previously expressed concern that Hong Kong SAR's threshold for granting protection is "distinctly high."⁵⁶

CAT has previously urged authorities to grant protection claimants with the right to work, in order to prevent destitution and degrading treatment.⁵⁷ The Committee on Economic, Social, and Cultural Rights (CESCR) has also recommended that the government adopt legislation granting asylum seekers and refugees access to legal employment among other social and economic rights.⁵⁸

Various obstacles also impede *non-refoulement* claimants' access to justice, including a lack of effective legal representation. Torture claimants only have 28 days to file a claim for protection (known as the "Torture Claim Form") once they have received the paperwork.⁵⁹ NGOs have criticised this timeframe for being overly restrictive, given that potential claimants may require more time to secure legal advice, interpreters, and other support.⁶⁰ Claimants are also required to file an appeal with the TCAB/NRCPO within 14 days after being notified of the ImmD's decision, which is also highly restrictive.

3.d Children

Hong Kong SAR's legislation does not protect children from detention—leaving both unaccompanied and accompanied children vulnerable to detention. The decision to detain is at the Director of Immigration's discretion.

Researchers have noted ambiguity regarding the detention of children, in particular the lack of public policy. According to the "Policy for detention pending final determination of the claimant's torture claim," one of the factors that the Director of Immigration should assess when considering whether an individual should be detained or released is whether "the person is under the age of 18 and [their] claimed age is accepted by the Director."⁶¹

⁵⁴ Immigration Department, "Statistics on Enforcement," 2020, <https://www.immd.gov.hk/eng/facts/enforcement.html>

⁵⁵ Justice Centre Hong Kong, "Submission to the UN Human Rights Committee List of Issues on the Fourth Report of the Hong Kong SAR Special Administrative Region under the International Covenant on Civil and Political Rights," May 2020, <https://bit.ly/2SPbybj>

⁵⁶ UN Committee Against Torture (CAT), "Concluding Observations on the Fifth Periodic Report of China with Respect to Hong Kong SAR, China," 3 February 2016, <https://bit.ly/34HE9og>

⁵⁷ UN Committee Against Torture (CAT), "Concluding Observations on the Fifth Periodic Report of China With Respect to Hong Kong SAR, China," CAT/C/CHN-HKG/CO/5, 3 February 2016, <https://bit.ly/34HE9og>

⁵⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), "Concluding Observations on the Second Periodic Report of China, Including Hong Kong SAR, China, and Macao, China," E/C.12/CHN/CO/2, 13 June 2014, <https://bit.ly/30Xsgty>

⁵⁹ Immigration Department, "Sample Non-Refoulement Claim Form," May 2019, <https://www.immd.gov.hk/pdfforms/Non-refoulement%20Claim%20Form.pdf>

⁶⁰ Hong Kong Human Rights Monitor, "Submission from NGOs Coordinated by the Hong Kong Human Rights Monitor to the Committee Against Torture on the Implementation of the CAT in the Hong Kong Special Administration Region, China," October 2015, <https://bit.ly/3iP3LVh>

⁶¹ Immigration Department, "Policy for Detention Pending Final Determination of the Claimant's Torture Claim," *Government of the Hong Kong SAR Special Administrative Region Immigration Department*, December 2012, https://www.immd.gov.hk/pdf/Detention_policy_en.pdf

However, this is only a guideline and the policy states: “the mere presence of a particular factor does not automatically lead to detention or release.”

NGOs have reported instances in which child non-*refoulement* claimants have been detained, prompting criticisms of the government’s failure to meet the standards set out in the UN Convention on the Rights of the Child.⁶² In 2013, the UN Committee on the Rights of the Child (CRC) recommended that the Hong Kong SAR Government cease the administrative practice of detaining asylum-seeking and refugee children and to establish a system to ensure data collection and registration of all asylum-seeking and refugee children in all areas under its jurisdiction.⁶³ In a 2020 decision in the case of *Fabio Arlyn Timogan and Others v Evan Ruth and Another*, the Court of Appeal held that non-*refoulement* claims submitted by children should receive separate consideration from the claims of their parents, even if the claims are made on the same set of circumstances.⁶⁴ This may have implications for detention of children and their guardians.

According to the Places of Detention Order (Cap. 115B), children are to be detained in the Tuen Mun Children and Juvenile Home (TMCJH), which is run by the Social Welfare Department. However, limited information exists regarding the official procedure when a minor held at TMCJH turns 18 years of age.⁶⁵ Civil society has also noted that children can also de facto be detained at other children’s homes, and that those under the age of three can be detained with their parents in Tai Tam Gap Correctional Institution (TTGCI) and Nei Kwu Correctional Institution (NKCI) (both of which are run by the Correctional Services Department). They can also be held with their guardians in adult detention centres (CIC and MTKDC).⁶⁶

As of December 2023, there are no official statistics on the total number of detained children. Some figures are available—for example, in 2020, 24 children were detained in Tuen Mun Children and Juvenile Home for migration-related reasons—but the numbers present in other facilities are not available.⁶⁷ According to a response from the Director of Immigration to a Freedom of Information (FOI) request from Justice Centre Hong Kong (JCHK), as of September 2018 the Immigration Department did not maintain statistics on the number of persons aged below 18 placed in immigration detention.⁶⁸

⁶² Justice Centre Hong Kong SAR, “Submissions to the Subcommittee on Children’s Rights of the Legislative Council: Rights of Refugee Children,” 14 July 2017, <https://bit.ly/2SOW9YA>

⁶³ UN Committee on the Rights of the Child, “Concluding Observations on the Initial Report of China Submitted Under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Adopted by the Committee at its Sixty-Fourth Session (16 September–4 October 2013),” 29 October 2013, <https://bit.ly/3dixEw6>

⁶⁴ Justice Centre Hong Kong, “Parallel Report to the Committee on the Elimination of Discrimination against Women,” February 2021, <https://www.justicecentre.org.hk/framework/uploads/2021/02/Justice-Centre-Hong-Kong-CEDAW-Lol-submission.pdf>

⁶⁵ Access Info, “Migrant Children Who Turn 18 at TMCJH,” https://accessinfo.hk/en/request/migrant_children_who_turn_18_at

⁶⁶ Access Info, “Policy Regarding Immigration Detainees at NKCI with Children,” https://accessinfo.hk/en/request/policy_regarding_immigration_det

⁶⁷ Immigration Detention in Hong Kong, “Data Visualizations Section 1: Immigration detention numbers and demographics – Tuen Mun Children & Juvenile Home (TMCJH),” <https://immigrationdetentionhk.net/en/data-viz-tmcjh/>

⁶⁸ Immigration Department, “Number of Children Detained,” *Civic Sight*, 26 September 2018, https://accessinfo.hk/en/request/number_of_children_detained

3.e Other At-Risk Groups

Although the Immigration Department's (ImmD) "Policy for detention pending final determination of the claimant's torture claim" refers to various categories of persons whose circumstances should be taken into account when the Director of Immigration considers whether to detain or not detain, this policy is a guideline only.⁶⁹

According to the policy, the following non-exhaustive list of factors include: "if the person is an elderly person requiring close supervision/medical care;" "if the person is a pregnant woman and there is no clear prospect for her torture claim to be finally determined in the near future;" "the person has children who are substantially dependant on him/her for care and supervision;" "the person is in serious medical/mentally ill-health condition;" "the person is physically disabled requiring constant nursing care;" and "there is satisfactory evidence that the person had been subjected to serious harm, physical or mental, inflicted by a third party in the past."⁷⁰

However, the policy also states that "the mere presence of a particular factor does not automatically lead to detention or release. The factors will be considered in the context of all the circumstances of the case." In other words, it is ultimately at the Director of Immigration's discretion as to whether particular factors should result in a reprieve from detention.

Justice Centre Hong Kong (JCHK) has criticised the lack of policies ensuring that vulnerable persons are not detained unnecessarily and for prolonged periods of time. In particular, JCHK has pointed to lack of protection for potential victims of trafficking.⁷¹

⁶⁹ Immigration Department, "Policy for Detention Pending Final Determination of the Claimant's Torture Claim," *Government of the Hong Kong SAR Special Administrative Region Immigration Department*, December 2012, https://www.immd.gov.hk/pdf/Detention_policy_en.pdf

⁷⁰ Immigration Department, "Policy for Detention Pending Final Determination of the Claimant's Torture Claim," December 2012, https://www.immd.gov.hk/pdf/Detention_policy_en.pdf

⁷¹ Justice Centre Hong Kong, "Submission to the UN Human Rights Committee List of Issues on the Fourth Report of the Hong Kong SAR Special Administrative Region under the International Covenant on Civil and Political Rights," May 2020, <https://bit.ly/2FmM9CL>

IN FOCUS: Victims of Trafficking

Hong Kong SAR acts as a source, destination, and transit site for human trafficking. Several high-profile incidents have shown that migrant domestic workers can be vulnerable to exploitation, forced labour, and human trafficking,⁷² and rights groups have found evidence that potential trafficking victims are exploited to commit drug offences.⁷³

Although the Prosecution Code provides that prosecutors should “consider a credible claim that a defendant or intended defendant is a victim of trafficking” and “appropriately deal with the case” with reference to international standards and practices” (18.2, Prosecution Code), failures in identifying potential victims leaves them particularly vulnerable to detention. There is no comprehensive anti-trafficking legislation in Hong Kong SAR.⁷⁴

While the government reports that it began implementing a trafficking victim screening mechanism in 2015 (which was fully implemented between the Immigration Department (ImmD), Customs and Excise Department, and Police in 2018,⁷⁵ and extended to the Labour Department in December 2019⁷⁶), the efficacy of the mechanism is questioned. In 2019 for example, just two persons were identified as trafficking victims out of 6,790 people screened.⁷⁷ Academics and civil society organisations have questioned the adequacy of the screening mechanism, highlighting the low number of identified victims in comparison to estimations of migrant domestic workers in conditions of forced labour.⁷⁸

As groups such as the Justice Centre Hong Kong (JCHK) have observed, poor screening mechanisms have resulted in potential victims of trafficking not being identified and as such, they are “consequently prosecuted and imprisoned for the offences they were exploited to commit.”⁷⁹ Moreover, as Hong Kong SAR law does not distinguish between the role and seniority of a person in sentencing related to drug operations, couriers who may be victims of trafficking in their own right may receive severe prison sentences.⁸⁰

⁷² Justice Centre Hong Kong, “Coming Clean,”

<https://www.justicecentre.org.hk/framework/uploads/2016/03/Coming-Clean-The-prevalence-of-forced-labour-and-human-trafficking-for-the-purpose-of-forced-labour-amongst-migrant-domestic-workers-in-Hong-Kong.pdf>

⁷³ Justice Centre Hong Kong, “Submission to the UN Human Rights Committee List of Issues on the Fourth Report of the Hong Kong SAR Special Administrative Region under the International Covenant on Civil and Political Rights,” May 2020, <https://bit.ly/2FmM9CL>

⁷⁴ Hong Kong Free Press, “Hong Kong’s New Human Trafficking Plan – A Rhetorical Manoeuvre or Reason for Hope?” 22 March 2018, <https://hongkongfp.com/2018/03/22/hong-kongs-new-human-trafficking-action-plan-rhetorical-manoeuvre-reason-hope/>

⁷⁵ Department of Justice, “Human Trafficking: Prosecutions,” *Civic Sight*, 6 November 2019, https://accessinfo.hk/en/request/human_trafficking_prosecutions#incoming-1209

⁷⁶ Labour Department, “Number Of Cases Where The Employment Agencies Administration (EAA) Has Implemented TIP Victim Screening Mechanism,” *Civic Sight*, 12 March 2020, https://accessinfo.hk/en/request/number_of_cases_where_the_employ#incoming-1301

⁷⁷ Justice Centre Hong Kong, “Submission to the UN Human Rights Committee List of Issues on the Fourth Report of the Hong Kong SAR Special Administrative Region under the International Covenant on Civil and Political Rights,” May 2020, <https://bit.ly/2FmM9CL>

⁷⁸ Security Bureau, “Trafficking in Persons,” 2020, <https://www.sb.gov.hk/eng/special/bound/iimm.htm>

⁷⁹ Justice Centre Hong Kong, “Submission to the UN Human Rights Committee List of Issues on the Fourth Report of the Hong Kong SAR Special Administrative Region under the International Covenant on Civil and Political Rights,” May 2020, <https://bit.ly/2FmM9CL>

⁸⁰ Justice Centre Hong Kong, “Submission to the UN Human Rights Committee List of Issues on the Fourth Report of the Hong Kong SAR Special Administrative Region under the International Covenant on Civil and Political Rights,” May 2020, <https://bit.ly/2FmM9CL>



4. DETENTION PROCEDURES AND AUTHORITIES

What authorities are responsible for detention and other migration-control measures?	Security Bureau Immigration Department Correctional Services Department Social Welfare Department
What basic procedural standards are required by law?	None
Does the law identify non-custodial measures or alternative to detention measures as part of detention procedures?	Yes
What measures are defined in law?	Supervised release and/or reporting (for non- <i>refoulement</i> claimants)
Does the law require consideration of non-custodial measures before imposing a detention order	No

In Hong Kong SAR, immigration detention and other migration-control measures fall under the authority of the Security Bureau and the Immigration Department (which is under the Security Bureau). Detention facilities are run by the Immigration Department, Correctional Services Department, and Social Welfare Department (for minors). Additional locations of detention include some hospital wards and police stations, which are run by the Hospital Authority and Hong Kong Police Force respectively.

4.a Procedural Standards

According to Section 53 of the Immigration Ordinance, “any person aggrieved by a decision, act or omission of any public officer taken, done or made in the exercise or performance of any powers, functions or duties under this Ordinance may by notice in writing lodged with the Chief Secretary for Administration within the time prescribed in subsection (2) object to that decision, act or omission.” For people who have landed in Hong Kong SAR unlawfully and who have been in Hong Kong SAR in the opinion of the Director for less than 10 days, the time prescribed in subsection (2) is within 24 hours. For all other cases, the time prescribed is 14 days.

For non-*refoulement* protection claimants, the Immigration Department (ImmD) “Policy for detention pending final determination of the claimant’s torture claim” provides that “detention will be kept under regular review and will be reviewed when there is a material change of circumstances.” It further provides that “the Director will give due consideration to any representation made against detention.”⁸¹ However, there are no specific judicial oversight or

⁸¹ Immigration Department, “Policy for Detention Pending Final Determination of the Claimant’s Torture Claim,” December 2012, https://www.immD.gov.hk/pdf/Detention_policy_en.pdf

procedural safeguards to review cases of immigration detention, such as a bail application process or an independent review mechanism.⁸²

There are no official statistics regarding the number of detention reviews conducted,⁸³ and official correspondence with authorities suggests that there is no publicly available policy on the procedure.⁸⁴ An Immigration Department response to an Access To Information request (ATI) sent by researchers at the Chinese University of Hong Kong suggests that detainees are informed of their detention review after the fact, raising concerns that detainees are deprived of an opportunity to appeal / state their case.⁸⁵

4.b Non-Custodial Measures

Although Hong Kong SAR's legislation identifies non-custodial measures—specifically, release under the individual's own recognisance if they are able to pay a surety and/or agree to fulfil release conditions, based on the immigration officer or police officer's discretion—this measure does not have to be considered before authorities impose a detention order. As such, it does not function as a check on a detention order's proportionality and necessity.

According to Section 36(1) of the Immigration Ordinance, an immigration officer or police officer may require a detainee, or an individual who is liable to detention but has not yet been detained, “to enter into a recognisance in the prescribed form in such amount, with such number of sureties and subject to such conditions as the immigration officer or police officer may reasonably require or impose; and where a person who is so detained enters into such a recognisance he may be released.” Conditions of a recognisance include in-person reporting at a police station or immigration office and notification in writing of any change in correspondence address.⁸⁶

For non-*refoulement* claimants, the Immigration Department's (ImmD) “Policy for detention pending final determination of the claimant's torture claim” states that the Director of Immigration shall take into consideration all the relevant circumstances of a claimant's case in determining whether they should be released or detained. This includes: “i) whether the person's torture claim may be decided within a reasonable time in the foreseeable future; ii) whether the process of the person's torture claim is likely to be delayed on ground of non-cooperation of the person; iii) whether that person constitutes a threat to public order of the security of Hong Kong SAR; iv) whether there is any risk of that person absconding and/or (re)committing an offence which is punishable with a term of imprisonment; v) whether that person's identity is resolved or satisfied to be genuine; vi) whether the person has expressed

⁸² Justice Centre Hong Kong, “Submission to the UN Human Rights Committee List of Issues on the Fourth Report of the Hong Kong SAR Special Administrative Region under the International Covenant on Civil and Political Rights,” May 2020, <https://bit.ly/2FmM9CL>

⁸³ Access Info, “Detention Reviews at CIC,” https://accessinfo.hk/en/request/detention_reviews_at_cic

⁸⁴ Access Info, “Detention Reviews at CIC,” https://accessinfo.hk/en/request/detention_reviews_at_cic_2?utm_campaign=alaveteli-experiments-87&utm_content=sidebar_similar_requests&utm_medium=link&utm_source=accessinfo.hk; Access Info, “Detention Reviews at MTKDC,” https://accessinfo.hk/en/request/detention_reviews_at_mtkdc_2?unfold=1

⁸⁵ Access Info, “Notice Given Upon Detention Review,” https://accessinfo.hk/en/request/notice_given_upon_detention_revi

⁸⁶ Section 36 Recognizance as alternative to detention of Immigration Ordinance (Cap. 115), <https://www.elegislation.gov.hk/hk/cap115!en>

that he/she is not able to take care of himself/herself if released from detention; and vii) whether there are other justifying circumstances in favour of release.”⁸⁷

The ImmD began providing recognisance as an alternative to detention for non-*refoulement* claimants after the Court of Final Appeal ruled in 2014 that a person can only be detained for a period of time reasonable to effect their removal.⁸⁸

In the financial year 2022-23, government data showed that the average daily cost per detainee at Castle Peak Bay Detention Centre was HKD\$1672.⁸⁹ According to authorities, the equivalent figures for detention across all institutions, and at Ma Tau Kok Detention Centre⁹⁰ or Tai Tam Gap Correctional Institution⁹¹ individually, are not maintained by the government.

⁸⁷ Immigration Department, “Policy for Detention Pending Final Determination of the Claimant’s Torture Claim,” December 2012, https://www.imm.gov.hk/pdf/Detention_policy_en.pdf

⁸⁸ Hong Kong SAR Government, “LCQ8: Comprehensive Review of Strategy of Handling Non-Refoulement Claims,” 28 March 2018, <https://www.info.gov.hk/gia/general/201803/28/P2018032800614.htm>

⁸⁹ Immigration Detention in Hong Kong, “Data Visualizations – How Much Does it Cost to Detain One Person For a Day at CIC?” <https://immigrationdetentionhk.net/en/data-viz-expenditures/#costs-CIC-average>

⁹⁰ “As the ImmD does not maintain a breakdown of the operational expenses of the MTKDC, figures on the average daily cost per detainee are not available.”; https://www.legco.gov.hk/yr20-21/english/fc/fc/w_q/sb-e.pdf, page 242

⁹¹ Access Info, “Cost of Detention at Tai Tam Gap Correctional Institution,” https://accessinfo.hk/zh_HK/request/cost_of_detention_at_tai_tam_gap



5. DETENTION MONITORING AND TRANSPARENCY

Who can access detention facilities for monitoring purposes?	Justices of the Peace
Is data pertaining to immigration detention readily available?	Proactively published data is scarce. Other data has been made available through Access to Information requests.
Has the country established a National Preventive Mechanism?	No
Does the country receive visits from Subcommittee on the Prevention of Torture?	No
Does the country receive monitoring visits from international organisations?	No

5.a Transparency

The Hong Kong SAR government makes very limited data available regarding its immigration detention practices. These are published in the Immigration Department’s (ImmD) Annual Reports and comprise of: admissions to Castle Peak Bay (CIC) and Ma Tau Kok (MTKDC) detention centres, and the “number of detention cases.” As of 2021-2022, limited statistics on immigration detention have been published on the ImmD website and the government’s open data portal for the first time—including the following:

- Number of detainee admissions by sex and country of origin
- Number of cases of self-harm or suicide committed by detainees
- Number of physical confrontations involving detainees
- Number of cases involving injury of staff and detainees as a result of physical confrontations
- Number of discipline cases involving detainees

Information regarding non-*refoulement* claims, which were previously on the site, are still available and include the following:

- Annual number of torture/non-*refoulement* claim cases
- Number of substantiated non-*refoulement* protection claims by nationality
- Number of outstanding non-*refoulement* claims broken down by sex, age, nationality, and status.⁹²

Of particular note, data pertaining to Tai Tam Gap Correctional Institution (TTGCI) and Nei Kwu Correctional Institution (NKCI) is not proactively published. These two facilities are managed by the Correctional Services Department whose data management system differs to that of the ImmD.

⁹² Immigration Department, “Statistics on Enforcement,” 2020. <https://www.immd.gov.hk/eng/facts/enforcement.html>

There are no freedom of information laws in Hong Kong SAR. There is a Code of Access to Information, which has been in place since 1995, however it is not legally binding.⁹³ Detention-related data has been made available through Access to Information (ATI) requests by researchers and civil society advocates. These take anywhere between three months to a year to receive complete responses.⁹⁴

Requests have shown that data points maintained for Castle Peak Bay Detention Centre (CIC) are often not collected and maintained at TTGCI and NKCI. Information made available via ATIs include:

- Length of detention
- Detainees' immigration status (including non-*refoulement* status)
- Reasons for detention (in other words, sections of the Immigration Ordinance that detainees are held under)
- Emergency ambulances sent to immigration detention facilities
- Expenditure of additional detention facilities operated by the Immigration Department (such as the airport)

Without regular ATI efforts, these datasets would not be available for the public to access.

5.b Detention Monitoring

China is not a signatory party to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment (OPCAT). As such, OPCAT does not apply to Hong Kong SAR and the territory has not designated a National Preventive Mechanism (NPM).⁹⁵

Hong Kong SAR maintains a Justice of the Peace system, whereby individuals appointed as Justices of the Peace (JPs) are empowered to visit detention facilities. The Justices of the Peace Ordinance (Cap. 510) provides the statutory basis for the operation of the JP system. According to Section 3(1), the Chief Executive can appoint "any person holding any office in the public service whom he considers to be fit and proper; or any other person whom he considers to be fit and proper, to be a justice of the peace."⁹⁶ Section 5(1) of the Ordinance empowers JPs to visit "any custodial institution or detained person" (Justices of the Peace Ordinance (Cap. 510)). However, some observers have criticised the JP system, highlighting that detainees who criticise detention conditions to JPs have faced disciplinary action.

In 2022, JPs visited Castle Peak Bay Immigration Centre (CIC) 15 times. In total, JPs received five complaints, three of which were regarding treatment and welfare. Of those three, one was related to the "strict discipline kept inside CIC." The other two were related to "handling of religious materials during a location search." After investigation, these two complaints were "found not substantiated." The remaining two complaints were regarding institutional services, specifically the taste of the food. JPs also received 208 enquiries, the

⁹³ Hong Kong SAR UPR Coalition Steering Committee, "Right to Access to Information," *Justice Centre Hong Kong*, 6 March 2018, <https://www.justicecentre.org.hk/framework/uploads/2018/03/HKUUPR-Coalition-Fact-Sheet-Access-to-Information.pdf>

⁹⁴ Immigration Detention in Hong Kong, "Data Visualizations," <https://immigrationdetentionhk.net/en/data-viz>

⁹⁵ Research Office Legislative Council Secretariat, "Monitoring of Prison Management in Selected Places," *Research Office Legislative Council Secretariat*, 26 February 2019. <https://www.legco.gov.hk/research-publications/english/1819rt05-monitoring-of-prison-management-in-selected-places-20190226-e.pdf>

⁹⁶ Section 3(1), Justices of the Peace Ordinance.

majority of which concerned requests for early release on recognisance, as well requests regarding services (medical treatment, visits, cleaning of cells and toilets, COVID-19 vaccinations) and treatment and welfare (additional phone calls, change of dayroom, arrangements for praying with other detainees while under quarantine.⁹⁷ (For more information on JP visits to detention centres, see: 6. Detention Facilities, Operations, and Regulations.)

However, advocates have voiced concerns over flaws in the JP system. One previous detainee said that an “unspoken rule” of CIC was that immigration officers would consider any detainee who dared to complain during JP visits as “disobedient” and “troublesome,” and subsequently punish the individual with solitary confinement. In one incident, upon asking about the reasons for their detention, a detainee was placed in solitary confinement for multiple days, in a cell with no window or toilet.⁹⁸

The Office of the Ombudsman in Hong Kong also has a monitoring role. While it does not conduct regular visits or systemic monitoring, individuals can file complaints regarding the detention system to the Ombudsman. In 2023, the Ombudsman conducted a direct investigation into the JP system, including statutory visits to immigration detention centres, and provided suggestions on improving visit procedures.⁹⁹

⁹⁷ Hong Kong SAR Government, “2022 Annual Report on Justices of Peace Visits,” https://www.info.gov.hk/jp/files/anreport22_eng.pdf

⁹⁸ Stand News, “Violent Strip Search, Denied Medication - Former Detainees Speak Out against Abuse in Castle Peak Bay Immigration Centre,” 13 July 2020, <https://www.thestandnews.com/society/violent-strip-search-denied-medication-former-detainees-speak-out-against-abuse-in-castle-peak-bay-immigration-centre/>

⁹⁹ Office of the Ombudsman Hong Kong, “Office of The Ombudsman announces results of direct investigation into operational arrangements for statutory visits under Justices of the Peace Visit Programme,” 2 February 2023, <https://www.ombudsman.hk/office-of-the-ombudsman-announces-results-of-direct-investigation-into-operational-arrangements-for-statutory-visits-under-justices-of-the-peace-visit-programme/?lang=en>



6. DETENTION FACILITIES, OPERATIONS, AND REGULATIONS

DEDICATED IMMIGRATION DETENTION FACILITIES¹⁰⁰			
DETENTION CENTRE NAME	CAPACITY	AVERAGE DAILY POPULATION	CENTRE MANAGEMENT
Castle Peak Bay Detention Centre	500	261 (Jan - Dec 2022)	Immigration Department
Ma Tau Kok Detention Centre	87	54 (Jan - Dec 2022)	Immigration Department
Tai Tam Gap Correctional Institution	160	101 (Jan 2023)	Correctional Services Department
Nei Kwu Correctional Institution	236	107 (August 2023)	Correctional Services Department
OTHER DETENTION SITES¹⁰¹			FACILITY MANAGEMENT
Prisons (of which there are 28)			Correctional Services Department
Police stations (of which there are 54)			Hong Kong Police Force
Custodial wards of the Queen Mary and Queen Elizabeth Hospitals			Hospital Authority
Tuen Mun Children and Juvenile Home			Social Welfare Department
Transit centres (West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, Heung Yuen Wai Boundary Control Point, Central Government Pier, River Trade Terminal, Clearance Area of the Shenzhen Bay Port Hong Kong Area, Hong Kong Airport, Hong Kong-Macau Ferry Terminal, Hong Kong-Zhuhai-Macao Bridge Hong Kong Port, Lok Ma Chau Spur Line Control Point, China Ferry Terminal, Tuen Mun Ferry Terminal, Kai Tak Cruise Terminal)			Immigration Department
ADDITIONAL DATA			
Cost (HKD) to detain one detainee for one day in Castle Peak Bay Detention Centre			1,652 (2022-23) ¹⁰²
Does domestic law regulate conditions and treatment in detention?			Yes

¹⁰⁰ Immigration Detention in Hong Kong, <https://immigrationdetentionhk.net/en/>

¹⁰¹ Immigration Detention in Hong Kong, <https://immigrationdetentionhk.net/en/>

¹⁰² Immigration Detention in Hong Kong, "Data Visualization," <https://immigrationdetentionhk.net/en/data-viz-expenditures/>

Non-nationals can be detained in a variety of settings within Hong Kong SAR. As of November 2023, the territory operates four dedicated immigration detention facilities: Castle Peak Bay Detention Centre (CIC), Ma Tau Kok Detention Centre (MTKDC), Tai Tam Gap Correctional Institution (TTGCI), and Nei Kwu Correctional Institution (NKCI). CIC and MTKDC are run by the Immigration Department (ImmD) while TTGCI and NKCI are under the authority of the Correctional Services Department.

While CIC has been operating since 2005 and MTKDC since 1998, TTGCI and NKCI are new additions, opened in May 2021 and May 2023 respectively. Together, the four facilities provide a total of 983 immigration detention places.

Non-nationals can also be confined in the territory’s 54 police stations,¹⁰³ all 28 prisons, medical facilities (the custodial wards of both the Queen Mary and Queen Elizabeth Hospitals), and transit centres such as the designated detention rooms in the Hong-Kong Macau Ferry Terminal, China Ferry Terminal, Kai Tak Cruise Terminal, and Hong Kong-Zhuhai-Macao Bridge Hong Kong Port.¹⁰⁴

Many NGOs have criticised conditions at detention facilities, including mistreatment and abuse by detention centre staff, insufficient food and medical provisions, and poor hygiene conditions.¹⁰⁵

6.a Castle Peak Bay Detention Centre (CIC)

Capacity	500
Average daily population	261 (2022) ¹⁰⁶
Categories of detainees	Adult Males Adult Females
Detainees’ top 5 nationalities	Mainland China, Indonesia, Vietnam, India, and the Philippines
Number of adult male detainees admitted	1,467 (2022) ¹⁰⁷
Number of adult female detainees admitted	1,326 (2022) ¹⁰⁸
Have deaths been reported in the facility?	Yes
Have cases of suicide and/or self-harm been reported in the facility?	Yes
Have concerns been raised regarding conditions in the facility?	Yes

¹⁰³ Immigration Detention in Hong Kong, “Where Can Immigration Detainees be Held?” <https://immigrationdetentionhk.net/en/>

¹⁰⁴ Immigration Detention in Hong Kong, “Where Can Immigration Detainees be Held?” <https://immigrationdetentionhk.net/en/>

¹⁰⁵ Support Group for Yuli, “Indonesian Worker Detained for 28 Days for Writing About Hong Kong SAR Protests in the Name of Immigration Measures, HKSAR Government Politically Suppress the Worker Writer,” 1 December 2019, https://drive.google.com/file/d/0B_U-p9vd9YEZa01RTUoydG1ZQ3VUNzhiNmVqeEpiSm8wODEw/edit

¹⁰⁶ Immigration Detention in Hong Kong, “Data Visualizations – Average Daily Detainee Population in CIC (2010-2022),” <https://immigrationdetentionhk.net/en/data-viz/#avepopcic>

¹⁰⁷ Immigration Detention in Hong Kong, “Data Visualizations – Yearly Admissions Into Castle Peak Bay Immigration Centre by Gender,” <https://immigrationdetentionhk.net/en/data-viz/#cic-gender-yearly>

¹⁰⁸ Immigration Detention in Hong Kong, “Data Visualizations – Yearly Admissions Into Castle Peak Bay Immigration Centre by Gender,” <https://immigrationdetentionhk.net/en/data-viz/#cic-gender-yearly>

Castle Peak Bay Detention Centre (CIC) is located in Tuen Mun. With capacity for 500 detainees, it is the largest dedicated immigration detention facility in Hong Kong SAR.¹⁰⁹ The centre is managed by the Immigration Department (ImmD) and holds adult immigration detainees—official data suggests that detainees held at CIC in 2022 were largely in their thirties and forties. Between 2019 and 2022, the majority of detainees in the facility were non-*refoulement* claimants.¹¹⁰

The centre features a “day room” and gender-segregated detainee quarters. In a now-deleted documentary on immigration detention by Hong Kong’s public broadcaster Radio Television Hong Kong, former detainees and civil society advocates recounted anecdotal experience of a “padded room” (isolation room). The padded room is reserved for detainees purportedly as a last resort, and detainees recounted being held in the room without clothing and in adult diapers.¹¹¹ (A 2022 government policy document states that solitary confinement acts “as the punishment for indiscipline acts,”¹¹² and in 2022, changes to immigration policy increased the maximum length of solitary confinement from 7 days to 28 days.) Since 2020, medical services have been contracted out to New Town Medical Group, who provide one male medical officer (see: **6.f Privatisation and Outsourcing** below). Emergency medical care is handled by public hospitals.

Detainees are permitted to receive one “social visit” per day—from family and friends. A maximum of two visitors are permitted for each visit (including infants and children) and visits cannot exceed 15 minutes.¹¹³ Detainees are also permitted to make calls once a week, although they are monitored and supervised. Local calls are free of charge and can last for up to five minutes. International calls require pre-paid call cards at the detainee’s own expense.¹¹⁴ Visits from lawyers and legal advisers are considered official visits and supervised under a separate set of rules. Legal advisers visiting CIC should “should be able to speak with the visitee “in the presence, but out of the hearing” of an officer.”¹¹⁵

Conditions in the centre have repeatedly been criticised, with observers highlighting excessive use of force and solitary confinement in the centre, amongst other concerns. In 2020 for example, lawmakers who visited CIC criticised the lack of space for activities, lack

¹⁰⁹ Hong Kong SAR Government, “LCQ19: Handling of Non-Refoulement Claims,” 7 February 2018, <https://www.info.gov.hk/gia/general/201802/07/P2018020700732.htm?fontSize=1>; Hong Kong SAR Government, “LCQ19: Handling of Non-Refoulement Claims,” 7 February 2018, <https://www.info.gov.hk/gia/general/201802/07/P2018020700732.htm?fontSize=1>

¹¹⁰ Official data available is immigration status of detainees held on specific dates (specifically, the end of month date) and thus not a generalised figure (such as of yearly admissions). As of Dec 2023, there are no publicly available statistics on yearly admissions broken down by immigration status. <https://immigrationdetentionhk.net/en/data-viz/#cic-imm-status-end-month>

¹¹¹ The documentary was produced in 2020 but has since been removed from RTHK’s official platforms. As of Dec 2023, a copy of the documentary can be found at this link: https://www.youtube.com/watch?v=Nu4jfv1-qJw&ab_channel=RTHKbackup

¹¹² Hong Kong SAR Government, “Legislative Council Panel on Security – Enhancing the Handling of Non-Refoulement Claims,” <https://www.legco.gov.hk/yr2022/english/panels/se/papers/se20221206cb2-968-2-e.pdf>

¹¹³ Immigration Detention in Hong Kong, “Guidebook for Family Members and Friends of Immigration Detainees,” <https://immigrationdetentionhk.net/en/guidebook/>

¹¹⁴ Immigration Detention in Hong Kong, “Guidebook for Family Members and Friends of Immigration Detainees,” <https://immigrationdetentionhk.net/en/guidebook/>

¹¹⁵ Immigration Detention in Hong Kong, “Guidebook for Family Members and Friends of Immigration Detainees,” <https://immigrationdetentionhk.net/en/guidebook/>

of natural light, and overcrowding; and described conditions in the centre as generally substandard and “miserable.”¹¹⁶

IN FOCUS: Castle Peak Bay Detention Centre During the COVID-19 Pandemic

During the COVID-19 pandemic, observers highlighted poor hygiene conditions and inadequate food provisions (including a lack of halal meals for Muslim detainees) in Castle Peak Bay Detention Centre (CIC).¹¹⁷

On 20 June 2020, more than 20 detainees from India, Pakistan, and various African countries launched a hunger strike in protest over their long-term detention at the facility. At its peak, there were 28 participants in the hunger strike: four detainees were released and two hospitalised.¹¹⁸ Upon release from hospital, one person reported being physically abused by detention centre staff. Of those participating in the action, some had been detained for nearly two years, and six had been detained for more than one year.¹¹⁹ The advocacy organisation CIC Detainees’ Concern Group reported that the hunger strikers had been placed in separate rooms for observation, but that they had not been provided with any medical assistance—in spite of some detainees’ pre-existing conditions. For example, one striker who had a tumour in his left arm was denied access to medical assistance.

In response, the Hong Kong SAR Government stated that the claims that detainees were refusing to eat were “completely untrue” and that allegations that there were unsatisfactory hygiene conditions in CIC were “unfounded.” It claimed that reports of the hunger strikes failed to take into account the fact that each of the detainees was either an “illegal immigrant or an overstayer” and that many of them “had a history of absconding or convictions of serious criminal offences.” It also “strongly condemned anybody making one-sided and unfounded allegations against the department without concrete facts, with intent to interfere with the discharge of its duties and coerce it into releasing the people concerned.”¹²⁰

Previously, the Government has stated that CIC staff are provided with “training tailor-made to ensure that they are capable of coping with any emergency situation that might happen... including resistance control, escort technique, the use of anti-riot equipment, fire drill, scenario training, etc.”

¹¹⁶ Stand News, “Violent Strip Search, Denied Medication - Former Detainees Speak Out against Abuse in Castle Peak Bay Immigration Centre,” 13 July 2020, <https://www.thestandnews.com/society/violent-strip-search-denied-medication-former-detainees-speak-out-against-abuse-in-castle-peak-bay-immigration-centre/>

¹¹⁷ L. Westbook, “Coronavirus: Hong Kong SAR Lawyers, Lawmakers Flag Hygiene Issues at Detention Centre, But Immigration Says Health Measures in Place,” *South China Morning Post*, 26 April 2020, <https://www.scmp.com/news/hong-kong/health-environment/article/3081544/coronavirus-hong-kong-lawyers-lawmakers-flag>

¹¹⁸ Grassmedia Action, “In Week Four of Hunger Strike, Migrant Justice and Sex Work Organizers Rally Around Immigration Detainees,” *Lausan*, 23 July 2020, <https://lausan.hk/2020/week-four-of-hunger-strike-immigration-detainees/>

¹¹⁹ Grassmedia Action, “In Week Four of Hunger Strike, Migrant Justice and Sex Work Organizers Rally Around Immigration Detainees,” *Lausan*, 23 July 2020, <https://lausan.hk/2020/week-four-of-hunger-strike-immigration-detainees/>

¹²⁰ Hong Kong SAR Government, “Online Reports Clarified,” 12 August 2020, https://www.news.gov.hk/eng/2020/08/20200812/20200812_224712_613.html

In 2022, Justices of the Peace (JPs) made 15 visits to CIC.¹²¹ While they provided overall “Satisfactory” gradings for the CIC’s facilities and services, they made various suggestions for improvements including requesting that the Department of Health provide medical officers for services at CIC, increasing the quota for telephone calls per week, holding interviews with case officers within one week upon request, “simplifying the repatriation policies so that detention could be shortened as much as possible,” and “enhancing communication with detainees so as to minimise grievances arising from uncertainty over departure date.”¹²² These suggestions also applied to Ma Tau Kok Detention Centre (MTKDC).

There have been numerous complaints of mistreatment and substandard detention conditions at CIC, including cases of strip-searches resulting in physical injuries, inadequate/lack of provision of medical care, and verbal abuse. According to data received from the ImmD by researchers at the Chinese University of Hong Kong’s Faculty of Law, there were 1,918 strip searches involving the removal of clothes and underwear at the CIC between January and October 2021, and 1,484 strip searches involving the removal of clothes *but not underwear*—amounting a total of 3,402 searches during that period.¹²³

In 2022, the government also introduced concerning changes to its immigration policy—including by allowing immigration officers to conduct intimate body cavity searches at CIC.¹²⁴ Statistics on the use of such searches are not currently publicly available.

Figure v: Strip Searches at the CIC, 2017 - 2021¹²⁵

YEAR	STRIP SEARCHES INVOLVING THE REMOVAL OF CLOTHES	STRIP SEARCHES INVOLVING THE REMOVAL OF CLOTHES AND UNDERWEAR	TOTAL NUMBER OF STRIP SEARCHES (BOTH CATEGORIES)
2021 (Jan - October)	1,484	1,918	3,402
2020	2,031	3,326	5,357
2019	1,121	3,200	4,321
2018	1,170	3,959	5,129
2017	1,546	4,432	5,978

In July 2017, reports indicated that an asylum seeker from North Africa had suffered multiple assaults in CIC. He was surrounded by immigration officers and pinned down, and subsequently stripped naked and thrown in a cell. He was given no food and only one glass

¹²¹ Hong Kong SAR Government, “2022 Annual Report on Justices of the Peace Visits,” https://www.info.gov.hk/jp/files/anreport22_eng.pdf

¹²² Hong Kong SAR Government, “2022 Annual Report on Justices of the Peace Visits,” https://www.info.gov.hk/jp/files/anreport22_eng.pdf

¹²³ Immigration Detention in Hong Kong, “Data Visualizations,” <https://immigrationdetentionhk.net/en/data-viz-detention-conditions/#strip-searches-location>

¹²⁴ S. Chopra, “Hong Kong Should Rethink Rules That Threaten to Make Immigration Detention Feel Like Jail,” *South China Morning Post*, 20 December 2022, <https://www.scmp.com/comment/opinion/article/3203710/hong-kong-should-rethink-rules-threaten-make-immigration-detention-feel-jail>

¹²⁵ Immigration Detention in Hong Kong, “Data Visualizations,” <https://immigrationdetentionhk.net/en/data-viz-detention-conditions/#strip-searches-location>

of water, and forced to urinate in one diaper, for 24 hours. He was not allowed to talk, see people, exercise, or smoke. One lawyer said that the asylum seeker was repeatedly called a “terrorist” by immigration officers. She said: “He is frequently branded a terrorist and told sometimes they have a top secret file on him. They suggested once that they would drop him in [Islamic State] territory.”¹²⁶

Several deaths have been reported in the facility. In Dec 2021, a 46-year-old Indian male detainee,¹²⁷ and in May 2023 a 48-year-old Bangladeshi male detainee, were found unconscious and subsequently died in hospital.¹²⁸ There have also been reports of suicide by detainees.¹²⁹ In February 2022, a 36-year-old woman from Mainland China died after committing suicide in her cell.¹³⁰ Cases of self-harm have also been recorded in the centre. According to the Immigration Department, between Sept to Dec 2021, there was one recorded case of self-harm at CIC. In the year of 2022, there were six recorded cases of self-harm.¹³¹

6.b Ma Tau Kok Detention Centre (MTKDC)

Based in the first and second floor of the Ma Tau Kok Government Offices, MTKDC can detain up to 87 persons at any one time. However, as of January 2024 it was reported that the centre would be relocated¹³² to the New Immigration Headquarters, slated to open in phases throughout 2024.¹³³

During visits to the centre in 2019, JPs noted that they received 0 complaints and 0 requests/enquires at the centre. They provided two overall ‘Satisfactory’ gradings for the Centre’s facilities, and two ‘Satisfactory’ gradings for the Centre’s services.

However, concerns have otherwise been raised regarding conditions in the centre—particularly regarding the fact that detainees are often held for extended periods. For example, while official government data between June 2017 and June 2020 show that zero

¹²⁶ R. Carvalho, “Hong Kong SAR Rights Lawyers Allege Pattern of Mistreatment in Immigration Detention Centre,” *South China Morning Post*, 12 July 2017, <https://www.scmp.com/news/hong-kong/law-crime/article/2102393/hong-kong-rights-lawyers-allege-pattern-mistreatment>

¹²⁷ Immigration Department, “Unconscious detainee dies in hospital,” 21 December 2021, <https://www.immd.gov.hk/eng/press/press-releases/20211221.html>

¹²⁸ The Government of the Hong Kong Special Administrative Region Press Releases, “Unconscious detainee dies in hospital, 27 May 2023, <https://www.info.gov.hk/gia/general/202305/27/P2023052700727.htm>

¹²⁹ Stand News, “Violent Strip Search, Denied Medication - Former Detainees Speak Out against Abuse in Castle Peak Bay Immigration Centre,” 13 July 2020, <https://www.thestandnews.com/society/violent-strip-search-denied-medication-former-detainees-speak-out-against-abuse-in-castle-peak-bay-immigration-centre/>

¹³⁰ Immigration Department, “Person Under Detention Commits Suicide at Castle Peak Bay Immigration Centre,” 24 February 2022, <https://www.immd.gov.hk/eng/press/press-releases/20220224.html>

¹³¹ Access Info, “Incidents of Self-Harm at CIC and MTKDC (2021-2022),” https://accessinfo.hk/en/request/incidents_of_self_harm_at_cic_an

¹³² Hong Kong SAR Government, “Immigration Headquarters in Tseung Kwan O, Construction Progress Report,” https://www.districtcouncils.gov.hk/sk/doc/2020_2023/en/dc_meetings_doc/23404/SK_2023_054_EN.pdf

¹³³ Hong Kong SAR Government, “Immigration Headquarters in Tseung Kwan O, Construction Progress Report,” https://www.districtcouncils.gov.hk/sk/doc/2020_2023/en/dc_meetings_doc/23404/SK_2023_054_EN.pdf

percent of detainees were held for over 15 days, the proportion rose to 60 percent during the COVID-19 pandemic.¹³⁴

In July 2019, a Vietnamese woman committed suicide by hanging herself in Ma Tau Kok Detention Centre. She was found by Immigration Department (ImmD) officers during a routine inspection and immediately sent to the hospital for resuscitation. She was later certified dead. The official ImmD press statement stated that she was an “illegal immigrant who was detained pending repatriation to her home country.”¹³⁵

During the inquest, officials repeatedly emphasised that MTKDC is a short-term detention facility where persons are usually held for up to 48 hours. While the facility presents as short-term, it has in recent years functioned more as a medium-term detention facility, with an increased number of detainees being held for two weeks or more.¹³⁶

According to the ImmD, between Sept to Dec 2021, there was one recorded case of self-harm at MTKDC. In 2022, there were four recorded cases of self-harm.¹³⁷

6.c Tai Tam Gap Correctional Institution (TTGCI)

Originally opened in 1980, Tai Tam Gap was re-purposed as a dedicated immigration detention facility in May 2021, and detains adult males in conditions that detainees have described as akin to conditions for animals.¹³⁸

When the facility was opened, authorities stated that the detainee population would consist only of non-*refoulement* claimants.¹³⁹ Since then, statements and press releases on TTGCI have changed their language, thus suggesting the detainee population is no longer exclusively non-*refoulement* claimants.

While the facility is managed by the Correctional Services Department, detainees are confined under the Immigration Ordinance, not the Prisons Ordinance (Cap. 234).¹⁴⁰ In comparison to detainees at the CIC who are governed by the Immigration (Treatment of Detainees) Order (Cap. 115E), detainees held at TTGCI are governed under the Prison Rules (Cap. 234A). Researchers have raised concerns that the increasing application of criminal justice regulations on immigration detainees suggests an increasing securitisation of immigration detention.

¹³⁴ Immigration Detention in Hong Kong, “Data Visualizations – How Long are MTK Detainees Held For? (2017 – August 2023),” <https://immigrationdetentionhk.net/data-viz-length-detention/#length-det-mtk-percentage-comparison>

¹³⁵ Immigration Department, “Person Under Detention Committed Suicide,” 7 July 2019, <https://www.immD.gov.hk/eng/press/press-releases/20190707.html>

¹³⁶ Immigration Detention in Hong Kong, “Data Visualizations – How Long are MTK Detainees Held For? (2017 – August 2023),” <https://immigrationdetentionhk.net/data-viz-length-detention/#length-det-mtk-percentage-comparison>

¹³⁷ Access Info, “Incidents of Self-Harm at CIC and MTKDC (2021- 2022),” https://accessinfo.hk/en/request/incidents_of_self_harm_at_cic_an

¹³⁸ Inmedia.hk, “大潭峽智慧監獄高清全天候監控 羈留者：我的生活就像動物”(Chinese only), <http://tinyurl.com/3zvykmbc>

¹³⁹ The Standard, “Tai Tam Prison to Reopen for Asylum Seekers,” 20 January 2021, <https://www.thestandard.com.hk/section-news/section/4/226731/Tai-Tam-prison-to-reopen-for-asylum-seekers>

¹⁴⁰ “修例強化免遣返聲請措施 增大潭峽懲教所作羈留設施 (Chinese only)” (19 January 2021). Available at: https://www.sb.gov.hk/chi/articles/articles_2021_01_19.html

In the first half year since TTGCI was reopened as an immigration detention centre in May 2021, the Correctional Services Department brought in riot police to “combat illicit activities of detainees” in June, July, and August. According to the authorities’ press release, these “illicit activities” included “provoke[ing] the officers” about a television program, starting a fight in the common area, and “refus[ing] to obey orders.” Detainees went on hunger strike in support of their fellow detainees. Each time, Correctional Services Department called in riot officers from its Regional Response Unit. Some detainees were punished with solitary confinement.¹⁴¹

With capacity for 160 detainees, between January 2022 and January 2023 the centre’s average daily detainee population ranged between 87 and 131 immigration detainees.¹⁴² Detainees are entitled to receive one visit per day, with one visitor per visit. These can last for up to 15 minutes. Detainees can make calls once a week for 5 minutes.¹⁴³ There is a day room for detainees to watch television or read newspapers. Outdoor activity is permitted only for an hour a day.¹⁴⁴

Critically, TTGCI debuted as Hong Kong’s first “smart prison,” featuring increased institutional security via technological features, such as biometric tracking of detainees. In 2021, Stand News (a now defunct media outlet), published an extensive report concerning detention conditions within TTGCI. These included solitary confinement as a punishment, CCTV cameras located within bathrooms and bedrooms, staff mocking detainees, and intense detainee population control. In response to this report, the government stated that these “unfounded reports by the Stand News” were “smearing and demonising the “Smart Prison” management model.”¹⁴⁵

The smart prison plan includes patrol robots and surveillance cameras that automatically detect “abnormal behaviours” including “fighting and suicide by hanging,”¹⁴⁶ wristbands that monitor detainee heart and respiratory rates, movements, and location.¹⁴⁷ Facial recognition software tracks detainees’ location, and sensors under mattresses monitor heartbeat.¹⁴⁸

¹⁴¹ Hong Kong Free Press, “The Never-Ending Sentence of Vo Van Hung, The Vietnamese Refugee Stuck Behind Bars in Hong Kong,” 24 September 2021, <https://hongkongfp.com/2021/09/25/the-never-ending-sentence-of-vo-van-hung-the-vietnamese-refugee-stuck-behind-bars-in-hong-kong/>

¹⁴² Immigration Detention in Hong Kong, “Data Visualizations,” <https://immigrationdetentionhk.net/en/data-viz-ttgc/#avepopttgc>

¹⁴³ Immigration Detention in Hong Kong, “Guidebook for Family Members and Friends of Immigration Detainees,” <https://immigrationdetentionhk.net/en/guidebook/>

¹⁴⁴ Hong Kong Free Press, “The Never-Ending Sentence of Vo Van Hung, the Vietnamese Refugee Stuck Behind Bars in Hong Kong,” 25 September 2021, <https://hongkongfp.com/2021/09/25/the-never-ending-sentence-of-vo-van-hung-the-vietnamese-refugee-stuck-behind-bars-in-hong-kong/>

¹⁴⁵ Hong Kong SAR Government, “CSD’s Statement in Response to Individual Media’s Unfounded Reports on Tai Tam Gap Correctional Institution,” 25 November 2021, <https://www.info.gov.hk/gia/general/202111/25/P2021112500482.htm>

¹⁴⁶ Correctional Services Department, “Security and Monitoring System,” https://www.csd.gov.hk/emuseum/en/security_monitoring_system.html

¹⁴⁷ Correctional Services Department, “Operations and Management System,” https://www.csd.gov.hk/emuseum/en/operation_management_system.html

¹⁴⁸ The Standard, “‘Smart’ Prisons to Track Inmates’ Every Move,” 12 July 2023, <https://www.thestandard.com.hk/section-news/section/4/254155/Smart-prisons-to-track-inmates-every-move>

The smart prison initiative has been presented in the press as a new generation of prisons to enhance the safety of the city.¹⁴⁹ Press releases from TTGCI's opening frame the introduction of smart prisons as a solution to the Correctional Services Department's challenges as it faces "a growing number of people being remanded in correctional institutions for riot-related offences."¹⁵⁰ Notably, there is no mention that TTGCI is not a prison and that the detainees held there are not persons detained due to the conviction of riot-related offences.¹⁵¹

Moreover, while the government reported that TTGCI holds detainees who have criminal convictions, in reality they have all completed their sentences. Advocates have therefore raised the issue of "double punishment." As one 2021 government press release stated: "To maintain public law and order, the CSD is currently supervising claimants who have committed serious crimes, pose security risks and are at risk of absconding or reoffending at TGCI in accordance with the relevant legislations to ensure that they do not pose any threat to the public."¹⁵²

6.d Nei Kwu Correctional Institution (NKCI)

The newest addition to Hong Kong's immigration detention sites, NKCI was originally established as a minimum-security institution in 2002 before being repurposed into an immigration detention facility in May 2023. Holding female adults under the provisions of the Immigration Ordinance, the centre falls under the authority of the Correctional Services Department.

Similar to TTGCI, immigration detainees held at NKCI are governed under the Prison Rules (Cap. 234A) and the facility is managed by the Correctional Services Department. Advocates have noted that the opening of NKCI signals the continued trend of increased securitisation of the immigration detention framework.

Children can be detained in the facility, in line with the Prison Rules (Cap. 234A) which provides that children under three can be held with their guardians. After they turn three years of age, they are kept under the care of a relative (who is outside detention) or referred to the Social Welfare Department.¹⁵³

From a geographical perspective, NKCI is more isolated than other immigration detention centres. Located on Hei Ling Chau island, those wishing to reach the centre need to take two ferries (with a transfer at Peng Chau Island). Though the ferries run every hour or so, the cumulative time needed for a round trip is considerable. The added time and cost of visiting could be challenging for visitors, especially for family members of non-*refoulement* claimants living on an extremely limited stipend.

¹⁴⁹ Kontinentalist, "Stuck in the System, Immigration Detention in Hong Kong," 4 August 2022, <https://kontinentalist.com/stories/detainees-held-at-immigration-detention-centres-in-hong-kong>

¹⁵⁰ Hong Kong SAR Government, "S for S Inspects Tai Tam Gap Correctional Institution," 22 July 2021, <https://www.info.gov.hk/gia/general/202107/22/P2021072200517.htm>

¹⁵¹ Hong Kong SAR Government, "S for S Inspects Tai Tam Gap Correctional Institution," 22 July 2021, <https://www.info.gov.hk/gia/general/202107/22/P2021072200517.htm>

¹⁵² Hong Kong SAR Government, "CSD's Statement in Response to Individual Media's Unfounded Reports on Tai Tam Gap Correctional Institution," 25 November 2021, <https://www.info.gov.hk/gia/general/202111/25/P2021112500482.htm>

¹⁵³ Access Info, "Policy Regarding Immigration Detainees at NKCI With Children," https://accessinfo.hk/en/request/policy_regarding_immigration_det

6.e Tuen Mun Children and Juvenile Home (TMCJH)

Tuen Mun Children and Juvenile Home (TMCJH) is a facility that holds both local and migrant children. TMCJH is managed by the Social Welfare Department and is listed under the Immigration (Places of Detention) Order (Cap. 115B) as a place of detention for minors.

The Social Welfare Department describes TMCJH as “providing temporary custody and residential training for children / juveniles and young offenders.” TMCJH has multiple purposes and holds children under six ordinances, including the Immigration Ordinance.¹⁵⁴

Official statistics provided by the Social Welfare Department to researchers at the Chinese University of Hong Kong show that between 2011 and 2020, between 7 to 35 migrant children were admitted per year for migration-related reasons.¹⁵⁵ Between 2017 and 2021, all but one of the migrant children who were admitted to TMCJH were between the ages of 14 and 18. One migrant child was under the age of 10 and was admitted to TMCJH in 2017. No children between the ages of 10 and 14 were admitted to TMCJH during this time period.¹⁵⁶

6.f Regulation of Detention Conditions and Regimes

As well as employing dedicated immigration detention facilities, Hong Kong SAR’s legislation allows for the detention of non-nationals in police stations, prisons, custodial wards of hospitals, and children’s and juvenile homes (Immigration (Places of Detention) Order). Section 13H(1) of the Immigration Ordinance also provides that the Secretary for Security may designate any place as a detention centre for persons authorised to be detained there under Section 13D.

According to a response from the Director of Immigration to an Access To Information request submitted by the Justice Centre Hong Kong (JCHK) in 2018, the Immigration Department (ImmD) will not detain a non-*refoulement* claimant in a prison while they await a final determination on their claim.¹⁵⁷

The Secretary for Security may issue rules pertaining to the treatment and control of conduct of detainees; the management, security, and the maintenance of order, discipline, cleanliness, and hygiene; and the punishment of offenders (Section 13H(5), Immigration Ordinance). This may include penalties for detainees who violate the rules, such as fines of 500 HKD (approximately 65 USD) and isolation for a period of 28 days; the separate confinement of persons and the circumstances under which a person may be so confined, the searching of detainees and visitors and detention, the payment and the disposal of monetary penalties in any manner whatsoever, and the appointment of detention centre visitors and the duties of such detention centre visitors (Section 13H(5), Immigration Ordinance).

¹⁵⁴Social Welfare Department, “Tuen Mun Children and Juvenile Home,” https://www.swd.gov.hk/en/pubsvc/offdr/cat_residentialb/crhomes/

¹⁵⁵ Immigration Detention in Hong Kong, “Data Visualizations,” <https://immigrationdetentionhk.net/en/data-viz-tmcjh/#yrlly-tmcjh>

¹⁵⁶ Access Info, “Demographic Information of Migrant Children Held at TMCJH,” https://accessinfo.hk/en/request/demographic_information_of_migra

¹⁵⁷ Immigration Department, “Immigration Detention at Prisons,” *Civic Sight*, 20 June 2018, https://accessinfo.hk/en/request/immigration_detention_at_prisons

IN FOCUS: The Immigration (Treatment of Detainees) Order

Schedule 1 of the Order includes paragraphs concerning the duties of immigration officers, conditions of searches, and the keeping of records regarding individual detainees. It states that detainees must be afforded reasonable opportunity to communicate with a legal adviser (**paragraph 1B**).

It also provides that detainees must be provided with adequate medical attention if they complain of or appear to be suffering from sickness or injury, and that a detainee may be escorted elsewhere to receive medical attention if a medical officer advises it or if no services can be provided at the centre (**paragraph 6A**).

Paragraph 6B states that “reasonable arrangements must be made for the comfort of detainees,” which includes provisions allowing for detainees to be seated while being questioned, to receive clothing items from outside, and to be provided with a bed and reasonable bedding if they will need to spend a night in the centre.

The Order further provides that detainees must be provided with adequate food and drinking water (**paragraph 6C**) and adequate facilities and the opportunity to wash, shower, shave, relieve themselves, and take a reasonable amount of exercise (**paragraph 6D**). Detainees may also send and receive letters (**paragraph 8**) and receive visits (**paragraph 9**), subject to the approval of the Superintendent of the Centre (visits by Justices of the Peace are not subject to this requirement). Female detainees must be kept separate from male detainees, and female detainees must be guarded by a female officer (**paragraph 12A**).

In addition, Schedule 1 of the Immigration (Treatment of Detainees) Order includes provisions regarding the use of handcuffs (**paragraph 12C**), conditions for solitary confinement (**paragraph 13**), and conditions under which “physical and [mechanical] restraint” may be used (**paragraph 14**). **Paragraph 15** provides that a detainee may complain to the Superintendent or any authorised officer regarding the treatment received by them or any other detainee in the Centre, to which the Superintendent shall reply as soon as practicable.

More information about regulations governing treatment of detainees is also available in the Operational Manual for CIC¹⁵⁸ and Operational Manual for MTKDC.¹⁵⁹

A notice to detainees indicating some of their rights within CIC is also to be placed in a conspicuous position in every room used for detention (paragraph 17). It states that detainees may ask to be released on recognisance. It also states that “[p]rovided that no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice you may communicate and consult with a legal adviser.” A similar notice is provided in MTKDC (paragraph 17, Immigration (Treatment of Detainees) Order (Cap. 331C)).¹⁶⁰

¹⁵⁸ Immigration Department, “Castle Peak Bay Immigration Centre Operational Manual (Treatment of Detainees),” <http://tinyurl.com/mv9sfd4c>

¹⁵⁹ Immigration Department, “Ma Tau Kok Detention Centre operational Manual (Treatment of Detainees),” <http://tinyurl.com/39xeeee8u>

¹⁶⁰ Hong Kong SAR Government, “Immigration Service (Treatment of Detained Persons) Order,” <https://www.elegislation.gov.hk/hk/cap331C>

As of 2021, the Government added the Immigration Service to the Weapons Ordinance (Cap. 217) and the Firearms and Ammunition Ordinance (Cap. 238), allowing immigration officers to carry weapons.¹⁶¹ The Government stated this was to “provide more effective operational support to detention facilities.”¹⁶²

6.f Privatisation and Outsourcing

Management of immigration detention centres in Hong Kong SAR is not privatised. However, some services are “contracted out,” including medical, kitchen, and laundry services.¹⁶³

According to a 2020 documentary on Hong Kong’s immigration detention system by Hong Kong’s public broadcaster RTHK, medical services have been contracted to New Town Medical Group. A contract of three years is worth HKD\$29,000,000. The services provided is mainly a male medical officer on daytime duty.¹⁶⁴ (For more on health care, see “6.g Health Care” below.)

The law also stipulates that operators of vessels, including ships and aircraft, can be obliged to carry out some enforcement roles. Under s.24 of the Immigration Ordinance, where a person who has been refused permission to land is to be removed from Hong Kong SAR, an immigration officer may give directions to the captain of the ship or aircraft in which that person arrived in Hong Kong SAR requiring him to remove that person from the territory in that ship or aircraft. The expenses of such removal shall be met by the owners of the ship or aircraft.

6.g Health Care

While some health care services are provided within some immigration detention facilities, not all facilities have services available. Ma Tau Kok Detention Centre (MTKDC) does not provide in-house medical services and detainees are instead serviced by public hospitals. Healthcare at Castle Peak Bay (CIC) is outsourced to a medical organisation (New Town Medical Group), and medical officers working in the centre are reportedly “fully registered doctors” under the Medical Council of Hong Kong. The duty medical officer can refer detainees to public hospitals for further examination and treatment if deemed necessary.¹⁶⁵

Mental health care services, however, are not provided within the immigration detention estate. Indeed, an inquest into the suicide of a Vietnamese woman in 2019 revealed extremely limited understanding of mental health amongst the immigration detention service providers.¹⁶⁶

¹⁶¹ Hong Kong SAR Government, “Cap. 217 Weapons Ordinance,” <https://www.elegislation.gov.hk/hk/cap217>

¹⁶² Hong Kong SAR Government, “LCQ19: Handling of Non-Refoulement Claims,” 7 February 2018, <https://www.info.gov.hk/gia/general/201802/07/P2018020700732.htm?fontSize=1>

¹⁶³ Hong Kong SAR Government, “LCQ19: Handling of Non-Refoulement Claims,” 7 February 2018, <https://www.info.gov.hk/gia/general/201802/07/P2018020700732.htm?fontSize=1>

¹⁶⁴ The documentary was produced in 2020 but has since been removed from RTHK’s official platforms. As of Dec 2023, a copy of the documentary can be found at this link: https://www.youtube.com/watch?v=Nu4jfv1-qJw&ab_channel=RTHKbackup

¹⁶⁵ Immigration Department, “Response to Untrue Report on Castle Peak Bay Immigration Centre by Individual Media Organisation,” 17 December 2020, <https://www.immd.gov.hk/eng/press/press-releases/20201217.html>

¹⁶⁶ The Witness, “越南籍非法入境女子 2019 年入境處羈留中心長褲勒頸亡 陪審團裁死於自殺,” 8 September 2022, <http://tinyurl.com/k9r3ucuc>

Anecdotal reports have highlighted that transgender detainees who are already on a regular routine of gender-affirming hormone treatment are not provided access to hormones. Furthermore, there are reports of transgender detainees being placed in solitary cells purportedly for their own protection.

Anecdotal reports have also revealed instances where women in immigration detention are only provided one sanitary pad a day for menstruation. There is no public policy on feminine hygiene provision for detainees.

Official government data regarding the number of emergency ambulances sent to CIC, MTKDC, and Tai Tam Gap Correctional Institution (TTGCI) in 2021 and 2022 show that the number sent to TTGCI far outweighs the number sent to CIC and MTKDC. This is despite TTGCI being a relatively new centre opened in 2021, and with a capacity (160) much lower than CIC (500).¹⁶⁷ Notably, contrary to the detailed breakdowns of types of emergencies requiring ambulances at CIC and MTKDC, a majority of ambulances were sent to TTGCI for “Unknown” reasons (69 out of 73 instances in 2021, and 129 out of 136 instances in 2022, were for unknown reasons).¹⁶⁸

During the COVID-19 pandemic, the government was criticised for failing to adopt policies to protect immigration detainees and other vulnerable non-nationals, despite authorities being hailed for their handling of the crisis and their ability to keep case numbers low within the territory’s general population.¹⁶⁹

Early on in the pandemic, human rights lawyers and lawmakers raised concerns about conditions in CIC—including reports of “rats in the premises, malfunctioning toilets, a lack of bleach for disinfection, no access or insufficient access to soap and hand sanitisers”—and the subsequent threat posed to the detainee population. Karen McClellan, a lawyer at the human rights law firm Daly & Associates, said she was very concerned about the virus spreading in immigration detention centres: “This is an area that we’re very concerned is falling through the cracks, putting an already vulnerable group even more at risk.” Lawmaker Dr. Fernando Cheung Chiu-hung also raised concerns about hygiene after visiting the centre. He reported seeing detainees in a room using ladles to scoop water from a plastic bucket to drink. He also observed that detainees spent most of their time in rooms the size of a regular classroom, with around 40 to 60 people in each room. In response to these concerns, the government stated that it had taken measures to prevent and control the virus in CIC.¹⁷⁰

¹⁶⁷ Immigration Detention in Hong Kong, “Data Visualizations – Why Were Emergency Ambulances Sent to Immigration Detention Facilities?” <https://immigrationdetentionhk.net/en/data-viz-detention-conditions/#emergency-ambulances-type>

¹⁶⁸ Immigration Detention in Hong Kong, “Data Visualizations – Why Were Emergency Ambulances Sent to Immigration Detention Facilities?” <https://immigrationdetentionhk.net/en/data-viz-detention-conditions/#emergency-ambulances-type>

¹⁶⁹ Time, “What We Can Learn from Singapore, Taiwan and Hong Kong About Handling Coronavirus,” 13 March 2020, <https://time.com/5802293/coronavirus-covid19-singapore-hong-kong-taiwan/>; BBC, “Coronavirus: What Could the West Learn From Asia?” 21 March 2020, <https://www.bbc.co.uk/news/world-asia-51970379>

¹⁷⁰ Hong Kong SAR Government, “LCQ12: Castle Peak Bay Immigration Centre,” 17 June 2020, <https://www.info.gov.hk/gia/general/202006/17/P2020061700461.htm>

On top of this, observers highlighted the lack of protocol to identify persons unsuitable for detention—resulting in persons susceptible to the virus, such as those who were immunocompromised, not receiving the medical care that they needed.¹⁷¹

¹⁷¹ S. Chopra, “Overused, Underexamined? Immigration Detention in Hong Kong,” *Border Criminologies*, 26 April 2021, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2021/04/overused>



7. HUMAN RIGHTS MONITORING

INTERNATIONAL HUMAN RIGHTS TREATY	APPLICABLE TO HONG KONG SAR?
International Covenant on Civil and Political Rights	Yes (1997)
International Covenant on Economic, Social and Cultural Rights	Yes (1997)
Vienna Convention on Consular Relations	Yes (1997)
Convention on the Elimination of Racial Discrimination	Yes (1997)
Convention on the Elimination of All Forms of Discrimination Against Women	Yes (1997)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Yes (1997)
Optional Protocol of the Convention Against Torture	No
Convention Relating to the Status of Stateless Persons	Yes (1997)
Convention on the Rights of the Child	Yes (1997)
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	No
Convention for the Protection of All Persons from Enforced Disappearance	No
Convention on the Rights of Persons with Disabilities	Yes (2008)

Hong Kong is a Special Administrative Region (SAR) of China and does not ratify UN treaties directly. When Hong Kong was a British colony, some treaties signed by the United Kingdom were extended to Hong Kong. Hong Kong was handed over to China in 1997. Since then, if treaties are to be applied to Hong Kong, China would need to extend the treaty to the territory.¹⁷²

China is not a signatory party to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment (OPCAT). As such, OPCAT does not apply to Hong Kong SAR and the territory does not receive visits from the Subcommittee on the Prevention of Torture.¹⁷³ The UN Committee Against Torture has recommended that Hong Kong extend the training on the Istanbul Protocol to all officials involved in the treatment of persons in custody and to introduce a methodology for evaluating the effectiveness of the trainings.¹⁷⁴

¹⁷² United Nations Treaty Collection, “Multilateral Treaties Deposited with the Secretary-General,” <https://treaties.un.org/pages/historicalinfo.aspx#HongKong>

¹⁷³ Research Office Legislative Council Secretariat, “Monitoring of Prison Management in Selected Places,” *Research Office Legislative Council Secretariat*, 26 February 2019. <https://www.legco.gov.hk/research-publications/english/1819rt05-monitoring-of-prison-management-in-selected-places-20190226-e.pdf>

¹⁷⁴ Hong Kong SAR Government, “Legislative Council Panel on Security – An Outline of the Topics in the Fourth Report of the Hong Kong Special Administrative Region Under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment,” <https://www.legco.gov.hk/yr20-21/english/panels/se/papers/secb2-797-1-e.pdf>

China has been called upon by multiple countries including Indonesia, the Philippines, Honduras, Sri Lanka, and El Salvador to accede / ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), and to include Hong Kong and Macao. In response, the Hong Kong Government has stated that the ICRMW is “incompatible” with Hong Kong’s policy that prohibits migrant domestic workers to bring their dependents to the territory and confer residential status. The Government stated that most requirements in the Convention are already met, bar a few, such as the right to choose one’s own residence and the right to choose one’s remunerated activity. The justification provided was that without these exceptions, there would be “significant policy and resource implications on the provision of various public services in overcrowded Hong Kong.”¹⁷⁵

During the 2019 Universal Periodic Review, China was encouraged to sign / ratify the Convention for the Protection of All Persons from Enforced Disappearance by Ukraine, Japan, and France.¹⁷⁶ Issues related to immigration detention have, however, been scrutinised by various international human rights mechanisms, including the UN Committee Against Torture and the UN Committee on the Rights of the Child.

2022, UN Human Rights Committee (CCPR):

““Hong Kong, China, should:

- (a) Avoid the administrative detention of asylum - seekers and migrants, prioritizing non-custodial alternatives and ensuring that detention is used only as a measure of last resort and for the shortest possible period of time, and avoid separating migrant families;*
- (b) Review the Immigration (Amendment) Ordinance 2021 with a view to bringing its immigration policy and legislation in line with international human rights and humanitarian standards and international best practices;*
- (c) Strengthen the procedural safeguards against arbitrary detention, including judicial oversight and individual assessment of asylum - seekers, particularly those in vulnerable situations.”¹⁷⁷*

2016, UN Committee against Torture (CAT):

“The Committee calls on Hong Kong, China to review the non-refoulement claim screening procedure in order to ensure that persons in need of international

¹⁷⁵ Hong Kong SAR Government, “Legislative Council Panel on Constitutional Affairs – The Formal Adoption by the United Nations Human Rights Council of the Report by its Working Group on the Universal Periodic Review on the Third Review of the Hong Kong Special Administrative Region,” <https://www.legco.gov.hk/yr18-19/english/panels/ca/papers/ca20190415cb2-1179-3-e.pdf>

¹⁷⁶ Hong Kong SAR Government, “Legislative Council Panel on Constitutional Affairs – The Formal Adoption by the United Nations Human Rights Council of the Report by its Working Group on the Universal Periodic Review on the Third Review of the Hong Kong Special Administrative Region,” <https://www.legco.gov.hk/yr18-19/english/panels/ca/papers/ca20190415cb2-1179-3-e.pdf>

¹⁷⁷ UN Human Rights Committee (CCPR), “Concluding Observations on the Fourth Periodic Report of Hong Kong, China,” CCPR/C/CHN-HKG/CO/4, 11 November 2014, <https://uhri.ohchr.org/Document/File/20c7a5c7-1f2d-4fe6-a97d-ea48c6288309/8ACFBFD4-8A06-40E3-BA1C-8A8BEEBF9F1E>

protection, including those fleeing indiscriminate violence, are fully protected against refoulement. In particular, Hong Kong, China should:

- (a) Ensure unhindered access to the unified screening mechanism to all individuals wishing to claim protection, irrespective of their immigration status;
- (b) Enhance the fairness and transparency of the screening process by, *inter alia*, ensuring that non-refoulement claims are thoroughly and individually examined; allowing sufficient time for claimants to fully indicate the reasons for their application and to obtain and present crucial evidence, such as their own medical expert evidence; and publishing redacted versions of the decisions of the Torture Claims Appeal Board;
- (c) Develop mechanisms for the early identification of victims of torture, their priority access to the unified screening mechanism and their immediate access to redress;
- (d) Grant an alternative immigration status to refugees and substantiated unified screening mechanism claimants that would allow them to remain legally in Hong Kong, China until the end of the process and facilitate their access to legal work in order to avoid destitution and degrading treatment;
- (e) Consider extending to it the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.¹⁷⁸

2013, UN Committee on the Rights of the Child (CRC):

“The Committee recommends that Hong Kong, China:

- (a) Cease the administrative practice of detaining asylum-seeking and refugee children;
- (b) Ensure that asylum-seeking and refugee children are provided with accessible and adequate support, including special care, protection and adequate guardianship and legal representation;
- (c) Accede to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.¹⁷⁹

¹⁷⁸ UN Committee against Torture (CAT), “Concluding Observations on the Fifth Periodic Report of China with Respect to Hong Kong, China,” CAT/C/CHN-HKG/CO/5, 3 February 2016, <https://uhri.ohchr.org/Document/File/78f5659e-29c8-4fdf-90f6-edac2d5222fb/73802E78-BC68-4AAA-A2FB-4FBE83614174>

¹⁷⁹ UN Committee on the Rights of the Child (CRC), “Concluding Observations on the Combined Third and Fourth Periodic Reports of China, Adopted by the Committee at its Sixty-Fourth Session,” CRC/C/CHN/CO/3-4, 29 October 2013, <https://uhri.ohchr.org/Document/File/6b187fd4-f9c7-425d-9d35-b8ea2c78b23e/817AFA17-D43E-44EC-BE5C-C42ECCCE1542>

IN FOCUS: Global Detention Project and Asia Pacific Refugee Rights Network Recommendations for the UPR

In 2023, the Global Detention Project and the Asia Pacific Refugee Rights Network issued a joint submission concerning Hong Kong as part of the fourth cycle of the UN Universal Periodic Review (UPR) of China (January/February 2024).¹⁸⁰ Among the key recommendations included in the submission were:

:

- *Ensure that immigration detention is only used as a measure of last resort—establishing fair and effective screening processes assessing individual and family vulnerabilities and resiliencies, and considering other arrangements or placements before a detention order is issued.*
- *In line with the joint CRC/CMW General Comment No. 23/No.4 (2017), the Government of Hong Kong SAR should immediately cease detaining children and their families for reasons related to their migration status. Instead, appropriate non-custodial accommodation must be found for them.*
- *Cease detaining other at-risk individuals and vulnerable groups, such as victims of trafficking. A comprehensive screening procedure must be put in place to ensure that trafficking victims are identified and protected—including the provision of access to key services such as health care and trauma counselling.*
- *Introduce maximum detention limits in legislation to ensure detention does not become indefinite.*
- *Investigate and address reports of poor conditions including lack of privacy and poor levels of hygiene in all detention facilities to ensure that conditions are not in consonance with international standards and that detainees are ensured the right to dignity.*
- *Ensure that all immigration detainees are guaranteed regular access to appropriate health care services, including medical screening upon arrival, access to psychosocial care, and sexual and reproductive health services. Attention must be paid to individuals' specific health care needs, and necessary hygiene items must be provided. Efforts must also be made to investigate and reform treatment provided to detainees in hospitals—including investigating and ending the practice of handcuffing detainees to their beds.*
- *Authorities should cease the practice of routine strip and cavity searches in immigration detention facilities. Body searches should only be used where there is a reasonable and clear justification.*
- *De-emphasise the security orientation of core staff who are in contact with detainees, including by amending legislation to end the requirement for staff to carry firearms and other weapons. Other carceral characteristics should also be removed from all detention facilities—including ending the use of prison rules in re-purposed prisons—in line with the Working Group on Arbitrary Detention's Deliberation No. 5 ("The conditions of their detention must be humane, appropriate and respectful, noting the non-punitive character of the detention in the course of migration proceedings").*

¹⁸⁰ Global Detention Project and Asia Pacific Refugee Rights Network, "China: Joint Submission to the Universal Periodic Review," 18 July 2023, <https://www.globaldetentionproject.org/china-joint-submission-to-the-universal-periodic-review>



www.globaldetentionproject.org