



Leitner Center

for International Law and Justice

AT FORDHAM LAW SCHOOL, NEW YORK CITY

Universal Periodic Report – China: Stakeholder Submission
The Leitner Center for International Law & Justice Fordham Law School
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Cover Page

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COUNTRY: CHINA

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The Leitner Center for International Law and Justice at Fordham Law School trains law students to become international legal experts and impassioned human rights advocates through its pioneering human rights programs, clinics, and education initiatives; facilitates capacity building and advocacy with local social justice organizations and activists around the world; and contributes to critical research among scholars in international human rights. In particular, in cooperation with in-country partners, the Leitner Center works extensively in partnership with civil society organizations to support vulnerable populations, including in China. The Leitner Center respectfully presents this Stakeholder Submission in advance of China’s upcoming Universal Periodic Review (“UPR”). This report is a project of the Leitner Center for International Law and Justice at Fordham Law School. The views expressed herein remain those of the Center and are not reflective of the official position of Fordham Law School or Fordham University.

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I. Introduction

1. **The Leitner Center for International Law and Justice** presents this submission for the fourth cycle review of China, regarding human rights issues affecting marginalized migrants in the Hong Kong Special Administrative Region (SAR) (hereinafter ‘Hong Kong’). This submission is based on the expertise of Leitner staff and consultants, interviews conducted with knowledgeable persons who remain anonymous for protection reasons, and desk-based research. A related, more detailed report will be published at: www.leitnercenter.org.
2. **This submission focuses on:**
 - A. Migrant domestic workers (MDWs)
 - B. People seeking international protection from torture or other persecution (refugees/non-refoulement claimants)
 - C. Detained migrants
 - D. Children of migrant backgrounds

II. Previous UPR recommendations and developments

3. **Human rights context:** In the previous cycle, China supported a recommendation to “Ensure that any legal provision to protect national security is clearly and strictly defined in its security laws, in conformity with international human rights law and standards”.¹ Contrary to this recommendation, China bypassed local legislative procedures to institute a new Hong Kong National Security Law in June 2020, criminalizing secession, subversion, terrorism, and collusion with foreign forces, and imposing long sentences on those convicted. This law is broad in scope and lacks clarity on important terms, including “national security”. The government has interpreted it broadly. Local NGOs, the Hong Kong diaspora, and international organizations report that this law undermines various freedoms and judicial independence and has nearly silenced the press, and repressed Hong Kong’s historically vibrant civil society. Many civil society organizations (CSOs) have suspended or ceased operations due to fear of being wrongfully charged with crimes when undertaking legitimate activities. This adversely impacts marginalized migrants and impedes access to basic rights such as health care, housing, education, and labor rights.²
4. **MDWs:** In the previous cycle, China supported several recommendations relating to migrant workers, including to: enhance monitoring of the Standard Employment Contract in Hong Kong;³ “[p]rotect the rights of migrant workers;”⁴ and “[i]ncrease knowledge of the law among workers, especially migrant workers”.⁵ Some measures have been implemented; however, thus far they do not provide equal employment rights for MDWs nor adequate protection from exploitive practices. The government has implemented some measures against trafficking, but further progress is needed. The government has made some efforts to inform MDWs of their rights and raise employers’ awareness of their obligations. Some employers who violate employment ordinances are prosecuted. However, existing measures are inadequate as MDWs fear that complaints will have negative repercussions. The current political climate has restricted advocacy on violations of the rights of MDWs and other marginalized migrants.

5. **Refugees/non-refoulement claimants:** In the previous cycle, China supported a recommendation to “[s]trengthen measures preventing torture and ill-treatment”.⁶ Since then, the government has undertaken contrary measures, including efforts to reduce the number of claims and expedite the removal of unsuccessful claimants. The Immigration (Amendment) Bill 2020 increases detention powers, allows contact with a claimant's country of origin during appeals, and enables government officials to control airline passenger data and refuse individuals entry or exit to Hong Kong. A 2022 policy permits removal of non-refoulement claimants while claims are still pending.
6. **Detention of migrants:** In the previous cycle, China supported a recommendation to “[r]espect the rights of all detainees under the relevant human rights instruments and the Vienna Convention on the Law of Treaties, including due process”.⁷ The government has since initiated minimal improvements, but there have also been very problematic detention policy changes. Statutory amendments introduced in 2021 enable detention center staff to carry firearms and other weapons, increasing risks of disproportionate use of force. In 2022, the government announced body cavity searches would be routine in detention facilities and increased the maximum period for solitary/separate confinement from 7 to 28 days. Policy changes have made it more difficult to submit non-refoulement claims from detention. The government has expanded the demographic information published in relation to detention of migrants, but significantly more data is needed to achieve full transparency. The government has undertaken modest efforts in detention centers to address human trafficking, but more effective measures are needed.
7. **Migrant children:** In the previous cycle, China supported several recommendations relating to children, including: that Hong Kong “introduce internal legislation to implement the Convention on the Rights of the Child”;⁸ to improve access to and funding for quality education for children of migrant backgrounds;⁹ and to “[i]ntensify efforts to support ... children in vulnerable situations”.¹⁰ The government has since made some efforts to include ethnic minority children in the education system, but migrant children are still largely excluded from mainstream schools and/or provided with an inadequate education. Non-refoulement claimants frequently live in prolonged poverty and instability due to the government's failure to provide adequate protection. Children of MDWs are often sent to live with relatives in another country because of restrictions on MDWs.

III. Discussion of Issues

A. Migrant domestic workers

8. **Approximately 339,451 migrant domestic workers** (referred to as ‘foreign domestic helpers’ by Hong Kong's government) were reported to be working in Hong Kong as of December 2021 (about 4.5 per cent of the population). Numbers are likely to increase significantly beyond pre-Covid levels (approximately 400,000/year) in coming years. Government statistics indicate that 98.5% of MDW visa holders are women.¹¹
9. **Legal inequalities and abuse:** Hong Kong's visa policy for MDWs is problematic in various ways: MDWs have only two weeks to leave the city if they lose their job, must live in their employer's abode, have a low minimum wage, have restricted residency rights when staying longer term, and there are no limits on working hours other than an uninterrupted 24-hour rest period every seven days. MDWs' Standard Employment Contract and Minimum Allowable Wage (MAW), which is a fraction of Hong Kong's

minimum wage for all other workers, offer minimal protection of rights and welfare. MDWs who become pregnant are at risk of unlawful dismissal, often resulting in homelessness. These circumstances expose MDWs to forced labor, trafficking, and other abuse, and remedies for abuses are inadequate.

10. **Financial exclusion and exploitation:** Many MDWs struggle to meet their financial needs. They are not eligible for the same social welfare benefits as other workers and face restrictions in opening bank accounts. Financial exclusion is often linked to exploitation through extortionate remittance services, predatory employment agencies, and risky informal lending practices.

B. Refugees/non-refoulement claimants

11. **Although China is a party to the 1951 Refugee Convention and its 1967 Protocol, these treaties have not been extended to Hong Kong.** The Hong Kong government does not grant asylum and considers people seeking international protection to be “illegal immigrants”. Approximately 14,900 people were seeking refuge in Hong Kong based on fear of persecution, torture, or other mistreatment in their home countries, as of September 2022.¹² These individuals are often referred to as “non-refoulement claimants” in Hong Kong.
12. **The success rate for non-refoulement claims is approximately 1%¹³,** and there are long delays, leaving most claimants in limbo for years. Most claimants are unable to access legal representation.
13. **Claimants have very limited rights while they wait for a decision.** They are not permitted to work, not granted temporary legal status, and the government’s basic support is insufficient to cover essential living needs. Most claimants live in overcrowded, unsanitary accommodation. Access to essential public services such as health care, education, and social support is severely restricted. This negatively impacts claimants’ physical and mental health.
14. **Even if a non-refoulement claim is granted, the claimant is still considered an “illegal immigrant”** and is not granted permission to stay in Hong Kong. They can apply for permission to work, but the application process is highly restrictive. Approvals are rare and permission to work is limited to six months. This pushes some claimants towards the informal labor market and risks exploitation. They are eligible for minimal support upon receiving a letter recognizing their claim, but support is set at the level of bare essentials for survival.
15. **Successful non-refoulement claims are forwarded to the United Nations High Commissioner for Refugees.** If UNHCR determines that the person is a refugee, they may be eligible for resettlement, but the process is slow and opportunities are very limited. A removal order remains in place while a refugee awaits resettlement. It is usually suspended pending resettlement, but the government retains the power to remove.
16. **The government removes many unsuccessful claimants to their home countries, and often detains adults and children prior to removal.** Given the low approval rate, many of those removed may face persecution upon return.

C. Detained migrants

17. **In recent years, approximately 9,500-12,000 migrants have been held in administrative detention each year in Hong Kong.** This number fell during the COVID-19 pandemic but is likely to return to a similar level.¹⁴ Many non-refoulement claimants are detained, but exact numbers are unknown. Data relating to immigration detention is scarce, especially for smaller facilities. Disaggregated data for some facilities indicate that one in three detainees in those facilities is female.¹⁵ Available data relating to detention of children indicate low numbers but is incomplete.
18. **Hong Kong's immigration laws permit indefinite administrative detention of children and adults, without adequate safeguards.** Time limits exist for detention for breach of stay conditions, unauthorized employment, and illegal entry, but people awaiting deportation or removal (including non-refoulement claimants) can be detained indefinitely. Government data for Hong Kong's largest immigration detention center shows that between January 2021 and May 2022, 10-20% of detainees had been detained for six months or more.¹⁶ Civil society accounts indicate that many detainees, including young children, are held for 18 months or more. One immigration detainee is known to have been detained for over five years.¹⁷
19. **Conditions in detention centers do not comply with international standards.** They are often dirty and lacking in privacy. Detainees must use open bathroom facilities, and CCTV is widespread, and some facilities monitor toilets, showers, and cells. Access to health care is inadequate, and the availability of menstrual hygiene products is limited. Detainees complain of mistreatment by staff, including excessive handcuffing and solitary confinement. Two recently opened detention centers follow prison rules, which are harsher than usual immigration detention facility rules. Detainees' communication with the outside world is limited. Visits are allowed, but one of the new facilities may limit their frequency and privacy. Phone calls are allowed but are monitored.¹⁸
20. **Judicial and other oversight of detention is limited.** Detainees are entitled to challenge their detention in *habeas corpus* proceedings, but very few can do so. Most detainees are unable to challenge their detention due to a lack of rights awareness, limited funds, and lack of access to legal assistance. Few detainees bring claims for unlawful detention after being released; this is rare among non-refoulement claimants due to apprehensions that it could adversely affect their claims. There is no independent complaint system through which detainees can challenge the conditions of detention without fear of reprisals. An interviewee stated that *'very few people complain because they are scared.'*¹⁹
21. **The implementation of the 2020 National Security Law has increased the risks of unlawful detention through curtailing freedom of the press and visits to detainees by NGOs and volunteers.** An interviewee stated that the government has accused journalists who reported on migrant detention of sedition and that community volunteers stopped visiting detained migrants due to fear of wrongful criminal charges after receiving notices from the government.²⁰

D. Migrant children

22. **Children in Hong Kong whose parents are MDWs, non-refoulement claimants, and lower-income migrants are not protected in line with the Convention on the Rights of the Child.**
23. **Children of these migrants often grow up in precarious situations without any permanent status.** Children who are themselves non-refoulement claimants or children of such claimants remain in limbo for years.²¹ The residence status of children of MDWs is severely restricted. The “live-in” rule often results in MDWs’ children being sent to their mothers’ countries, causing prolonged separation and associated problems.
24. **Children of these migrants are subject to immigration detention, in some situations, indefinitely.** Available data relating to detention of children is incomplete.
25. **Children of these migrants often do not have access to adequate education.** They are allowed to attend public schools, but those who do often face discrimination, are placed in institutions that fail to meet their needs, and receive an inadequate education due to language challenges, lack of resources, and other barriers.²² Many cannot afford school uniforms or books.

IV. Recommendations

We request that States make the following recommendations to China:

A. Migrant domestic workers

Enhance protections for migrant domestic workers in Hong Kong to fully comply with the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights law and labor standards, within the next two years, through:

- 1) **Reforming employment regulations** to eliminate the “two-week” rule and “live-in” rule, align minimum hourly wage for MDWs with other workers, raise the minimum allowable wage and food allowance to adequate levels, and eliminate any requirements that prevent MDWs from leaving abusive employers.
- 2) **Eliminating laws and practices that have a disproportionate and discriminatory impact on women, including MDWs and introducing effective protections for pregnant MDWs** to prevent dismissal and other punitive actions relating to pregnancy.
- 3) **Combatting trafficking and exploitation** through providing effective training to officials and implementing effective screening mechanisms and support services for survivors.
- 4) **Eliminating all conditions that inhibit MDWs’ access to formal financial institutions** and effectively regulating lending and remittance services to eliminate extortionate or predatory practices.
- 5) **Preventing exploitation** by employers or employment agencies and ensuring effective remedies for abuses.

B. Refugees / non-refoulement

Ensure effective protection of people in Hong Kong who have a well-founded fear of torture, persecution, or serious harm in their home country, in line with the 1951 Convention relating to the Status of Refugees and other international law, within the next two years, including through:

- 1) **Respecting the right to seek and enjoy asylum set out in the Universal Declaration of Human Rights** through formally acknowledging that people seeking refuge from persecution are not “illegal immigrants”.
- 2) **Extending the 1951 Convention Relating to the Status of Refugees** and its 1967 Protocol to Hong Kong.
- 3) **Ensuring the fulfilment of all rights set out in the Refugee Convention** for people seeking international protection in Hong Kong, and issuing temporary residence permits upon a claim being submitted and long-term residence permits upon recognition of a need for international protection.
- 4) **Reforming the regulatory framework for the legal profession to allow more diversified ways for lawyers to provide free legal services and expanding legal aid** to ensure that people seeking international protection and other migrants in Hong Kong can access adequate legal assistance.
- 5) **Implementing effective independent monitoring mechanisms** that ensure that claims for international protection are determined in line with international standards and without undue delays.

C. Migrant detention

Implement measures to prevent arbitrary detention of migrants in Hong Kong in compliance with the International Covenant on Civil and Political Rights and other international law, within the next two years, including through:

- 1) **Prohibiting detention of children, pregnant women, and others** for whom detention poses disproportionate risks, including survivors of torture, victims of trafficking, LGBTQI+ people, and stateless people.
- 2) **Implementing alternatives to detention** for people seeking international protection and individuals with deportation or removal orders, including programs that allow individuals to remain in the community.
- 3) **Applying strict and reasonable time limits on all administrative detention**, with time limits applying cumulatively for multiple instances of detention.
- 4) **Implementing effective monitoring mechanisms** that allow detainees to report mistreatment or inadequate conditions without fear of reprisals and ensure that conditions within detention centers comply with international standards, ensuring in particular that women’s health and hygiene are adequately protected.
- 5) **Establishing mechanisms to ensure that all detainees are aware of their right to liberty** and the possibility of challenging detention through *habeas corpus* applications and can confidentially access adequate legal advice.

D. Migrant children

Introduce measures that ensure compliance with the Convention on the Rights of the Child and other international law in Hong Kong, with particular regard to the rights of children of migrant backgrounds, within six months, including through:

- 1) **Requiring that government officials consider children’s best interests** as a primary consideration in all decisions and actions relating to children.
- 2) **Ensuring that no child faces punitive actions or conditions** for reasons relating to their own or a parent’s immigration status.
- 3) **Ensuring that children have access to adequate food, housing, and other essentials.**
- 4) **Ensuring that the education system meets the needs of children of migrant backgrounds,** with particular attention to financial barriers, language, trauma, and other relevant factors.
- 5) **Granting residence permits to children** of migrant domestic workers and children seeking international protection (on their own or with family members) which provide stability and access to adequate support and essential services.

¹ Belgium, 28.152

² Interview 1, 15 December 2022 and Interview 3, 6 March 2023.

³ Philippines, 28.344

⁴ Nepal, 28.332

⁵ Bolivia, 28.329

⁶ Australia, 28.170

⁷ Sweden, 28.171

⁸ Croatia, 28.346

⁹ Slovenia, 28.264, Sri Lanka, 28.265; Dominican Republic, 28.330, Mexico 28.301, Algeria, 28.270

¹⁰ Djibouti, 28.298

¹¹ Hong Kong Census and Statistics Department. "Statistic Products", Census and Statistics Department, Government of the Hong Kong SAR, accessed July 7, 2023, <https://www.censtatd.gov.hk/en/>.

¹² Government of the Hong Kong SAR, "LCQ10: Non-refoulement claimants", and Dimsum Daily, "Over 14,900 non-refoulement claimants still remain in Hong Kong as at end-September 2022".

¹³ "Submissions for the 2020-2021 Policy Address Consultation", Justice Centre Hong Kong (October 2020), p.1, <https://www.justicecentre.org.hk/framework/uploads/2020/10/Justice-Centre-Hong-Kong-2020-Policy-Address-Public-Consultation.pdf>.

¹⁴ "Data Visualizations", Immigration Detention in Hong Kong, accessed June 22, 2023, <https://immigrationdetentionhk.net/en/data-viz/>.

¹⁵ "Data Visualizations" Immigration Detention in Hong Kong.

¹⁶ "Data Visualizations", Immigration Detention in Hong Kong.

¹⁷ Interview 7, 19 May 2023

¹⁸ Interview 7, 19 May 2023

¹⁹ Interview 7, 19 May 2023

²⁰ Interview 7, 19 May 2023

²¹ Interview 8, 3 July 2023

²² Interview 8, 3 July 2023