



UNSEEN STRUGGLES: ADDRESSING MIGRANT RIGHTS IN HONG KONG

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Leitner Center
for International Law
and Justice

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CONTENTS

- I. EXECUTIVE SUMMARY..... 4
- II. INTRODUCTION..... 7
- III. MIGRANT DOMESTIC WORKERS..... 13
- IV. REFUGEES AND ASYLUM SEEKERS..... 21
- V. IMMIGRATION DETAINEES..... 27
- VI. MARGINALIZED MIGRANT CHILDREN.. 35
- VII. CONCLUSION..... 44



I. EXECUTIVE SUMMARY

A shifting political landscape is gripping Hong Kong. The country's "one country, two systems" relationship with the central government in Beijing has ostensibly provided autonomy and civil liberty to the city since the 1997 handover. Yet recent developments are moving the bond closer to "one country, one system", threatening these critical freedoms.

In response to mass protests in 2019, 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. The new law is broad in scope and lacks clarity on important terms, including "national security" itself. This has undermined Hong Kong's judicial independence and freedom of speech, and created a climate of fear that has all but silenced an open press and restricted the city's historically vibrant civil society. Meanwhile, electoral reforms introduced in March 2021 have given pro-Beijing politicians greater power and reduced the influence of pro-democracy voices. This has degraded human rights protections, with a disproportionate impact on marginalized people and those who advocate for them. The erosion of human rights in Hong Kong has particularly obscured the plight of marginalized migrants, whose struggles often remain "unseen" amid the broader political and social turmoil.

Migrant domestic workers already comprise around five percent of Hong Kong's population. With the number of people 65 and over in Hong Kong expected to grow from 18 percent to 30 percent of the population by 2041, the already high demand for domestic workers is set to grow to meet the increasing care needs from this demographic shift. The vast majority of MDWs are women, and the legal framework is designed to keep them on low incomes and locked in stagnant roles with few opportunities. They are at risk of various forms of exploitation and abuse, including lack of adequate food, inordinately long working hours, and physical and mental abuse. They also lack access to formal financial services, leaving them at the whim of unregulated lending and extortionate interest rates, and struggle to secure legal protection for their employment and human rights.

Hong Kong is home to a significant number of asylum seekers and refugees seeking international protection due to fears of persecution, conflict, or human rights abuses in their home countries. However, Hong Kong has not ratified the 1951 Refugee Convention, which means these individuals are not granted "refugee status". A minimal number of people are recognized by government officials as needing protection against *refoulement* (return to a country where they would face treatment in violation of the Convention against Torture). The government considers people seeking protection as "illegal immigrants" and refers to them as "*non-refoulement* claimants" rather than refugees.¹ The *non-refoulement* application procedure is

extremely lengthy, and the success rate is below one percent, primarily due to the high threshold for substantiating claims and an unduly high standard of proof. Lack of legal representation, language barriers, and other challenges hinder effective navigation of the system. Claimants often live in overcrowded and unsanitary accommodation and have limited access to health care, education, and social support. Many refugees suffer significant mental trauma. Once granted *non-refoulement* status, refugees are still considered "illegal immigrants" and have minimal rights. The government refers them to UNHCR for resettlement, but this is another lengthy process.

Individuals in Hong Kong who are awaiting deportation, removal, or a *non-refoulement* decision can be held indefinitely in immigration detention, where conditions are poor and detainees have little contact with the outside world or access to legal aid. Inadequate access to hygiene, privacy, and health care, mistreatment by staff members, and unregulated solitary confinement are all common. Detention facilities operate without independent oversight or a complaints system, reducing the likelihood of conditions improving. Recent measures, including the new Immigration (Amendment) Bill, have increased the government's detention powers and compromised detainees' fundamental rights.

Children of MDWs and refugee children face numerous challenges. Despite being born in or brought to Hong Kong at a young age, these children often face prolonged instability and cannot fully participate in society. Children born in Hong Kong to MDWs are often separated from their parents and sent to their mother's country of origin. This is largely due to MDWs being legally required to live with their employers, coupled with their low income and long working hours, which makes raising children in Hong Kong impossible in most cases. In Hong Kong, children from refugee families are not afforded any protective status, leading to prolonged periods of poverty. These children often face a lack of adequate support and have limited access to health care services. Some refugee children are subject to immigration detention and/or separation from family members. If they are able to attend school in Hong Kong, marginalized migrant children often struggle to get an adequate education because the education system does not meet many of their needs. The government's limited initiatives to address these problems have been insufficient. Funding to assist children often excludes programs supporting migrant children, and policies fail to address the root causes of migrant children's struggles.

Amid Hong Kong's numerous human rights, it is crucial not to overlook the "unseen struggles" faced by marginalized migrants. Recognizing and addressing these often-overlooked issues is essential for cultivating a vibrant, inclusive, and fair society in Hong Kong, where the human rights of all individuals are upheld and everyone has the opportunity to thrive.



II. INTRODUCTION

This report scrutinizes the situation of some of Hong Kong's most marginalized migrants. Hong Kong, a vibrant, cosmopolitan city, is a melting pot of diverse migrant groups. Whether they are domestic migrant workers from the Philippines and Indonesia, businesspeople from mainland China, or professionals from Europe, they each contribute unique expertise, resources, perspectives, and cultural influences, enriching the social fabric of Hong Kong. However, Hong Kong's immigration system creates unequal categories and rights for different groups of migrants, resulting in favorable conditions for some, while others face a lack of protection, discrimination and insufficient opportunities. This report focuses on some of the most marginalized migrants: domestic workers, refugees, detainees, and children within these populations. They often face challenges stemming from their legal status, socioeconomic background, and the nature of their work.

Methodology and research aims

This report is based on desk research, including freedom of information requests, and interviews by Leitner Center staff, students and consultants with considerable knowledge on marginalized migrants in Hong Kong. Conducted in 2022-2023, the study focuses on understanding people's lived experiences. It seeks to show the broader systemic issues in the city, particularly during the 2018 to 2023 timeframe covered in China's 2024 UPR examination. The research was hindered by the curtailment of free speech in Hong Kong, which caused people to be unwilling to discuss human rights issues. Nevertheless, the report highlights the current situation of the people concerned. For protection reasons, the names of people involved in the research are not disclosed.

Systemic issues in Hong Kong

Hong Kong faces a range of long-standing, systemic socioeconomic issues that provide context for understanding the difficulties faced by marginalized migrants in the city today.²

A rapidly aging population presents significant health care, housing, and social welfare challenges. The proportion of people aged 65 and over in Hong Kong is projected to increase from 18.2 percent in 2020 to 30.1 percent in 2041.³ One government policy to manage this demographic shift is to increase the number of migrant domestic workers to ensure older adults can continue living at home for as long as possible and maintain their quality of life.⁴

Poverty and income inequality in Hong Kong is one of the worst among

high-income economies around the world. One in five – 1.65 million people – live below the poverty line⁵ and struggle to meet their basic needs, and this number does not include non-citizens, such as migrant domestic workers.⁶ The poverty rate is especially pronounced among children (23.1 percent) and older people (33.1 percent). Through social welfare redistribution measures, such as cash transfers and in-kind benefits, the government substantially reduces the number of people living below the poverty line to fewer than 1 in 10. However, in recent years, the poverty gap, which measures how far below the poverty line a population is, has continued to widen.⁷

Homelessness and a housing shortage are growing problems in Hong Kong. The number of registered "street sleepers" from 2019 to 2022 increased by 21 percent to 1,564,⁸ although non-profit organizations say the figure is likely much higher.⁹ The Hong Kong Government has introduced public housing programs to help alleviate these issues,¹⁰ offering rental housing at prices significantly below the market rate to eligible low-income residents. However, demand far outweighs supply, leading to long wait times.¹¹

The mental health of Hong Kong residents is a growing concern, with high levels of stress, anxiety, and depression reported across all age groups. A 2019 survey found that 61.2 percent of respondents reported experiencing mental health problems.¹² Access to affordable mental health care is limited. Many people may not seek treatment due to stigma, lack of awareness, shortage of professionals in mental health care support, and high costs.

The COVID-19 pandemic was hard on school-going children, older people, MDWs, people seeking asylum, and other marginalized migrants.¹³ MDWs experienced prolonged separation from family members, mandatory confinement even on days off, lack of payment, inadequate food during mandatory quarantines, and termination of employment for contracting COVID-19.¹⁴ Approximately 13,000 asylum seekers and refugees were initially excluded from access to COVID-19 vaccinations, despite the heightened risks due to poor, overcrowded living conditions.¹⁵ Asylum seekers and refugees suffered disproportionately due to pandemic-related spikes in food prices and shortages in the one supermarket chain in which they can buy food using government vouchers.¹⁶

Barriers to access to justice are particularly challenging for disadvantaged groups. Language difficulties, lack of knowledge of rights, financial constraints, and cultural and social stigmas are all obstacles to legal assistance and obtaining fair outcomes in legal proceedings.¹⁷ The legal aid process is complex and confusing, and solicitors are often unable to assist clients as there is no compensation for the time to prepare a legal aid application. Furthermore, there are concerns about Hong Kong's judiciary's independence due to the perceived influence of Beijing in appointing

judges. It is also overburdened by an increasing number of complex cases and political pressures, straining the judiciary's resources and capacity.¹⁸ These issues can undermine public trust in the justice system and limit its effectiveness in ensuring equal access to justice. Comprehensive action is needed to ensure all individuals have adequate access to justice regardless of their background or circumstances.¹⁹

Human rights in Hong Kong

During this universal periodic review period from 2018 to 2023, human rights conditions deteriorated significantly in Hong Kong.

Suppression of civil society

Since the National Security Law (NSL) came into force in June 2020, Hong Kong's civil society organizations (CSOs) have seen their operating environment shrink. The NSL, used in tandem with pre-existing regulations, has obliged many CSOs to suspend or cease operations, and fostered fear and self-censorship.²⁰ This has disproportionately impacted CSOs' ability to assist and advocate for marginalized groups, including migrants facing human rights abuses, impeding access to fundamental civil, political, social, and economic rights. While working on this report, we experienced a significant reluctance among Hong Kong-based organizations and individuals to speak to us and engage in international advocacy.

The NSL's impact on civil and political rights has rightly garnered attention. However, the effects on the social and economic rights of migrants, including those related to health care, housing, education and labor, have been overlooked in many human rights reports.²¹ The fear of harsh consequences has a chilling effect on discussing issues that would otherwise not be considered politically sensitive.

"It's important to recognize that limitations on civil society can disproportionately affect those with economic or social disadvantages, especially those living in disadvantaged areas like Sham Shui Po or Lantau. ... [T]he impact is felt by many. In Sham Shui Po, for example, community members and former district counselors report that they used to be able to hold meetings to discuss issues like rent and noise pollution, but now some worry about complaining and that they can't control what people will say during these meetings. They will, therefore, say it is better to not have any meetings at all."²²

Heightened scrutiny on financial transactions for human rights defenders and CSOs

Measures aimed at preventing money laundering and protecting national security have led to organizations working having their funds seized and staff arrested. This has happened, for example, to those working on issues related to the 2019 protest movement. Proposed crowdfunding laws could further limit these activities and undermine CSO advocacy.²³ The Societies Ordinance, which predates the NSL but was rarely enforced before 2020, mandates registration for all societies within one month of establishment, timely reporting of organizational changes, and prompt provision of information upon request by the Societies Officer.²⁴ The Societies Officer can refuse or cancel a society's registration based on concerns relating to national security, public safety, or affiliations with foreign political bodies.²⁵ Non-compliance can result in fines and imprisonment.²⁶ The increased use of the Societies Ordinance has profoundly affected how CSOs operate in Hong Kong.

"There's a group of volunteers in Hong Kong who visited detainees and advocated for them ... buying them a notebook or candy and cigarettes. They used to go to meet these people who otherwise might not have anyone else to look out for them in Hong Kong. They never said they were an NGO or an organization. It was always completely transparent that they were a volunteer community group. About a year ago, they got notices from the government demanding explanations ... for why they were not registered as a society or a company. They asked where they were getting their funds from. But they don't even have any funds. In the context of their other work, they didn't want to do anything that compromised their day jobs. So, they basically disbanded the project. ... They [the community groups] stopped, all of them stopped."²⁷

Democratic deficit

Changes to Hong Kong's electoral system have reduced the number of democratically elected members in the Legislative Council (LegCo) and related committees. At-risk groups have lost their natural allies in the political opposition within the LegCo who previously fought for their rights.²⁸

"The political opposition has been wiped out. They were their [vulnerable groups'] allies in LegCo and related committees and in that political space. They fought their corner, got their access, people like Young, Fernando, they are all gone."

Silenced media

The media landscape in Hong Kong has also undergone significant changes, with two major pro-democracy newspapers forced to close and the space for independent reporting shrinking.²⁹ Media outlets perceived as critical of China or pro-democracy have faced increased pressure and restrictions, resulting in self-censorship, a decline in the diversity of perspectives, and sometimes closure. The diminished press freedom limits access to unbiased information. Furthermore, the restrictions on reporting extend to topics that might appear safe, such as labor rights and detention conditions. This ultimately may subject media outlets to further (self) censorship.

"Chris Tang, Hong Kong's secretary for security, attacked Stand News, which had published articles about the Tai Tam Gap Detention Centre and made allegations of poor treatment of the detained, including violence against detainees. And this had nothing to do with anything we would have considered political before. But the government said Stand News is casting doubts on our [Hong Kong's] smart prison initiative and that this is related to security, this is seditious. And once that happened, I think other media outlets became nervous about covering immigration detention."³⁰

Repressing protest and advocacy

Participating in protests has become increasingly difficult. The Women's March, Tiananmen Square anniversary protest and Labor Day March were canceled despite the lifting of all COVID-19 restrictions. A cap of 29 participants remains for all protests.³¹ Numerous individuals fear large gatherings, as the government may charge participants with participating in an illegal assembly. Under the Public Order Ordinance, this offense carries a penalty of up to five years imprisonment.³² In one example, the organizers of the 2023 Women's March canceled the event the day before it was to take place. There were fears of negative repercussions of going ahead "after its representatives had been summoned numerous times for meetings with the police," and supporters were pressured and threatened with arrest.³³

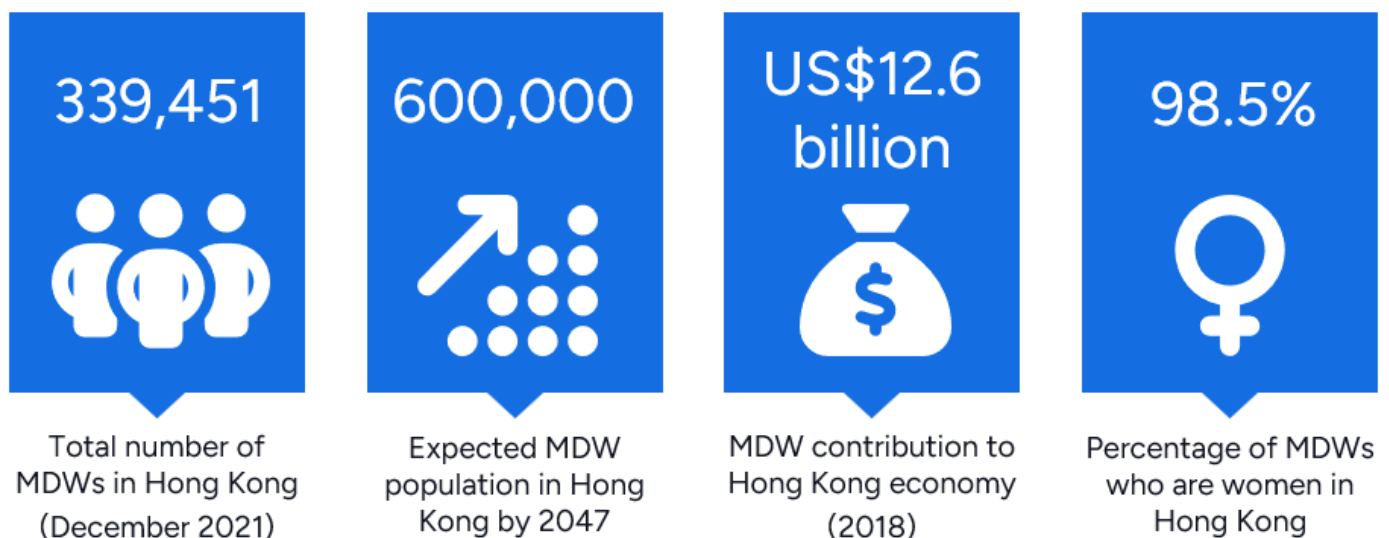


III. MIGRANT DOMESTIC WORKERS

As of December 2021, there were 339,451 migrant domestic workers (MDWs)³⁴ employed in Hong Kong (4.5 percent of the population). The Hong Kong Government has designed a visa regime that caters to the significant demand for domestic workers from outside Hong Kong. There is no cap on the number of MDW visas issued, and citizens from most states are eligible for domestic worker visas. The vast majority (98.5 percent) of those granted visas are women.

Hong Kong's economy relies on MDWs. Just half of mothers aged 25 to 54 in Hong Kong would be able to participate in the labor market if they did not employ MDWs.³⁵ They contributed US\$12.6 billion, or 3.6 percent of GDP, in 2018.³⁶ The government anticipates that the demand for MDWs will continue to rise, primarily driven by Hong Kong's aging population, and is projected to reach 600,000 by 2047.³⁷ During the COVID-19 crisis, the number of MDWs decreased by 70,000 as pandemic restrictions prevented them from entering Hong Kong.³⁸ These numbers are slowly returning to previous levels.

A 2016 NGO Justice Centre Hong Kong report raised serious concerns about the conditions in which many MDWs are recruited and employed. In many cases, conditions amount to forced labor or human trafficking, or are otherwise abusive or exploitative.³⁹ Since then, the Hong Kong Government has undertaken some efforts towards protecting the rights of MDWs and improving conditions,⁴⁰ including introducing a dedicated 24-hour hotline in 2018 to give advice on employment rights and obligations, and address complaints.⁴¹ A comprehensive handbook for MDWs was developed, covering topics such as preparing before departure, living in Hong Kong and



informing them of the available support and assistance.⁴² The government sometimes prosecutes employers who violate employment ordinances, such as underpaid wages or not granting rest days.⁴³

In some instances, the courts have provided an avenue for justice or clarified the law in favor of MDWs. For example, in a January 2023 case relating to the common practice of employers having their domestic workers on "standby" on their day off, the Court of Appeal confirmed that if they are made to be available to work if needed, this does not qualify as a "rest day" under Hong Kong law.⁴⁴ However, despite these developments, many MDWs still face significant barriers to upholding their rights, often due to fear of the negative consequences of seeking protection or justice. The current political climate limits advocacy on issues affecting MDWs,⁴⁵ especially impacting individual MDWs and grassroots organizations not registered under the Societies Ordinance.⁴⁶

Legal framework

Hong Kong is subject to critical international conventions related to labor and related rights, such as fair treatment, non-discrimination, freedom from exploitation, and access to legal remedies. They include:

- the Slavery Convention of 1926
- the Forced Labour Convention 1930
- the Abolition of Forced Labour Convention 1957
- the Convention for the Elimination of All Forms of Discrimination Against Women
- the International Covenant on Civil and Political Rights (ICCPR)
- the International Covenant on Economic, Social, and Cultural Rights (ICESCR).⁴⁷

That these treaties apply to Hong Kong is significant in underscoring its need to uphold people's rights and protect MDWs from forced labor, discrimination and exploitation, and ensuring a safer and more equitable working environment in line with international standards.

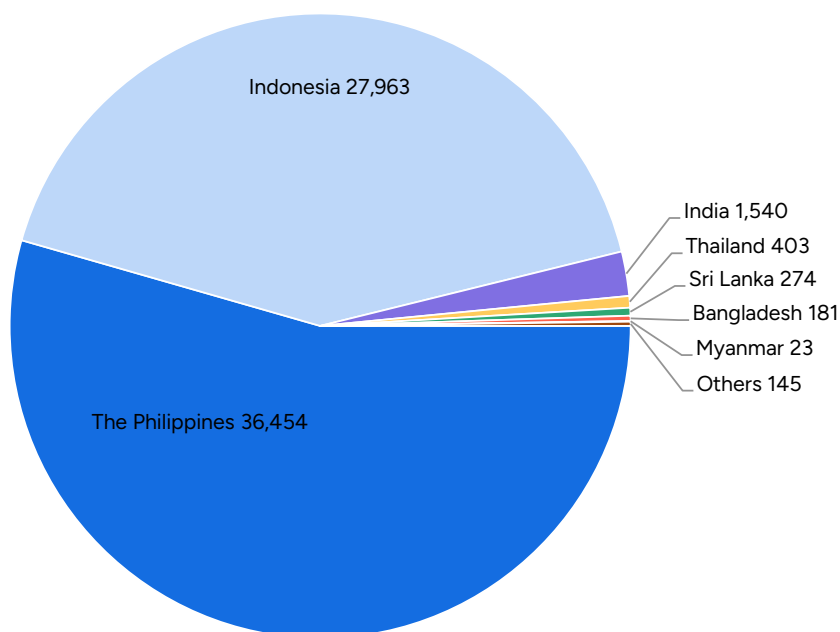
The Hong Kong Bill of Rights Ordinance and other domestic laws offer limited protection to MDWs. The Standard Employment Contract and the Minimum Allowable Wage (MAW) protect the rights and welfare of MDWs to some extent, but leave gaps.⁴⁸ For example, employers must pay the MAW and provide MDWs with food or a food allowance, reasonable accommodation, medical treatment, and paid annual leave and holidays. The law also requires that employers give a month's notice or payment upon termination of employment.⁴⁹ However, these requirements are frequently violated.

MDWs are also legally protected from termination of employment on the basis of pregnancy. Still, hundreds of pregnant MDWs are unlawfully fired each year, in some cases leaving them homeless and their children without access to basic necessities.⁵⁰ Cultural differences may also lead to different outcomes. For example, Indonesian MDWs often opt to terminate contracts and return home, while Filipinos may decide to raise their children in Hong Kong with the support of their employer or may take children to the Philippines to be raised by relatives.⁵¹

The "two-week" and "live-in" rules require MDWs to live with their employers, work only as domestic workers with their designated employer, and leave Hong Kong within two weeks of finishing their contract. They are allowed to change employers only under very specific, limited circumstances involving abuse. There are no limits on MDWs' working hours, except for an uninterrupted 24-hour rest period every seven days.⁵²

Despite Hong Kong's commitment to various international conventions, there remains a significant gap in its legal framework concerning the trafficking and exploitation of MDWs. While the region has taken steps to address human trafficking, such as the introduction of the Action Plan to Tackle Trafficking in Persons, the effectiveness of these measures is

Country of origin and number of approved migrant domestic worker visa applications in 2022



Source: Freedom of information request to Labour Department, AccessInfo.hk (2023)

questionable.⁵³ The current screening mechanisms often fail to identify and protect trafficked individuals. The justice system presents numerous challenges for victims seeking redress, with lengthy processes and a high burden of proof that often results in traffickers evading accountability. Policies such as the mandatory "live-in" and "two-week" rules exacerbate the vulnerabilities of MDWs, making them more susceptible to trafficking and exploitation.⁵⁴ The lack of a comprehensive anti-trafficking law and the limited scope of existing policies fail to address the complexities of the issue, leaving a significant portion of the MDW population at risk.

Primary concerns

Human trafficking, forced labor, abuse, and gender-based violence and discrimination

A substantial number of MDWs are victims of trafficking, exploitation, gender-based violence or discrimination.⁵⁵ A 2016 study found that 17 percent of MDWs (one in six) experienced forced labor and 14 percent of these women had been trafficked. In addition, 77.6 percent of MDWs surveyed had medium to strong signs of other exploitation. Only 5.4 percent of MDWs surveyed indicated no signs of exploitation or forced labor.⁵⁶ In a 2019 survey of MDWs, 29 percent said the food their employer-provided was insufficient, 25 percent said they experienced ill-treatment, 15 percent said their employer had physically abused them, and two percent said they had experienced sexual assault and/or harassment.⁵⁷

Trafficking and other abuse often remain undetected, primarily due to MDWs' fear of negative repercussions of reporting abuse, such as contract termination, loss of income, and loss of their permission to remain in Hong Kong.⁵⁸ Advocacy relating to trafficking is difficult. Government officials frequently claim that it does not occur.⁵⁹ The "live in" rule and the other restrictions on MDWs can trap these women with abusive employers. MDWs who become pregnant frequently suffer unlawful termination of employment, and if they remain in Hong Kong, their children are born into a precarious existence.

"Many face poor working conditions, such as being made to sleep on the floor, in cabinets, storerooms, toilets, or even balconies. Maltreatment is common, and many don't receive adequate food, often limited to noodles or just bread daily. Given their meager salaries, they can't afford to buy food outside. Beyond these conditions, physical and sexual abuse are concerns. Even seemingly minor issues, like long working hours, remain significant challenges."⁶⁰

Discriminatory wages and working conditions

The minimum wage for MDWs, at HK\$4,730 per month (US\$600), is a quarter of the minimum wage of other workers and a fraction of the average salary in Hong Kong.⁶¹ MDWs are still excluded from some of the rights accorded to local workers, for example, the minimum hourly wage.⁶² Many work under challenging conditions. In the 2019 survey of MDWs, 52 percent said their employer did not provide them with a private room, 44 percent said they were routinely required to work 16 or more hours per day, and 21 percent said they had no regular day off.⁶³ Although LegCo members have proposed various measures related to MDWs, some of which would be positive, others, including efforts to prevent "job-hopping" and lending restrictions, have been criticized for being discriminatory or restrictive.⁶⁴

Financial exploitation and exclusion

Many MDWs grapple with limited access to social welfare and face challenges to meet their financial needs.⁶⁵ Financial exclusion is often linked to high-cost remittance services, predatory employment agencies, and risky informal lending practices.⁶⁶ In 2023, many MDWs were charged recruitment fees of over HK\$19,000 by unscrupulous agencies, despite laws aimed at preventing this.⁶⁷ An interviewee shared that she had been unable to leave or change her employer, despite facing severe abuse, because she owed her employment agency six months of salary.⁶⁸ There is ongoing advocacy relating to these issues, including by the Indonesian and Filipino governments, but exploitation continues. Migrant worker organizations have led various campaigns, including one on behalf of 30 MDWs who had to pay substantial amounts to employer agencies.⁶⁹

"Predatory lenders and employment agencies have exploited loopholes in the system, establishing entities in the Philippines or Indonesia, and then leveraging that to their advantage in Hong Kong. They manage to circumvent the laws, which is unacceptable. The government has the tools to combat this, and they should use them. In my view, the government's responsibility is to reassess the laws governing money lenders and employment agencies, engage with NGOs working in this area to address these issues, and enforce the laws effectively."⁷⁰

Only one in five Hong Kong MDWs has a bank account, much lower than other countries in the region with high numbers of MDWs.⁷¹ While they can sometimes open accounts with banks from their home country that have

Case study: Wattan

Wattan is a 20-year-old woman from the Philippines. Her family is poor. Her father died of COVID-19 in 2020, and she had few job opportunities in the Philippines. She went to Hong Kong as a domestic worker in 2022, working for a wealthy family to cook, clean, and look after their baby and older grandparents. She is required by law to live with her employer. She usually works around 14-16 hours a day, six days a week. Sometimes, her employers say they need her to work on her day off, and they do not pay her extra for this. Wattan knows this is against the law, but she does it anyway because she worries about losing her job. She earns the Minimum Allowable Wage of HK\$4,730 a month. Her employer provides her with food, but it is not enough. She often goes hungry. From her wages, Wattan sends half home to her mother and five younger sisters each month. Without this, her family would not have enough money for food and other necessities. Wattan uses most of her remaining wages to repay the loan she took to get to Hong Kong. She cannot open a bank account because her employer refuses to let her use their address with the bank, and she doesn't have enough money to pay bank fees.

Wattan's employer, Bila, is often harsh and dismissive, but usually not physically abusive. Sometimes, she shouts at Wattan and blames her for things even though Wattan has done nothing wrong. The grandparents are quite demanding and often wake Wattan up at night.

The 17-year-old son of the family begins to harass Wattan sexually. It has been getting worse. She is worried he will rape her. She gathers her courage and tells Bila that he is bothering her and that it is hard to do her job because she is scared. Bila says her son is just flirting, and she can leave if Wattan doesn't like working with them.

Under the conditions of her visa, Wattan is not permitted to change jobs unless she proves she has been abused, which is a difficult and lengthy process. Leaving Bila's employment would mean she must leave Hong Kong within two weeks. With no job prospects back home, her remaining debts and her family relying on her, Wattan feels stuck. She has nowhere to turn. She stays working, enduring these conditions and fearing for her physical safety.

This hypothetical case study is drawn from real-world examples.

branches in Hong Kong, opening accounts with Hong Kong-based banks is difficult. The requirements are stringent, often requiring proof of address, such as utility bills in their name and proof of salary. Employers often do not allow workers to use their home address for bank-related information.⁷² Even if allowed to open an account, many do not have enough money for the minimum deposits or account fees.⁷³

Summary and recommendations

Hong Kong relies heavily on its many migrant domestic workers, but their rights are frequently not respected, and they endure many hardships. Low wages, financial exclusion, and vulnerability to trafficking and forced labor persist despite limited efforts by Hong Kong's authorities to address them.

The harm caused to MDWs' has a gender dimension, either because it is gender-related abuse or discrimination, or because it has a disproportionate impact on women. The vast majority of MDWs are women, and they are subject to legal regimes and practices that place them and keep them in discriminatory and/or abusive situations.

We recommend the government enhances protections for MDWs 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. This can be done by:

- 1. Reforming employment regulations** to eliminate the "two-week" and "live-in" rules, raise the minimum wage and align it with the minimum wage for residents, increase monthly food allowances to adequate levels, and eliminate barriers preventing MDWs leaving abusive employers.
- 2. Eliminating laws and practices** that disproportionately impact MDWs.
- 3. Introducing more effective protections for pregnant MDWs** to prevent dismissal and other punitive actions relating to pregnancy.
- 4. Tackling trafficking and exploitation** through effective training and screening mechanisms, and support services for survivors.
- 5. Eliminating all conditions that inhibit MDWs' access to formal financial institutions** and regulating lending and remittance services to eliminate extortionate or predatory practices.
- 6. Preventing exploitation** by employers or employment agencies and ensuring effective remedies for abuses.



IV. REFUGEES AND ASYLUM SEEKERS

Hong Kong has long been a destination for people fleeing persecution and conflict. Between March 2014 and the end of July 2023, it witnessed the arrival of 22,744 individuals seeking international protection, primarily from Pakistan, India, Vietnam, Indonesia, Bangladesh and the Philippines.⁷⁴ These individuals assert that their removal from Hong Kong would expose them to risks, such as persecution, torture, or cruel, inhuman, or degrading treatment, in their home countries.

Although China is a party to the 1951 Refugee Convention and its 1967 Protocol,⁷⁵ these treaties have not been extended to Hong Kong, which cites concerns about "illegal immigration" due to its geographical and sociopolitical context.⁷⁶ In limited circumstances, people seeking international protection in Hong Kong can be recognized as needing protection from return (*refoulement*) to a country where they are at risk of ill-treatment. They are typically referred to as *non-refoulement* claimants within the context of the legal system. The Hong Kong Government does not grant refugee status to such persons but refers them to UNHCR for potential resettlement if their case is "substantiated" on persecution grounds.⁷⁷

Legal framework

Hong Kong, while not adhering to the Refugee Convention, is bound by other human rights treaties, including the Convention against Torture (CAT)⁷⁸ and the International Covenant on Civil and Political Rights (ICCPR),⁷⁹ as well as customary international law. This prevents Hong Kong from returning people to countries where they will face torture, or inhuman or degrading treatment (*refoulement*). In addition, applicable international human rights treaties, such as the ICCPR, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),⁸⁰ ICESCR, and Convention on the Rights of the Child (CRC),⁸¹ require that people seeking protection are not subject to inhuman or degrading treatment, unlawful detention, unlawful discrimination, or other human rights violations.⁸² Further, Article 14 of the Universal Declaration on Human Rights (UDHR) guarantees the right of all people to "seek and enjoy asylum from persecution".⁸³ Although the UDHR is not binding law, this universal right should be fulfilled.

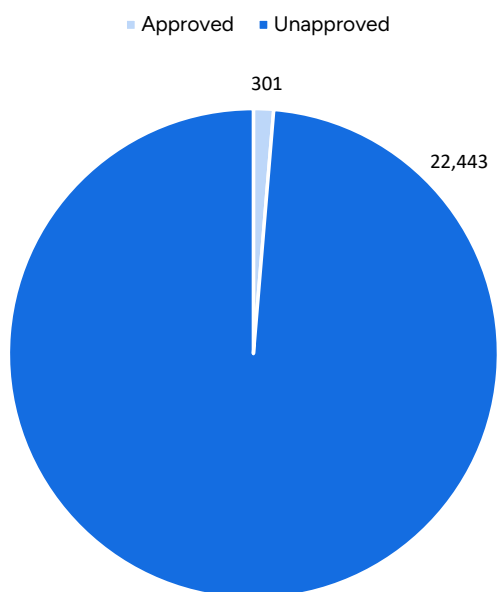
In 2014, the Hong Kong Government introduced the Unified Screening Mechanism (USM) procedure to assess *non-refoulement* protection claims for people facing removal. The USM combines assessment of all claims against removal into one process.⁸⁴ Under the USM, the Hong Kong Government assesses the need for *non-refoulement* protection of persons who claim that they are at risk of:

- torture as defined under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- torture, or cruel, inhuman or degrading treatment or punishment under Article 3 of Section 8 of the Hong Kong Bill of Rights
- persecution with reference to the principle of *non-refoulement* under Article 33 of the 1951 Convention Relating to the Status of Refugees.⁸⁵

A government notice to *non-refoulement* claimants states that the threshold for substantiating a claim is "very high", requiring that the claimant demonstrate that they face a "genuine and substantial risk" of ill-treatment that reaches a "minimum level of severity".⁸⁶

Although the USM is theoretically a positive step towards a government-led system to determine refugee status⁸⁷ in a territory where the 1951 Refugee Convention does not apply, it operates with an inappropriately high standard of proof, lacks adequate procedural safeguards, and has an alarmingly low initial recognition rate of approximately 0.4 percent. Recent developments have worsened the legal regime for people in need of protection. In May 2021, the Immigration (Amendment) Bill 2020 was passed, modifying the existing Immigration Ordinance. Among other changes, it permits immigration officers to communicate with a claimant's country of origin during appeals and enables the Security Secretary to control airline passenger data and refuse individuals' entry to Hong Kong.⁸⁸ A policy shift in December 2022 permits the removal of *non-refoulement* claimants whose cases are still under review.⁸⁹

Status of 22,744 *non-refoulement* claims (March 2014 to June 2023)



Source: Freedom of Information request to Security Bureau, AccessInfo.hk (2023)

Hugo: seeking protection in Hong Kong

Hugo's* parents and brothers were killed when he was only seven years old in a conflict in an African country. He was stabbed but survived. He later became an influential youth leader and was imprisoned for his activism. Hugo escaped prison and fled his country, eventually arriving in Hong Kong.

By 2023, he had lived in Hong Kong for over 10 years. He is one of the few refugees whose *non-refoulement* claim is considered "substantiated", which means the Hong Kong Government has acknowledged he would be at risk of persecution if he returned to his home country. However, Hugo's situation in Hong Kong remains precarious, full of hardships and dangers. He has not been granted permission to work. He is still considered an "illegal immigrant." His only real hope is that he might someday be resettled to another country where he would be granted refugee status and build a life for himself.¹⁰⁵

**Pseudonym used for protection reasons*

Primary concerns

Procedural challenges and legal barriers

The Unified Screening Mechanism presents a lengthy and complex process, subjecting claimants to prolonged periods of uncertainty and severe hardship. Financial constraints, scarcity of legal aid and a lack of interpreters are among the barriers restricting claimants' ability to adequately present their claim for protection and navigate the system successfully.⁹⁰ The Immigration Department has approved, or "substantiated", just 90 of the 22,744 claims made (0.4 percent) over nine years (March 2014-June 2023). The Immigration Department approved two additional and a further 211 claims were granted on appeal during this period.⁹¹

Initial decisions are frequently flawed. For example, they may be based on factual errors, rely on outdated, inappropriate sources or inadequate assessments relating to gender-based violence and persecution, or demonstrate a poor understanding of the law.⁹² Available data indicates that since 2016, cases are increasingly approved on appeal rather than during the initial application.⁹³

The government's current approach reflects the aim to reduce the number

of non-ethnic Chinese "illegal immigrants" and overstayers lodging *non-refoulement* claims in Hong Kong.⁹⁴ The recent policy and legal shifts mentioned above, including the removal of people with pending claims, increased power to refuse entry to Hong Kong, and allowing authorities to communicate with a claimant's country of origin during an appeal, have further worsened the situation of *non-refoulement* claimants. This could put lives at risk.

Inadequate conditions and access to public services

As of 30 June 2023, there were some 14,700 *non-refoulement* claimants in Hong Kong.⁹⁵ These people live in very difficult circumstances. They are only given temporary permission to work after their claim is approved. The government provides very basic support, but the assistance is calibrated only to prevent destitution. It does not allow for an adequate quality of life. The government has outsourced most of its assistance to International Social Services Hong Kong. Assistance commences only after a *non-refoulement* claimant receives a letter from the Immigration Department acknowledging that they have lodged a claim. Some claimants go for months without access to food, shelter, or medical care. The majority of claimants live in overcrowded and unsanitary accommodation. Support allowances have not been adjusted to reflect living costs increases since 2014.⁹⁶

Claimants' access to essential public services such as health care, education, and social support is severely restricted.⁹⁷ The psychological impacts of protracted *non-refoulement* processes, coupled with inadequate living conditions and prior experiences of trauma and displacement, take a heavy toll on applicants' mental health and well-being.⁹⁸ Access to mental health support is limited.⁹⁹ In addition, many claimants are placed in detention centers where conditions are poor (see chapter V).

"We ran out of food," said Akter*, a woman from Bangladesh seeking protection in Hong Kong after being raped and subsequently disowned by her family. She lives in inadequate housing with her husband and two small children. The government-funded support is insufficient to meet their basic needs, so her husband has sometimes worked illegally to help the family survive, which led to him being detained for 13 months in 2018. More recently, since he has been unable to work at all following an injury at a construction site, their existence has become even more precarious.¹⁰⁰

*Name changed to protect privacy

Limited rights and uncertain futures for substantiated claimants

Once a claimant's case is approved, they are still considered "illegal immigrants" with minimal rights. Their removal may be suspended, and they may be granted temporary permission to work.¹⁰¹ However, Hong Kong then refers the individuals to UNHCR to be resettled to another country, and this process often takes a few years before they can move.¹⁰² UNHCR data indicates that only 130 refugees in Hong Kong were resettled from 2018 to July 2023.¹⁰³ While waiting in Hong Kong, the removal order remains in place, but is temporarily suspended and can be activated again should the government want to deport them,¹⁰⁴ leaving their situation precarious.

Summary and recommendations

People seeking international protection in Hong Kong face serious challenges. There is a restrictive domestic legal framework that does not comply with international standards, extremely low rates of recognition of the risk of torture or other abuses, inadequate living conditions and support, and high risks of detention and *refoulement*. Those whose claims are substantiated are granted little protection, have limited access to permission to work, and face long waiting times for potential resettlement. It is vital to ensure people in Hong Kong who have a well-founded fear of torture, persecution, or severe harm in their home country are protected in line with international law, including through:

- 1. Acknowledging that people seeking refuge from persecution are not "illegal immigrants"** and respecting the right to seek and enjoy asylum set out in the Universal Declaration of Human Rights.
- 2. Extending the 1951 Convention Relating to the Status of Refugees** and its 1967 Protocol to Hong Kong.
- 3. Issuing temporary residence permits upon claims are submitted and long-term residence permits when claims are approved** to ensure the fulfillment of all rights set out in the Refugee Convention.
- 4. Providing free legal services and expanding legal aid** by reforming the regulatory framework for the legal profession to allow more diversified ways for lawyers to support people seeking international protection and other migrants in Hong Kong.
- 5. Implementing effective independent monitoring mechanisms** that ensure claims for international protection are determined in line with international standards and without undue delays.

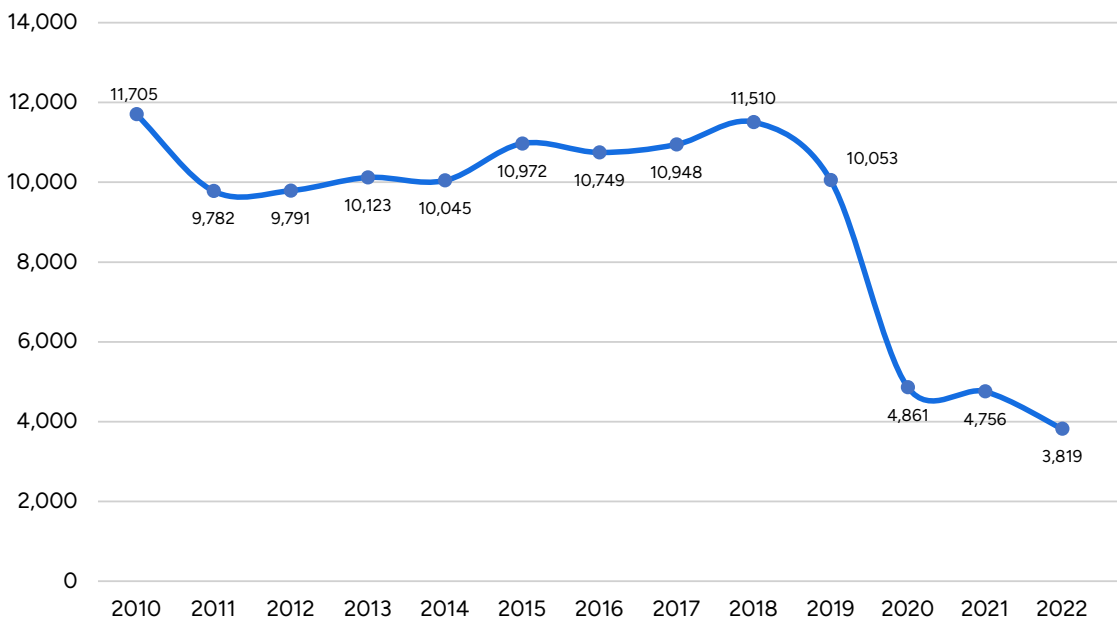


V. IMMIGRATION DETAINEES

People are held in government immigration detention facilities for various reasons, including identity verification, removal or deportation investigations, and pending the determination of *non-refoulement* claims.¹⁰⁶ Hong Kong's immigration detention population has fluctuated over the years. Before COVID-19, approximately 9,500-12,000 people were detained for immigration purposes a year (around 1,000 detainees at a given time).¹⁰⁷ The pandemic triggered a sharp reduction,¹⁰⁸ which is expected to grow again as pandemic border control restrictions have eased. Furthermore, new detention facilities have opened, which has increased capacity.¹⁰⁹ Individuals serving criminal sentences are held in separate prisons and are only transferred to immigration detention if they are to be deported upon completing their sentences.¹¹⁰ Most years, the cumulative immigration detention population in Hong Kong has been similar to or outnumbered the number of prisoners in criminal detention facilities.¹¹¹

Hong Kong has four main immigration detention centers. The largest, with a 500-person capacity, is Castle Peak Bay Immigration Centre (CIC) for longer-term detention.¹¹² Ma Tau Kok Detention Centre (MTKDC) is for short-term detention. Two former prisons, Tai Tam Gap Correctional Institution (TTGI) and Nei Kwu Correctional Facility, have recently been converted to immigration detention centers. Over 100 smaller facilities exist in various locations, but data on them is scarce, making it difficult to determine detainee numbers or the duration of detention.¹¹³

Number of detentions in Hong Kong under immigration power



Source: Immigration Department Annual Reports (Appendix 13), Immigration Department Response to Access to Information Request (2022), Immigration Department Response to Access to Information Request (2023)

Comprehensive, disaggregated statistics are unavailable on the number of people detained, for how long and why. *Non-refoulement* claimants and other individuals with deportation or removal orders against them are held primarily in designated detention centers. Most *non-refoulement* claimants have been detained at some point, some of them multiple times.¹¹⁴ A significant proportion of detainees (70 to 80 percent) are likely held for a short period before being released on bail or under a personal promise to appear in court. Data on detainees' sex or gender is unavailable for the overall population. However, data for certain facilities indicate one in three detainees in those locations are female. Most detainees are from mainland China, Vietnam, Indonesia, India, the Philippines, Pakistan and Bangladesh.¹¹⁵

While precise data on the number of children in immigration detention is limited, reports from civil society suggest that due to effective advocacy, the figure is minimal. When children are detained, they are held with their family members.¹¹⁶ According to government records from the Tuen Mun Children & Juvenile Home, the designated facility for detaining migrant children since 2006, the average annual intake is 20-25.¹¹⁷

Legal framework

Article 9 of the ICCPR, which applies in Hong Kong, prohibits arbitrary detention, and Article 10 requires that all people detained must be treated with humanity and respect. Detaining children for immigration purposes is generally inconsistent with the Convention on the Rights of the Child, which also applies in Hong Kong. Article 37 of the CRC explicitly says detaining children should be a last resort and for the shortest time possible.

The UN Office of the High Commissioner on Human Rights Working Group on Arbitrary Detention states that detention is considered arbitrary in various circumstances, including:

- when a person is deprived of their liberty as a result of having exercised certain rights set out in the Universal Declaration of Human Rights (UDHR), such as the right to seek and enjoy asylum (UDHR Article 14)
- if it improperly infringes on certain rights set out in the ICCPR (including freedom of movement under Article 12)
- when "asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy".¹¹⁸

UNHCR guidelines state that:

- indefinite detention for immigration purposes is arbitrary if conditions do not meet minimum international standards

- children should not be detained
- vulnerable people, such as survivors of torture, generally should not be detained
- detention of people seeking asylum becomes arbitrary if detention continues longer than necessary for a legitimate purpose.¹¹⁹

Hong Kong's 1972 Immigration Ordinance (Cap 115) (hereinafter "the ordinance") and subsequent laws regulate the entry, stay, and departure of individuals in Hong Kong, as well as the immigration detention system.¹²⁰ Detention under the ordinance is primarily managed by administrative authorities, bypassing judicial review.¹²¹ Time-limited detention applies to individuals who breach visa conditions, undertake unauthorized employment, or enter Hong Kong illegally. Worryingly, the ordinance allows for indefinite detention of individuals who await deportation or have removal orders against them, and during the processing of *non-refoulement* claims.¹²²

The Immigration (Amendment) Bill 2020, passed in May 2021, modified the existing Immigration Ordinance.¹²³ It increased the government's detention powers and allowed detention center staff to carry firearms and other weapons, leading to a heightened security environment.¹²⁴ A policy shift in December 2022 permits *non-refoulement* claimants to be removed from Hong Kong while their cases are still under review, increasing the risk of being detained before removal.¹²⁵ Policy changes over the past five years have made submitting *non-refoulement* claims from detention facilities more difficult.¹²⁶

The Hong Kong Government also announced in December 2022 routine body cavity searches in detention facilities and increased the maximum time a detainee could be held in solitary/separate confinement from 7 to 28 days. The law also contains inadequate safeguards for detainees' privacy and allowances for communication with the outside world. Phone calls are monitored and visits are restricted in various ways, depending on the facility.¹²⁷

Immigration detainees can, in theory, challenge their detention through *habeas corpus* proceedings, through which a court can assess the lawfulness of detention. However, there are many barriers to exercising this right, including lack of awareness, limited funds, and restricted access to free legal advice. It is also legally possible to take claims for unlawful detention to court after being released, but *non-refoulement* claimants rarely do this due to concerns it could unfavorably affect their ongoing claims.¹²⁸

In recent years, the government has made modest improvements in immigration detention, but many challenges remain. For example, transparency has improved, with more demographic information proactively disclosed than previously.¹²⁹ However, available data is still minimal, especially

for the numerous smaller detention facilities. The government has also taken some steps to identify victims of human trafficking within detention centers by encouraging people to speak up. This initiative acknowledges the problem's existence and some willingness to confront it. However, a more comprehensive approach is needed, as indicated in a recent report, "A Pathway to Justice or a Road to Nowhere."¹³⁰

Mary: struggling for dignity and safety in immigration detention

Mary, a 35-year-old woman from south Asia, found herself caught in the complexities of Hong Kong's immigration detention system after fleeing persecution in her home country due to her political activism. Her journey to seek a safer life led her to Hong Kong, where she hoped to find refuge and stability. However, the reality was starkly different from what she had envisioned.

Upon arrival in Hong Kong, Mary was placed in one of the city's immigration detention facilities, where she was to await the processing of her *non-refoulement* claim. The conditions within the detention center were far from humane. Mary, along with other detainees, experienced a lack of privacy, with CCTV cameras in showers and sleeping areas, and endured the constant monitoring of her biometric data through a wristband. Mary was also subjected to invasive cavity searches, a routine yet deeply violating procedure. These searches, which included undressing and thorough body checks, were humiliating and retraumatizing due to Mary's experiences of persecution in her home country. The absence of gender-sensitive approaches and female officers during these searches amplified Mary's emotional distress. Aimed at preventing contraband smuggling, these procedures often felt like disciplinary measures, stripping detainees of their dignity.

Mary also witnessed and experienced instances of violence and mistreatment within the center. Staff sometimes resorted to physical violence, taking detainees to corners without CCTV surveillance to commit the acts with impunity. Fearful yet steadfast, Mary wanted to raise her voice against these injustices, but was stifled by the absence of a confidential and independent complaints mechanism.

This hypothetical case is drawn from real-world examples discussed during expert interviews.

Primary concerns

Detaining vulnerable people

The detention of vulnerable people, including survivors of torture, and, although rarely, children, is particularly alarming. Policies that purport to limit the detention of such people are routinely ignored, often resulting in indefinite confinement, sometimes for long periods, causing and exacerbating mental health issues among these detainees.¹³¹

Detention length

Despite a lack of public information on detention length,¹³² available government data shows that between January 2021 and May 2022, 10-20 percent of detainees in Hong Kong's largest immigration detention center, CIC, had been detained for six months or more.¹³³ Civil society accounts indicate that many detainees, including detainees with young children, are held for 18 months or more. One individual is known to have been held for over five years.¹³⁴

Poor detention conditions

Detention centers are frequently unhygienic, lacking in privacy, and sometimes abusive. Detainees must use open bathroom facilities and CCTV is widespread, including in toilets, showers, and cells. This is particularly concerning for women due to concerns about sexual and gender-based violence by detention staff.¹³⁵

Detainees are given little opportunity to communicate privately with the outside world. It is often challenging for detainees to seek assistance from non-governmental organizations unless they have prior knowledge of those organizations.¹³⁶

The 2021 policy changes, including permitting staff to carry firearms, have heightened the risk of unnecessary and disproportionate use of force. This is despite government data from 2010-2021 showing that physical confrontations between detainees have been extremely rare, and confrontations with staff even rarer (ranging from zero to three incidents between staff and detainees a year from 2010-2021).¹³⁷

Other concerns include limited availability of menstrual hygiene products, staff mistreatment, excessive handcuffing, unregulated solitary confinement, and inadequate access to health care.¹³⁸

"[Detainees are] not taken to hospital until there is an absolute crisis. This is supposed to be a non-punitive facility, but when they are taken to hospital, they are taken handcuffed, and they are handcuffed to the bed while they are in hospital."¹³⁹

There are concerns regarding the conditions at the two recently opened detention centers (TTGI and Nei Kwu Correctional Facility), which follow prison rules.¹⁴⁰ Incidents of staff being violent towards detainees and the use of biomedical tracking wristbands have been reported in TTGI, as well as insufficient privacy. The removal of tracking wristbands can lead to solitary confinement. The High Court has upheld harsher rules for these facilities.¹⁴¹

"There are CCTV cameras in showers and toilets and in the areas where people sleep, whereas in the older facilities like CIC, there's a lot of CCTV in the public areas, but [unlike in TTGI] you know there isn't a camera over your bunk. There was a media report, for example, that said staffers harassed a man because they saw him on CCTV masturbating in bed."¹⁴²

Absence of independent oversight

There is no anonymous complaint system nor any monitoring of immigration detention facilities by an independent body. This results in few complaints due to fears of retaliation and means conditions in detention centers are less likely to improve.¹⁴³

"If I'm a detainee and I want to complain about a staffer who beat me up, the government's detention policy doesn't lay down any measures to keep the complaints confidential. So, even if the superintendent is doing a good job, and they won't march to the staffer and tell them, 'detainee X complained about you', other people around them might know, and interviews suggest this is the case. Very few people complain because they are scared."¹⁴⁴

Summary and recommendations

Human rights violations routinely occur in Hong Kong's immigration detention system. People seeking international protection are detained indefinitely, sometimes for long periods. Conditions are generally poor, including inadequate hygiene, health care, and privacy. Isolation is permitted. Prison rules apply in some facilities. Staff sometimes commit abuses with impunity. There are insufficient safeguards against arbitrary detention, and for most detainees, there is little hope of successfully challenging the legality of their detention. There is no independent monitoring of detention facilities nor an anonymous complaints system.

Data relating to immigration detention is limited. The government has made minor improvements, but the situation has deteriorated in recent years.

It is crucial to implement measures to prevent arbitrary detention of migrants in Hong Kong and ensure compliance with the International Covenant on Civil and Political Rights and other international law, 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**, applying them 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**, the possibility of challenging detention through *habeas corpus* applications, and that they can confidentially access adequate legal advice.



VI. MARGINALIZED MIGRANT CHILDREN

Hong Kong's marginalized migrant children encompass a diverse demographic that cuts across the groups examined above. In this report, we use the term "marginalized migrant children" to refer to people under age 18, including:

- children of migrant domestic workers
- children of *non-refoulement* claimants and unaccompanied child *non-refoulement* claimants (to whom we refer collectively as "refugee children")
- children from these groups who have been detained for immigration purposes and/or placed in the care of the state for reasons relating to their or a parent's immigration status.

These children live in a legal quagmire where access to education is difficult and various social issues impact their lives. Many of these children were born in Hong Kong or arrived at a young age, but despite their deep-rooted connections to the city, they are often treated as outsiders. They struggle to find their place in a society that frequently overlooks their needs and rights.¹⁴⁵

There has been little research into marginalized migrant children in Hong Kong and few organizations have advocated on their behalf. Efforts to interview experts on these issues were only partially successful. The Leitner Center was unable to obtain official government data confirming how many of these marginalized migrant children exist. However, sources indicate there are "many" refugees under 18 and children of MDWs in Hong Kong.¹⁴⁶

Marginalized migrant children are often subjected to negative stereotypes and discrimination. This societal bias permeates through to schools, neighborhoods and local community centers, limiting their opportunities to form friendships and reinforcing their sense of being outsiders.¹⁴⁷ These challenges can affect their physical and mental health, emotional development, and academic achievement.¹⁴⁸

The government claimed in 2010 that "[i]n the HKSAR, the best interests of the child are necessary considerations in all relevant decision-making, including legislative proposals and policies, and are taken into account as a matter of course".¹⁴⁹ It is evident, however, that the Hong Kong Government does not adequately consider the best interests of marginalized migrant children as a primary consideration in all actions that affect those children.

To the contrary, the Hong Kong Government's laws, policies, and practices place these children in vulnerable positions, including, but not limited to, protracted poverty, insufficient food, limited access to health care, delayed or lack of access to adequate education, and, in some cases, separation from parents. NGOs fill some gaps through, for example, paying school-

related costs for refugee children, providing additional classes and offering other support.¹⁵⁰ However, an interviewee noted that there is a lack of government funding for projects to assist migrant children:

"The government's funding still explicitly states that it will not support migrants. So, if you run a program for migrant domestic workers or migrant children, you won't receive government funding."¹⁵¹

Legal framework

Hong Kong's laws and policies offer some protections for marginalized migrant children, but there are significant gaps, leading to their inadequate protection and denial of their rights under international law. Hong Kong has been a party to the Convention on the Rights of the Child (CRC) since 1994. The CRC sets out numerous obligations with which Hong Kong must comply in relation to these and other children. Key commitments relating to the concerns addressed in this report include:

- Article 2: ensure the rights of every child are upheld without discrimination, irrespective of their or their parent's national or ethnic origin, or other status.
- Article 3: ensure children's best interests are a "primary consideration" in all decisions or actions affecting children.
- Articles 7 and 9: protect children's rights to a nationality, to be cared for by their parents, and not to be separated from their parents unless necessary and in the child's best interests.
- Article 16: do not arbitrarily interfere with children's rights to family or privacy.
- Article 20: provide special protection and assistance to children deprived of their family environment and ensure alternative care for such children (including asylum-seeking children).¹⁵²
- Article 22: provide appropriate assistance and protection to children seeking asylum or refugees according to international law.

Hong Kong law provides some CRC protections,¹⁵³ but the CRC has not been incorporated into Hong Kong law. Therefore, it is not possible to bring litigation in Hong Kong to compel the government to meet its obligations under the convention where there is no complementary provision in domestic law. Regardless, the government must ensure children's rights under the CRC are fulfilled.

Primary concerns

The 2013 Concluding Observations of the UN Committee on the Rights of the Child (UNCRC Committee) raised concerns and made recommendations to the China Government relating to education, discrimination, poverty, detention, legal protection, and other issues for migrant and refugee children, including to:

- address discrimination against undocumented, refugee and asylum-seeking children and ethnic minority children in Hong Kong
- to ensure that all "children have equal access to basic services, including health, education and other social services"
- to abolish "designated schools", take measures to promote appropriate bi-lingual education in mainstream schools, and ensure access to local schools for all children in Hong Kong.¹⁵⁴

The UNCRC Committee also recommended:

- taking "all necessary measures" to alleviate disproportionate levels of poverty and inadequate housing among migrant, refugee, and ethnic minority children
- ending the detention of asylum-seeking and refugee children
- ensuring children are adequately supported, including through provision of special care, protection and adequate guardianship and legal representation
- strengthening efforts to ensure the obligation to consider the best interests of children are adequately applied in all proceedings, programs, and policies that impact them¹⁵⁵
- applying the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol be extended to Hong Kong.¹⁵⁶

Ten years on, many of these concerns remain.

Legal status

The CRC mandates that states adopt all necessary legislative, administrative, and other measures to implement the rights established in the convention.¹⁵⁷ This may include granting residence permits to migrant children to ensure their rights under the convention are realized.

Migrant domestic workers are prohibited from bringing their children to Hong Kong. Babies born to MDWs in Hong Kong can be granted a temporary residence permit in line with their mother's visa or their father's status, if it is more favorable and the father is acknowledged on the birth certificate.¹⁵⁸ Yet,

due to the "live-in" rule requiring MDWs to live with their employer, as well as other laws and policies, many of these children are separated from their parents and sent to live with relatives in their mother's country.¹⁵⁹

Refugee children can apply for *non-refoulement* under the USM, but they are deemed "illegal immigrants" under Hong Kong law and are not entitled to refugee status or residence permits even if their claim is substantiated. The Hong Kong courts have acknowledged the need to consider children's *non-refoulement* claims separately from their parents, and for a lawyer to be assigned to represent children.¹⁶⁰ The lack of legal recognition leaves these children in limbo, unable to fully participate in society or achieve their full potential.¹⁶¹

*"Asylum-seeking children in Hong Kong didn't make the decision to be born there to refugee parents. They didn't make the decision even to come there. And now we're in a place in Hong Kong where these kids have grown up in Hong Kong, but do not have a permanent status."*¹⁶²

Detention

The ICCPR and numerous other international laws prohibit arbitrary detention. Article 37 of the CRC protects children's right to liberty, mandating that they must not be subject to arbitrary detention. The UNCRC Committee has found that immigration detention conflicts with the best interests of children and the right to development. It considers that any form of child immigration detention should be forbidden by law, whether in relation to the child's or their parents' immigration status. It has observed that, where a child's interests requires keeping the family together, the parents should not be detained either.¹⁶³ If children are detained, CRC requires that they must be treated humanely, with respect for their dignity and age-specific needs, and that children have the right to legal assistance and to challenge the legality of their detention.

Hong Kong's law states that people considered by an immigration officer to be children may be detained for reasons relating to their immigration status at specified facilities.¹⁶⁴ As noted on page 29, some children of immigration detainees are taken into social services' care and detained at Tuen Mun Children and Juvenile Home, which also holds juvenile criminal offenders. The Leitner Center was not able to obtain additional information about the situation of migrant children at this facility.¹⁶⁵

Although it appears that children are detained for immigration purposes relatively rarely in Hong Kong, for the children who are detained, this is a form of punishment related to their or their parent's immigration status and violates international law.

Adequate food, housing, health care and other essentials

The CRC mandates that states ensure children have access to essential services, including adequate food, health care and housing. Article 24 of the CRC requires states to take measures to provide children with health care and nutritious food to ensure they are as healthy as possible. Articles 26 and 27 further obligate states to ensure children have an adequate standard of living.

Hong Kong law requires MDWs' employers to provide them with accommodation and food, including during pregnancy, but this obligation is frequently violated and does not extend to any children they have. The cost of living and unaffordability of child care are prohibitive for most MDWs who have children in Hong Kong. Many MDWs who have children are forced to leave Hong Kong or take them to their home country to be looked after by relatives.

"I have a friend who was a victim of sexual abuse by her boyfriend from another country. After the incident, her boyfriend left, and she was terminated by her employer, forcing her to return to Indonesia. She had a child from that relationship, and while they obtained a birth certificate from both Hong Kong and the consulate, they had to return to their home country. It's challenging to stay in Hong Kong, especially when considering who will care for the child while the mother works."¹⁶⁶

Non-refoulement claimants are eligible for very basic support for housing and food, including allowances for children. Monthly, this amounts to HK\$1,200 per adult or child for food, and HK\$1,500 per adult and HK\$750 per child for rent (plus utility allowances). These amounts are inadequate. A social worker with the Center for Refugees emphasized the stark reality for refugees in a 2022 news article:

"Some parents who choose to abide by the law [prohibiting them from working] have made the difficult decision to ration their baby's meals and sell their milk powder to make ends meet. The government subsidies simply aren't enough."¹⁶⁷

Unaccompanied asylum-seeking children are housed at International Social Services Hong Kong's Anthony Lawrence International Refuge for Newcomers.¹⁶⁸ The Leitner Center could not obtain information about the conditions at this facility.¹⁶⁹

People seeking protection in Hong Kong, including children, can usually access free basic health care, but they struggle to access advanced

treatment, such as surgery or brain scans. A spokesperson for the Hospital Authority, which oversees public health institutions in Hong Kong, was quoted in the South China Morning Post in October 2023, stating that *non-refoulement* claimants (presumably including children) will only be provided free medical treatment in public hospitals in emergencies.¹⁷⁰

Barriers to education

CRC Article 28 obliges states to make primary education compulsory and freely available to all, to promote various forms of secondary education and make them accessible to all, and to make higher education "accessible to all on the basis of capacity". Under Hong Kong law, children are required to attend school from age 6 to 15 (or until they finish Form 3 of secondary education).¹⁷¹ The government has made some efforts to include ethnic minority children in the education system.¹⁷² However, these initiatives often fail to reach marginalized migrant children, who are still largely excluded from mainstream schools.¹⁷³ The government's funding policies explicitly exclude programs that support migrant children.¹⁷⁴

Even when they are able to attend school, these cohorts of migrant children are often placed in institutions that fail to meet their language needs, discriminate on religious or ethnic grounds, or alienate or exclude them.¹⁷⁵ If marginalized migrant children do well in school and want to continue to higher education, unless they have extra support, this may be impossible due to their immigration status, the costs, or because their language skills are considered not good enough.¹⁷⁶

"The most direct and immediate issue affecting all migrant children, particularly those from lower income families, is education. ... If their parents aren't receiving services, then the children probably aren't either. ... [F]or children whose parents lack economic means, the education system and society at large often treat them as outsiders. This lack of inclusion and support is a significant problem that needs addressing."¹⁷⁷

Refugee children must get permission from the government to attend public schools.¹⁷⁸ There can be delays during the process, for example, if the Immigration Department has not confirmed how long a child will stay in Hong Kong.¹⁷⁹ Schools are required to take a non-discriminatory approach to admissions, but many schools refuse admission to asylum-seeking children because they do not speak Cantonese fluently. Refugee children's best chance of getting into a school is to try one of the schools designated to receive additional funding to support ethnic minorities, especially one that has higher language diversity among students. However, although the government claims that these "designated" schools shield minority students from the discrimination they may face at mainstream schools, there are

concerns that attending these schools increases racial segregation.¹⁸⁰ An interviewee noted that due to various barriers, some migrant children are unable to attend school, especially beyond year 8 or 9 (usually ages 12-14).¹⁸¹

Although the government subsidizes educational expenses for *non-refoulement* claimant children, this is done through reimbursement, rather than advance payments. This approach compels families with limited cash to borrow money to cover their children's education costs.¹⁸² Refugee Union, an organization of refugees, raised concerns about this in 2021:

"The Education Bureau (EDB) disburses the education subsidy AFTER the start of the academic year by transferring it to the SWD [Social Welfare Department] contractor (ISS) which sits on the cash and rarely makes it available to refugee parents till December or January, and even later in certain cases. ... The delayed disbursement by ISS causes unnecessary financial stress on refugee parents who are pressured by school administrators to purchase all the necessary material in August before the start of the academic year in September."¹⁸³

Jason: overcoming educational hurdles

Jason arrived in Hong Kong from Vietnam with his family at age 12, seeking international protection. It was two years before he was accepted to attend secondary school. He was eligible for government subsidies for school fees, uniforms, textbooks and transportation, but these subsidies are paid several months after the start of the school year. This meant his mother had to borrow money to cover the costs and then seek reimbursement, which was very slow. Jason regularly missed part of his school day every two weeks when he went with his parents to report to the Immigration Department. Despite the challenges he faced, Jason did very well in school. However, his future remained uncertain due to his lack of legal status. He learned to plan his life in two-week blocks around reporting to immigration authorities.¹⁸⁴

Summary and recommendations

Marginalized migrant children in Hong Kong, including children of MDWs, refugee children and detained migrant children, face a precarious existence. The response of the Hong Kong Government to the issues faced by these children is inadequate.

Most refugee children lack any legal status and live in poverty and instability for protracted periods. They are often unable to access an appropriate

education and face significant societal discrimination. Some are separated from their parents and subject to immigration detention. Similarly, children of MDWs frequently endure prolonged separation from their parents due to the existing legal framework for MDWs. For those children who do reside in Hong Kong, there are various challenges.

To address these issues, Hong Kong must implement policies that end the discrimination faced by marginalized migrant children and ensure they can escape their legal limbo and access an adequate education, health care, standard of living, and other rights. We recommend that the Government introduce measures that ensure compliance with the Convention on the Rights of the Child and other international law in Hong Kong. This should particularly focus on the rights of children of migrant backgrounds, including through:

1. **Requiring government officials to take children's best interest** as a primary consideration in all decisions and actions relating to children.
2. **Ensuring no child is subject to immigration detention** or other punitive actions or conditions for reasons relating to their own or a parent's status.
3. **Guaranteeing access to adequate food, housing, and other essentials** for all children.
4. **Ensuring the education system meets the needs of children of migrant backgrounds**, addressing financial barriers, language, trauma, and other relevant factors.
5. **Granting residence permits** to refugee children as well as children of MDWs, which provide stability and access to adequate support and essential services.



VII. CONCLUSION

It is telling that a report on human rights issues in Hong Kong was hindered by the ongoing repression of civil society and individual rights in the city. If the climate of fear that hangs like a dark cloud over the islands of Hong Kong were not there, more advocates on these issues would undoubtedly be willing to speak out, and our job would have been much more straightforward. The Hong Kong Government needs to eliminate the laws, policies and practices that have caused people to silence themselves, and it also needs to be more transparent on these critical issues so they can be understood in depth.

Marginalized migrants in Hong Kong live a harsh reality. They are among the people most vulnerable to human rights abuses in Hong Kong. They face not only the broader issues affecting Hong Kong, such as the erosion of civil liberties and human rights abuses, but also systemic challenges like poverty, homelessness, and limited access to justice and health care services. Compounding their issues is an unfair legal system that does not comply with international standards and instead contributes to discrimination and exploitation.

Migrant domestic workers are critical to Hong Kong's economy. The city's professionals rely on these poorly paid staff to raise their children, care for their aging parents, cook their food, and clean their homes, enabling them to work full-time on Hong Kong's substantial salaries. Despite their essential role, migrant domestic workers are overworked, abused, exploited, and in some cases, denied their fundamental human rights. Fixing this injustice is crucial, especially as Hong Kong's aging population ushers in a growing demand for domestic workers.

Escaping persecution and violence, asylum seekers and refugees face a hostile environment in Hong Kong where their existence is marred by deeply flawed legal frameworks, substandard living conditions, health care barriers, employment restrictions, and a high risk of detention and forced return. In the rare event the system recognizes the threats they left behind as genuine and stops their removal, they remain "illegal immigrants" up until the day they are resettled to another country – a process that can take years.

Many of these asylum seekers and refugees will have passed through immigration detention during their time in Hong Kong. This system allows for prolonged, indefinite confinement in poor, often prison-like conditions where no independent body oversees the facilities. Detainees, including children, are usually unable to challenge their incarceration.

Meanwhile, marginalized migrant children in Hong Kong are not protected or supported in line with the Convention on the Rights of the Child. Many of these children do not have full access to an appropriate education. Children

of MDWs are frequently separated from their parents due to the restrictions on visas and their working conditions. Refugee children are not granted any protective status nor provided adequate support or advanced health care, and some are even detained in a facility that holds juvenile criminal offenders. Their parents are generally prohibited from working, leaving families with children living in poverty for extended periods or facing separation if parents are detained for illegally working to provide for their families.

Despite these challenges, there is hope for the future. What is broken can be fixed. Advocacy for democracy, fair working conditions, and respect for human rights must continue. There are many actions the Hong Kong Government can take to improve conditions for marginalized migrants. Stronger protection for migrant domestic workers. Extending the Refugee Convention to Hong Kong and ensuring it is applied consistently with international standards. Using immigration detention only when it is essential and with conditions that meet international standards. Ensuring marginalized migrant children have appropriate legal status, adequate support, can access a proper education, and receive all needed health care. These improvements would benefit society as a whole, allowing the most marginalized to live in dignity and achieve their full potential and, in many cases, drive innovation and contribute to economic growth.

ENDNOTES

1. According to the 1951 Refugee Convention, a refugee is someone who has left their country of origin or former habitual residence and has a well-founded fear of persecution for one of the reasons covered by the convention. An asylum-seeker is seeking recognition that they are a refugee. A *non-refoulement* claimant, in the context of Hong Kong, is a person seeking international protection due to a risk of persecution, torture, or inhuman or degrading treatment in their home country (as set out in the USM procedure).
2. Interview 4, March 11, 2023; Interview 5, March 24, 2023; and "Hong Kong", The Human Rights Measurement Initiative (HRMI) Rights Tracker, accessed June 22, 2023, <https://www.rightstracker.org/country/HKG?tab=atrisk>.
3. "Population Projections 2020 to 2061", Census and Statistics Department, Government of the Hong Kong SAR, September 2020.
4. Although there are other potential ways of addressing this demographic shift, the Hong Kong Government seems to be pursuing increasing the number of MDWs as the main option. In an interview with the South China Morning Post, then-Secretary for Labour and Welfare Dr Law Chi-kwong said: "Today we have 360,000 foreign domestic helpers. Because of an ageing population, 30 years down the road, that demand will grow to 600,000. That means an additional 240,000 foreign domestic helpers [are needed], just for looking after the elderly". "Hong Kong will need 600,000 domestic helpers in next 30 years amid demand for elderly care, labour chief says", South China Morning Post, November 5, 2017, <https://www.scmp.com/news/hong-kong/community/article/2118462/hong-kong-will-need-600000-domestic-helpers-next-30-years>.
5. "Gini Coefficient by Country", Wisevoter, <https://wisevoter.com/country-rankings/gini-coefficient-by-country/>, and Paul Yip, "Poverty report shows Hong Kong is failing its most vulnerable", South China Morning Post, November 17, 2021, <https://www.scmp.com/comment/opinion/article/3156229/poverty-report-shows-hong-kong-failing-its-most-vulnerable/>. The Gross Domestic Product (GDP) of Hong Kong was worth 368.14 billion US dollars in 2021, according to official data from the World Bank. The GDP value of Hong Kong represents 0.16 percent of the world economy. "DataBank | World Development Indicators", The World Bank, accessed July 7, 2023, <https://databank.worldbank.org/reports.aspx?source=world-development-indicators&country=HKG>. See also Government of the Hong Kong SAR - Office of the Government Economist Financial Secretary's Office | Census and Statistics Department, "Hong Kong Poverty Situation Report 2020", November 2021, https://www.commissiononpoverty.gov.hk/eng/pdf/Hong_Kong_Poverty_Situation_Report_2020.pdf; and Sue Ng, "Explainer: One-fifth of Hongkongers live in poverty. Here's what you need to know", Young Post (YP) | South China Morning Post, November 15, 2021, <https://www.scmp.com/yp/discover/news/hong-kong/article/3156120/explainer-one-fifth-hongkongers-live-poverty-heres-what>.
6. Government of the Hong Kong SAR, "Hong Kong Poverty Situation Report 2020", Figure 2.10.
7. Id., Figure 2.12.
8. "Street sleepers" is the term used by the Hong Kong authorities and press to refer to homeless people who sleep on the street. AccessInfo.hk, "Information on homelessness and housing - a Freedom of Information request to Labour and Welfare Bureau", https://accessinfo.hk/en/request/1433/response/4323/attach/2/Code%2095%20reply%20emial%20E%20AS2%20rev%20r.pdf?cookie_passthrough=1.
9. "Homelessness in Hong Kong", ImpactHK, <https://impacthk.org/about/homelessness-in-hk/>.
10. AccessInfo.hk, "Information on homelessness and housing - a Freedom of Information request, to Labour and Welfare Bureau", https://accessinfo.hk/en/request/1433/response/4323/attach/2/Code%2095%20reply%20emial%20E%20AS2%20rev%20r.pdf?cookie_passthrough=1.
11. "Hong Kong: The Facts - Housing", Housing Bureau, Government of the Hong Kong SAR, July 2022, <https://www.gov.hk/en/about/abouthk/factsheets/docs/housing.pdf>.
12. "Press Release: World Mental Health Day #HowOkayAreYouCampaign", Mind HK,

<https://www.mind.org.hk/press-releases/wmhd2019/>.

13. COVID-19 pandemic-related travel restrictions led to a decrease in the number of MDWs while the demand for their services remained the same or even increased. In response, the Legislative Council temporarily suspended the "two-week" rule, a policy that normally requires MDWs to exit Hong Kong within two weeks of leaving a job or face deportation.

"Adjusting measures to assist migrant domestic workers and employers cope with COVID-19 pandemic", Government of the Hong Kong SAR, December 30, 2020, <https://www.info.gov.hk/gia/general/202012/30/P2020123000304.htm> and Purple Romero, "Terminated? No need to go home asap, as Labour Sec allows visa extension for MDW", Hong Kong News, March 21, 2020, https://hongkongnews.com.hk/top_stories/terminated-no-need-go-home-asap-labour-sec-allows-visa-extension-fdh/.

14. Interview 5, March 24, 2023; and Helen Davidson, "Hong Kong domestic workers left homeless after being fired for contracting Covid-19", The Guardian, February 23, 2022; Candice Chau, "The frontline in our homes: Covid-19's lasting impact on Hong Kong's migrant domestic workers", Hong Kong Free Press, January 29, 2023, <https://hongkongfp.com/2023/01/29/the-frontline-in-our-homes-covid-19s-lasting-impact-on-hong-kongs-migrant-domestic-workers/>; Raquel Carvalho, "Limited food, no wages: domestic workers struggle amid quarantine in Hong Kong", South China Morning Post, June 21, 2020, <https://www.scmp.com/week-asia/economics/article/3089837/limited-food-no-wages-domestic-workers-struggle-amid-quarantine>; and "Refugees and migrants forgotten in COVID-19 crisis response", Amnesty International, May 14, 2020, <https://www.amnesty.org/en/documents/act30/2319/2020/en/>.

15. Rhea Mogul, "Covid-19 does not discriminate: Thousands of refugees, asylum-seekers barred from Hong Kong vaccination programme", Hong Kong Free Press, May 13, 2021, <https://hongkongfp.com/2021/05/13/covid-19-does-not-discriminate-thousands-of-refugees-asylum-seekers-barred-from-hong-kong-vaccination-programme/>; and Selina Cheng, "Covid-19 vaccine to be rolled out for mainland visitors and refugee claimants in Hong Kong", Hong Kong Free Press, May 25, 2021 <https://hongkongfp.com/2021/05/25/covid-19-vaccine-to-be-rolled-out-for-mainland-visitors-and-refugee-claimants-in-hong-kong/>.

16. Mercedes Hutton, "Covid-19: Panic buying leaves Hong Kong's refugees with little to eat, as fifth wave sends food prices soaring", Hong Kong Free Press, March 4, 2022, <https://hongkongfp.com/2022/03/04/covid-19-panic-buying-leaves-hong-kongs-refugees-with-little-to-eat-as-fifth-wave-sends-food-prices-soaring/>.

17. In addition to other challenges, NGOs are hamstrung by regulatory restrictions set by the Law Society of Hong Kong for the legal profession relating to providing legal services to people in need. For instance, NGOs cannot hire in-house staff lawyers to provide legal advice and representation, and must refer a case to a lawyer employed by a law firm. See Joanne Harris, "Access to justice: pandemic forces courts to incorporate remote technology", International Bar Association, January 21, 2021, <https://www.ibanet.org/article/6A06D54D-C1F6-4COA-BC29-C5D03560B6AB> and The Global Network for Public Interest Law (PILnet) & DLA Piper, This Way – Finding Community Legal Assistance in Hong Kong, May 31, 2017, https://www.pilnet.org/wp-content/uploads/2020/06/FINAL_REPORT_31_May_2017.pdf.

18. Interview 11, October 30, 2023; Georgetown University, The Hong Kong 2019 Protest Movement: A Data Analysis of Arrests and Prosecutions, October 2023, chapter IV, <https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2023/10/GCAL-HK-2019-ARREST-DATA-REPORT-FINAL-OCT-2023.pdf>.

19. Equal Justice Hong Kong, <https://www.equaljustice.org/>.

20. This has had a chilling effect on advocacy for human rights, including the rights of migrant domestic workers. Many activists and organizations have been targeted for their involvement in protests, advocacy, and media work, and some forced to change operations, close, or leave Hong Kong. For example, the Asia Monitor Resource Centre (AMRC) left Hong Kong in September 2021, and the Hong Kong Confederation of Trade Unions was disbanded in October 2021. See AMRC, "Statement to false accusation", posted on Facebook on Sep-

tember 16, 2021, https://m.facebook.com/story.php?story_fbid=pfbid0TQWv9ruoK5A1s3g5i-kaAvkgzJMsJLEZCC6PTV8Niw93XXSkfWF4KjWeQQVJhyeXrl&id=161133747251481&_rdr and Pak Yiu and Jessie Pang, "Hong Kong trade union disbands as impact of security law deepens", Reuters, October 3, 2021, [https://www.reuters.com/world/asia-pacific/hong-kong-trade-union-disbands-impact-security-law-deepens-2021-10-03/#:~:text=HONG%20KONG%2C%20Oct%203%20\(Reuters,in%20the%20global%20financial%20centre.&text=%22In%20the%20meeting%2C%20all%20our%20affiliates%20made%20the%20hard%20decision.](https://www.reuters.com/world/asia-pacific/hong-kong-trade-union-disbands-impact-security-law-deepens-2021-10-03/#:~:text=HONG%20KONG%2C%20Oct%203%20(Reuters,in%20the%20global%20financial%20centre.&text=%22In%20the%20meeting%2C%20all%20our%20affiliates%20made%20the%20hard%20decision.) In addition, the trustees of the 612 Humanitarian Relief Fund, which helped arrested protesters pay for their legal and medical bills, were convicted for failing to register the fund as a society and fined up to HK\$4,000 each. Peter Lee, "Hong Kong court convicts Cardinal Zen and 5 others over failing to register protester relief fund as society", Hong Kong Free Press, November 25, 2022, <https://hongkongfp.com/2022/11/25/breaking-hong-kong-court-convicts-cardinal-zen-and-5-others-over-failing-to-register-protester-relief-fund-as-society/>. Prior to these convictions, the fund had already stopped operation in 2021, a month earlier than planned, because the Hong Kong Government, based on powers granted by the NSL, demanded it hand over operational details, including information about its donors and beneficiaries. Chris Lau, "Hong Kong national security law: protest fund facing foreign collusion probe to stop taking donations 'until further notice'", South China Morning Post, September 6, 2021, <https://www.scmp.com/news/hong-kong/politics/article/3147752/hong-kong-national-security-law-protest-fund-facing-foreign>. In another example, in September 2022, four individuals involved with Spark Alliance, a crowd-funding platform that raised money for 2019 protesters, were arrested on money-laundering charges based on the Anti-Money Laundering and Counter-Terrorist Financing Ordinance. Peter Lee, "Hong Kong court orders seizure of HK\$70 million from crowd-funding platform that raised money for 2019 protesters", Hong Kong Free Press, September 26, 2022, <https://hongkongfp.com/2022/09/26/hong-kong-court-orders-seizure-of-hk70-million-from-crowd-funding-platform-that-raised-money-for-2019-protesters/>. COVID-19 regulations, though now relaxed, were also used to limit freedom of assembly. For example, members of the League of Social Democrats and the Labour Party were convicted of breaching COVID-19 rules after marching in two groups of four to the government's headquarters in Admiralty as part of a Labor Day protest in 2020. Candice Chau, "8 Hong Kong democrats lose appeal against Covid-related conviction and sentence for 2020 Labour Day demo", Hong Kong Free Press, October 18, 2022, <https://hongkongfp.com/2022/10/18/8-hong-kong-democrats-lose-appeal-against-covid-related-conviction-and-sentence-for-2020-labour-day-demo/>.

21. Interview 1, December 15, 2022; and Interview 3, March 6, 2023.
22. Interview 5, March 24, 2023.
23. Know Your Rights Hong Kong, <https://kyrhk.civicsight.org/en/money-laundering>.
24. Societies Ordinance (Cap. 151), Laws of Hong Kong, Sections 5, 10, and 15.
25. Societies Ordinance (Cap. 151), Laws of Hong Kong, Sections 5A(3) and 5D.
26. Societies Ordinance (Cap. 151), Laws of Hong Kong, Sections 5C, 5F, 9, 10, 16, 19, 20-25, 26L, 26M, and 41.
27. Interview 7, May 19, 2023.
28. Leitner Center, Civil Society Submission to the United Nations Human Rights Committee, May 2022, tinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FCSS%2FHKG%2F48792&Lang=en.
29. Reporters Without Borders, <https://rsf.org/en/country/hong-kong>.
30. Interview 7, May 19, 2023.
31. Interview 3, March 6, 2023; Interview 9, October 20, 2023; and Jessie Pang, "Hong Kong women's rights protest cancelled after police cite risk of violence", Reuters, March 4, 2023, <https://www.reuters.com/world/asia-pacific/hong-kong-womens-rights-protest-cancelled-after-police-cite-risk-violence-2023-03-04/>; Lea Mok, "Emotional meltdown': Hong Kong Labour Day demo cancelled, as activist says security law prevents disclosing why", Hong Kong Free Press, April 26, 2023, <https://hongkongfp.com/2023/04/26/emotional-meltdown-hong-kong-labour-day-demo-cancelled-as-activist-says-security->

law-prevents-disclosing-why/; and "Tiananmen: Six held in Hong Kong on anniversary of massacre", BBC News, June 5, 2022, <https://www.bbc.co.uk/news/world-asia-china-61690523>.

32. Public Order Ordinance (Cap. 245), Laws of Hong Kong, Section 17A.

33. "Hong Kong women's march called off after police meetings: organisers", The Online Citizen, March 8, 2023, <https://www.theonlinecitizen.com/2023/03/08/hong-kong-womens-march-called-off-after-police-meetings-organisers/>.

34. The Hong Kong Government usually uses the term "foreign domestic helpers". We consider the term migrant domestic workers, used by the ILO, to be more appropriate: "Migrant domestic workers", International Labour Organization, accessed July 7, 2023, <https://www.ilo.org/global/topics/labour-migration/policy-areas/migrant-domestic-workers/lang-en/index.htm>.

35. Government of the Hong Kong SAR, "Statistic Products". The government's financial constraints and exclusionary practices could result in MDWs relocating to neighboring countries, while China's labor policies, including welcoming workers from the Philippines, pose a potential threat to Hong Kong's economic growth by restricting women's participation in the labor market. Only 49 percent of Hong Kong's mothers aged 25 to 54 would be able to participate in the labor market if they did not employ MDWs. After hiring MDWs, however, the female labor force participation increases to 78 percent. Jason Hung, "Hong Kong Hurts Itself by Financially Excluding Foreign Domestic Workers", The Diplomat, February 7, 2020, <https://thediplomat.com/2020/02/hong-kong-hurts-itself-by-financially-excluding-foreign-domestic-workers/>.

36. Hillary Leung, "Here's How Much Domestic Workers Add to Hong Kong's Economy", Time, March 6, 2019, <https://time.com/5543633/migrant-domestic-workers-hong-kong-economy/>, and "The value of care: Research reveals domestic workers contribute USD\$12.6 billion to Hong Kong's economy, 3.6% of the GDP", Enrich Personal Development Ltd., March 6, 2019, https://enrichhk.org/sites/default/files/2019-09/FINAL-English_Press-Release_Value-of-Care-Report1_0.pdf.

37. Jennifer Creery, "Domestic workers contribute HK\$98.9 billion to Hong Kong's economy, 3.6% of GDP - study", Hong Kong Free Press, March 6, 2019, <https://hongkongfp.com/2019/03/06/domestic-workers-contribute-hk98-9-billion-hong-kongs-economy-3-6-gdp-study/>.

38. This is a decline of 70,000 since the start of the COVID-19 pandemic. The majority of these workers are from the Philippines (over 190,000) and Indonesia (over 140,000). There are also some from Thailand, Sri Lanka, Nepal, India, and Bangladesh. Hong Kong Census and Statistics Department, "Statistic Products", Government of the Hong Kong SAR, <https://www.censtatd.gov.hk/en/>.

39. Justice Center Hong Kong, Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong, March 2016, <https://www.justicecentre.org.hk/framework/uploads/2016/02/Coming-Clean-2016-Justice-Centre-Hong-Kong.pdf>.

40. AccessInfo.hk, "Information on Foreign Domestic Helpers (FDHs) policies undertaken by the HKSAR government since 2018 - a Freedom of Information request to Labour and Welfare Bureau", https://accessinfo.hk/en/request/information_on_foreign_domestic?unfold=1.

41. Id.

42. Labour Department, "Be Prepared for Employment in Hong Kong: A Handbook for Foreign Domestic Helpers", Government of the Hong Kong SAR, https://www.fdh.labor.gov.hk/res/pdf/Be_Prepared_for_Employment_in_HK_handbook_FDH_English.pdf; AccessInfo.hk, "Information on Foreign Domestic Helpers (FDHs) policies undertaken by the HKSAR government since 2018 - a Freedom of Information request to Labour and Welfare Bureau"; and Social Welfare Department, "Pilot Scheme on training for Foreign Domestic Helpers in Elderly Care" Government of Hong Kong SAR, https://www.swd.gov.hk/en/pubsvc/elderly/cat_careersupp/psfdh/index.html.

43. Labour Department, "Be Prepared for Employment in Hong Kong: A Handbook for Foreign Domestic Helpers".
44. Dentons, "Hong Kong Court of Appeal confirms that 'standby time' is not a 'rest day' under Hong Kong law", January 10, 2023, <https://hongkong.dentons.com/insights/articles/2023/january/10/hong-kong-court-of-appeal-confirms-that-standby-time-is-not-a-rest-day>.
45. Candice Chau, "Rights group urge better working conditions for Hong Kong's domestic workers ahead of Women's Day", Hong Kong Free Press, March 2, 2023, <https://hongkongfp.com/2023/03/02/rights-group-urge-better-working-conditions-for-hong-kongs-domestic-workers-ahead-of-womens-day/> and Candice Chau, "Hong Kong to launch public consultation on further regulating migrant domestic worker 'job-hopping'", Hong Kong Free Press, March 17, 2023, <https://hongkongfp.com/2023/03/17/hong-kong-to-launch-public-consultation-on-further-regulating-migrant-domestic-worker-job-hopping/>.
46. Interview 9, October 20, 2023.
47. League of Nations, Convention to Suppress the Slave Trade and Slavery, 25 September 1926, 60 LNTS 253, Registered No. 1414, available at: <https://www.refworld.org/docid/3ae6b36fb.html>; International Labour Organization (ILO), Forced Labour Convention, C29, 28 June 1930, C29, available at: <https://www.refworld.org/docid/3ddb621f2a.html>; International Labour Organization (ILO), Abolition of Forced Labour Convention, C105, 25 June 1957, C105, available at: <https://www.refworld.org/docid/43fdeb602.html>; UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <https://www.refworld.org/docid/3ae6b3970.html>; UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>; and UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html>.
48. AccessInfo.hk, "Information on Foreign Domestic Helpers (FDHs) policies undertaken by the HKSAR government since 2018 - a Freedom of Information request to Labour and Welfare Bureau".
49. See IOM, "Foreign Domestic Worker Rights in Hong Kong Factsheet", 2018, <https://iomx.iom.int/sites/g/files/tmzbdl196/files/resources/associated/foreign-domestic-worker-rights-hong-kong-factsheet.pdf>.
50. The majority of MDWs are women of childbearing age. "For those unable to return home, their children are typically the most vulnerable - undocumented and without access to healthcare, shelter and education." Department of Social Work and Social Administration, "Children at the Heart of Migration: Ensuring All Children Affected by Migration are Protected and Respected", The University of Hong Kong, May 2023, <https://www.pathfinders.org.hk/wp-content/uploads/2023/05/Children-at-the-Heart-of-Migration-May23.pdf>, p. 2.
51. Interview 9, October 20, 2023; Interview 10, October 20, 2023.
52. The "two-week" rule stipulates that MDWs must exit Hong Kong within 14 days of the end of their employment contract. They are always on two-year contracts and if they do not have a current employment contract, their immigration status expires after 14 days. Interview 4, March 11, 2023; The "live-in" rule requires that migrant domestic workers reside in the homes of their employers. Immigration Department, "General Information on the Right of Abode in Hong Kong", Government of the Hong Kong SAR, <https://www.immd.gov.hk/eng/services/roa/geninfor.html>.
53. "A Pathway to Justice or a Road to Nowhere?", Stop Trafficking of People (STOP), <https://stophk.my.canva.site/atjresearch>.
54. According to the 2023 Global Slavery Index, an estimated 21,000 people in Hong Kong are living in conditions of modern slavery, including forced labor. "Global Slavery Index 2023", Walk Free, p. 118, accessed June 22, 2023, <https://cdn.walkfree.org/content/uploads/2023/05/17114737/Global-Slavery-Index-2023.pdf>. MDWs experience various forms of abuse, including exploitative recruitment practices, oppressive work and living

conditions, debt bondage, inadequate legal protections, and the inability to freely terminate employment. Asha D'Souza, "Moving towards Decent work for Domestic Workers: An Overview of the ILO's Work", International Labour Office, 2010, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_142905.pdf.

55. "A Pathway to Justice or a Road to Nowhere?", Stop Trafficking of People (STOP).

56. Justice Center Hong Kong, Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong, March 2016.

57. Jessie Yeung, "Imagine being forced to live with your boss. That's the case for nearly 400,000 women in Hong Kong", CNN, July 9, 2020, <https://www.cnn.com/2020/07/09/asia/hong-kong-helper-live-in-rule-intl-hnk>.

58. "A Pathway to Justice or a Road to Nowhere?", Stop Trafficking of People (STOP). Without valid immigration status or while on a visitor visa, MDWs are left with no accommodation, right to work nor access to public health care without incurring significant costs. This creates a substantial deterrent against reporting abuse. According to reports from Rights Exposure and other sources, MDWs are typically not permitted to apply for new employment contracts until they reach an advanced stage in any legal case against their employers. Given that these cases can extend over several months, MDWs are likely to lose a significant amount of income and may even fall into debt. This further exacerbates the challenges they face and underscores the need for more supportive policies and measures.

59. Interview 9, October 20, 2023.

60. Interview 10, October 20, 2023.

61. As of October 2022, the minimum allowable wage for domestic helpers in Hong Kong was HK\$4,730 per month. "Hong Kong Labour Department Minimum Allowable Wage and food allowance for migrant domestic workers", Government of the Hong Kong SAR, September 30, 2021, <https://www.info.gov.hk/gia/general/202109/30/P2021093000329.htm>.

62. AccessInfo.hk, "Information on Foreign Domestic Helpers (FDHs) policies undertaken by the HKSAR government since 2018 - a Freedom of Information request to Labour and Welfare Bureau".

63. Jessie Yeung, "Imagine being forced to live with your boss. That's the case for nearly 400,000 women in Hong Kong". CNN, July 9, 2020.

64. Members of LegCo's Democratic Alliance for the Betterment and Progress of Hong Kong political party, including Frank Ngan and Elizabeth Quat, have proposed MDW-related bills, such as measures to terminate "job-hopping," a rating system for employment agencies that measures domestic workers' turnover rates, and a limit on the value of loans MDWs can take out. In response, the Federation of Asian Domestic Workers' Unions (FADWU) said that the proposals discriminate against MDWs, and that "job-hopping" is a myth created by the government. A coalition of 71 unions petitioned against the proposal, and 20 union members rallied outside LegCo. The Asia Migrants Coordinating Body (AMCB) called on the Philippines and Indonesia to ban the two lawmakers as persona non grata. Marlon Alexander Luistro, "HK Migrant Domestic Workers to Quat, Ngan: Stop the racist attacks", Hong Kong News, February 24, 2023, <https://hongkongnews.com.hk/news/hk-migrant-domestic-workers-to-quat-ngan-stop-the-racist-attacks/>.

65. The median monthly income of migrant domestic workers was HK\$4,630 in 2019, a little over a quarter of the overall median income of HK\$16,500 in Hong Kong. The recorded poverty rate among migrant domestic workers was relatively low at 2.7 percent, but this may be due to the fact that many of them live in employer-provided accommodation and have limited opportunities to access other forms of welfare assistance.

66. Interview 9, October 20, 2023.

67. Candace Chau, "Excessive agency fees costing some Hong Kong migrant domestic workers over HK\$19,000, union says", Hong Kong Free Press, July 19, 2023, <https://>

hongkongfp.com/2023/07/19/excessive-agency-fees-costing-some-hong-kong-migrant-domestic-workers-over-hk19000-union-says/.

68. Interview 10, October 20, 2023.

69. Interview 9, October 20, 2023; Governments of MDW countries of origin have economic and other interests in having a high number of their nationals working abroad as migrant domestic workers, which may affect their advocacy on these issues. See e.g., Margaret Simons, "They treated me like an animal': how Filipino domestic workers become trapped", *The Guardian*, October 26, 2023, <https://www.theguardian.com/news/2023/oct/26/how-filipino-domestic-workers-become-trapped>.

70. Interview 8, July 4, 2023.

71. Interview 9, October 20, 2023; Only 18 percent of MDWs have a local bank account, lower than MDWs in Singapore (51 percent) and Malaysia (86 percent). Hung, "Hong Kong Hurts Itself by Financially Excluding Foreign Domestic Workers", *The Diplomat*, <https://thediplomat.com/2020/02/hong-kong-hurts-itself-by-financially-excluding-foreign-domestic-workers/>.

72. Interview 9, October 20, 2023.

73. "The Value of Care: Key Contributions of Migrant Domestic Workers to Economic Growth and Family Well-being in Asia", Experian & Enrich, March 2019, https://enrichhk.org/sites/default/files/2019-09/Final_The-Value-of-Care_Full-Report.pdf.

74. As of September 2022, there were approximately 14,900 *non-refoulement* claimants remaining in Hong Kong. In terms of nationalities, most claimants are from Vietnam, Indonesia, Pakistan, India, Bangladesh, and the Philippines. "LCQ10: Non-refoulement claimants", Government of the Hong Kong SAR, November 23, 2022, <https://www.info.gov.hk/gia/general/202211/23/P2022112300464.htm>; and "Over 14,900 non-refoulement claimants still remain in Hong Kong as at end-September 2022", *Dimsum Daily*, November 23, 2022, <https://www.dimsumdaily.hk/over-14900-non-refoulement-claimants-still-remain-in-hong-kong-as-at-end-september-2022/>.

75. "About UNHCR - The 1951 Refugee Convention", UNHCR, <https://www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention>, and Maja Janmyr, "1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda", *International Journal of Refugee Law*, Volume 33, Issue 2 (June 2021): 188–213, <https://doi.org/10.1093/ijrl/eeab043>.

76. Rachel Li, Isaac Shaffer and Lynette Nam, Hong Kong's Unified Screening Mechanism: form over substance, *Forced Migration Review*, Issue 67, July 2021, <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/issue67/li-shaffer-nam.pdf>.

77. Immigration Department, "Making a Claim for *Non-refoulement* Protection in Hong Kong", https://www.immd.gov.hk/eng/useful_information/non-refoulement-making-claim.html.

78. Ratified by the United Kingdom (UK) on 8 December 1988 and applied to Hong Kong by extension on 9 December 1992 in a notification to the UN Secretary-General. On 10 June 1997, the Secretary-General received communications concerning the status of Hong Kong from the governments of China and the UK. Upon resuming the exercise of sovereignty over Hong Kong, China notified the Secretary-General that the convention, with the reservation made by China, will also apply to Hong Kong. See United Nations Treaty Collection, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Signatories and Parties, Vol. 1465, p. 85, Notes 6 and 12, https://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtdsg_no=IV-9&chapter=4&lang=en#top; Lene Wendland, "A Handbook on State Obligations under the UN Convention Against Torture", *The Association for the Prevention of Torture (APT)*; and "Refugee protection, internal displacement and statelessness - Report of the Special Rapporteur on trafficking in persons, especially women and children", A/HRC/53/28, May 23, 2023, <https://www.files.ethz.ch/isn/16024/HB%20on%20State%20Obligations.pdf>, and "Refugee protection, internal displacement and statelessness - Report of the Special Rapporteur on trafficking in persons, especially women and children", A/HRC/53/28, May

23, 2023, https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2Fdocuments%2Fhrbodies%2Fhrcouncil%2Fsessions-regular%2Fsession53%2Fadvance-versions%2FA_HRC_53_28_AdvanceUneditedVersion.docx&wdOrigin=BROWSELINK.

79. Ratified by the United Kingdom (UK) on 20 May 1976 and applied to Hong Kong by extension. Upon resuming the exercise of sovereignty over Hong Kong, China notified the Secretary-General that the convention will apply to Hong Kong. See United Nations Treaty Collection, International Covenant on Civil and Political Rights, vol. 999, p. 171 and vol. 1057, p. 407 (procès-verbal of rectification of the authentic Spanish text); depositary notification C.N.782.2001.TREATIES-6 of 5 October 2001 [Proposal of correction to the original of the Covenant (Chinese authentic text)] and C.N.8.2002.TREATIES-1 of 3 January 2002 [Rectification of the original of the Covenant (Chinese authentic text)], https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en#top.

80. UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: <https://www.refworld.org/docid/3ae6b3940.html>.

81. UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>.

82. UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: <https://www.refworld.org/docid/3ae6b3940.html>.

83. UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), <https://www.refworld.org/docid/3ae6b3712c.html>.

84. Rachel Li, Isaac Shaffer and Lynette Nam, Hong Kong's Unified Screening Mechanism: form over substance, Forced Migration Review, Issue 67, July 2021, and Immigration Department, "Making a Claim for *Non-refoulement* Protection in Hong Kong", https://www.immd.gov.hk/eng/useful_information/non-refoulement-making-claim.html.

85. UNHCR (Hong Kong), Unified Screening Mechanisms, <https://www.unhcr.org/hk/en/what-we-do/usm-procedures-2>.

86. Immigration Department, "Notice to Persons Making a *Non-Refoulement* Claim", August 1, 2021, https://www.immd.gov.hk/pdf/notice_non-refoulement_claim_en.pdf. The USM's "very high" threshold differs significantly from UNHCR guidance relating to the standards for assessing whether a person is a refugee, which states that refugee claims should be assessed at a low standard of proof, ie "a reasonable degree of likelihood". See generally UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/1P/4/ENG/REV. 4, <https://www.refworld.org/docid/5cb474b27.htm>.

87. We note that the government does not refer to the USM as a refugee status determination procedure, but it is in fact a procedure for assessing whether a person faces a risk of persecution in their home country.

88. Legislative Council, "Legislative Council Brief - Immigration (amendment) Bill 2020", File Ref.: SB CR 10/3221/15.

89. Interview 7, May 19, 2023; "LCQ10: *Non-refoulement* claimants", Government of the Hong Kong SAR, November 23, 2022.

90. Interview 6, April 23, 2023, and Justice Center Hong Kong, Parallel report to the Committee on the Elimination of Discrimination against Women Complimenting the ninth periodic report submitted by Hong Kong, China, February 2021, https://www.justicecentre.org.hk/framework/uploads/2021/02/Justice-Centre-Hong-Kong-CEDAW-Lol-submission_updated.pdf.

91. Justice Center Hong Kong, Parallel report to the Committee on the Elimination of Discrimination against Women Complimenting the ninth periodic report submitted by Hong

- Kong, China, February 2021, and Accessinfo.hk, USM substantiation rate - a Freedom of Information request to Security Bureau.
92. Justice Center Hong Kong, Parallel report to the Committee on the Elimination of Discrimination against Women Complimenting the ninth periodic report submitted by Hong Kong, China, February 2021, 5.2.
93. Chinese University of Hong Kong, "Immigration Detention in Hong Kong; Section 4: Refugee/Non-Refoulement/USM Claims; Number of Substantiated NR Claims (2014 - April 2020)", September 2021, <https://immigrationdetentionhk.net/en/data-viz-refugee/>.
94. Legislative Council, "Legislative Council Brief - Immigration (amendment) Bill 2020", File Ref.: SB CR 10/3221/15.
95. Accessinfo.hk, *Non-refoulement* protection claims - a Freedom of Information request to Security Bureau, https://accessinfo.hk/en/request/1376/response/4208/attach/3/SB%20s%20reply.pdf?cookie_passthrough=1.
96. Peter Yeung, "Cost of living: A refugee family runs out of food in Hong Kong", Al Jazeera, January 2, 2023, <https://www.aljazeera.com/features/2023/1/2/cost-of-living-no-future-for-asylum-seekers-in-hong-kong>. Government policy is based on avoiding "pull factors" that the government considers might attract more people to lodge *non-refoulement* claims. Mihir Melwani, "Driven by desperation: Without the right to work, refugees in Hong Kong face impossible choices", Hong Kong Free Press, February 20, 2022, <https://hongkongfp.com/2022/02/20/driven-by-desperation-without-the-right-to-work-refugees-in-hong-kong-face-impossible-choices/>.
97. Lars Hamer, "'Dire situation': Hong Kong authorities urged to show compassion to seriously ill asylum seekers who need life-saving treatment", South China Morning Post, Oct 28, 2023, <https://www.scmp.com/news/hong-kong/society/article/3239531/dire-situation-hong-kong-authorities-urged-show-compassion-seriously-ill-asylum-seekers-who-need>.
98. Interview 6, April 23, 2023.
99. Mihir Melwani, "Driven by desperation: Without the right to work, refugees in Hong Kong face impossible choices", Hong Kong Free Press, February 20, 2022.
100. Peter Yeung, "Cost of living: A refugee family runs out of food in Hong Kong", Al Jazeera, January 2, 2023. <https://www.aljazeera.com/features/2023/1/2/cost-of-living-no-future-for-asylum-seekers-in-hong-kong>.
101. Although the few *non-refoulement* claimants whose claims are considered "substantiated" can apply for permission to work, the permission is only temporary (maximum of six months, potentially renewable). Data published in 2021 indicates that 80 percent of applications for permission to work are granted. Chinese University of Hong Kong, "Immigration Detention in Hong Kong; Applications to work by *non-refoulement* claimants (as at end of Feb 2021)", September 2021, <https://immigrationdetentionhk.net/en/data-viz-refugee/>.
102. Resettlement is primarily to the US or Canada, and waiting times vary considerably depending on various factors, but it usually takes a long time. UNHCR Hong Kong, "Durable Solutions", "Resettlement", <https://www.unhcr.org/hk/en/what-we-do/durable-solutions#:~:text=Resettlement,to%20those%20enjoyed%20by%20nationals>; and UNHCR, Resettlement Data Finder, <https://rsq.unhcr.org/en/#r6wl> [search for China-Hong Kong as country of asylum].
103. UNHCR, Resettlement Data Finder, <https://rsq.unhcr.org/en/#C9qA> [search for China-Hong Kong as country of asylum].
104. Justice Center Hong Kong, Parallel report to the Committee on the Elimination of Discrimination against Women Complimenting the ninth periodic report submitted by Hong Kong, China, February 2021.
105. Mihir Melwani, "Driven by desperation: Without the right to work, refugees in Hong Kong face impossible choices", Hong Kong Free Press, February 20, 2022, <https://hongkongfp.com/2022/02/20/driven-by-desperation-without-the-right-to-work-refugees-in-hong-kong-face-impossible-choices/>.

106. Chinese University of Hong Kong, "Immigration Detention in Hong Kong: An Overview", September 2021, <https://immigrationdetentionhk.net/wp-content/uploads/2021/09/Immigration-Detention-in-Hong-Kong-Overview.pdf>.
107. Chinese University of Hong Kong, "Data Visualizations", Immigration Detention in Hong Kong, <https://immigrationdetentionhk.net/en/data-viz/>.
108. The pandemic caused a sharp decrease in 2020, with a recorded 4,765 detainees. "In 2019, there were more immigration detainees than prisoners in Hong Kong", Immigration Detention in Hong Kong, accessed June 22, 2023, <https://immigrationdetentionhk.net/en/>.
109. Interview 7, May 19, 2023.
110. Id.
111. Comparing immigration detention populations internationally is challenging due to varying data. However, in the United Kingdom and the United States, for example, the prison population generally exceeds the immigration detention population.
112. Interview 7, May 19, 2023, and Chinese University of Hong Kong, "Immigration Detention in Hong Kong: An Overview".
113. Interview 7, May 19, 2023, and Immigration Detention in Hong Kong, "In 2019, there were more immigration detainees than prisoners in Hong Kong".
114. Interview 7, May 19, 2023.
115. Chinese University of Hong Kong, Immigration Detention in Hong Kong, "Data Visualizations".
116. Interview 9, October 20, 2023.
117. Chinese University of Hong Kong, "Immigration Detention in Hong Kong; Official data on Tuen Mun Children & Juvenile Home (TMCJH)", <https://immigrationdetentionhk.net/en/data-viz-tmcjh/>.
118. United Nations Office of the High Commissioner on Human Rights, Working Group on Arbitrary Detention, "About Arbitrary Detention", <https://www.ohchr.org/en/about-arbitrary-detention>.
119. UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, <https://www.refworld.org/docid/503489533b8.html>.
120. Government of the Hong Kong SAR, Cap. 115 Immigration Ordinance, <https://www.elegislation.gov.hk/hk/cap115>
121. Chinese University of Hong Kong, "Immigration Detention in Hong Kong: An Overview".
122. Interview 7, May 19, 2023. Legislative Council, "Legislative Council Brief - Immigration (amendment) Bill 2020, File Ref.: SB CR 10/3221/15.
123. Legislative Council, "Legislative Council Brief - Immigration (amendment) Bill 2020, File Ref.: SB CR 10/3221/15.
124. The law itself includes exit bans as well, although the Security Bureau said the law would be applied only to inbound flights and target illegal immigrants.
125. Interview 7, May 19, 2023; and "LCQ10: *Non-refoulement* claimants", Government of the Hong Kong SAR, November 23, 2022.
126. Interview 7, May 19, 2023.
127. Id.
128. Id.
129. Id.
130. Id.; and "A Pathway to Justice or a Road to Nowhere?", Stop Trafficking of People.
131. Interview 7, May 19, 2023; and see Justice Center Hong Kong, Parallel report to the Committee on the Elimination of Discrimination against Women Complimenting the ninth periodic report submitted by Hong Kong, China, February 2021, 4.2.
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133. Chinese University of Hong Kong, "How long are immigration detainees held for in

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134. Interview 7, May 19, 2023.
 135. Id.
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 137. Chinese University of Hong Kong, Immigration Detention in Hong Kong, "Data on immigration detention conditions in Hong Kong".
 138. Interview 7, May 19, 2023.
 139. Id.
 140. Surabhi Chopra, "Hong Kong should rethink rules that threaten to make immigration detention feel like jail", South China Morning Post, December 20, 2022, <https://www.scmp.com/comment/opinion/article/3203710/hong-kong-should-rethink-rules-threaten-make-immigration-detention-feel-jail>.
 141. Interview 7, May 19, 2023.
 142. Id.
 143. Id.
 144. Id.
 145. Yen Nguyen, "No Future for the Children of Asylum Seekers in Hong Kong", The Diplomat, August 28, 2020, <https://thediplomat.com/2020/08/no-future-for-the-children-of-asylum-seekers-in-hong-kong/>.
 146. Interview 9, October 20, 2023 and Yen Nguyen, "No Future for the Children of Asylum Seekers in Hong Kong", The Diplomat, August 28, 2020, <https://thediplomat.com/2020/08/no-future-for-the-children-of-asylum-seekers-in-hong-kong/>.
 147. Interview 8, July 4, 2023, and Shan Jiang and Steven Sek-yum Ngai, "Effects of structural-economic and socio-relational exclusion on well-being of Chinese migrant children", Health and Social Care, Volume 30, Issue 5 (September 2022): 1847-1857, DOI: <https://doi.org/10.1111/hsc.13564>.
 148. Shan Jiang and Steven Sek-yum Ngai, "Effects of structural-economic and socio-relational exclusion on well-being of Chinese migrant children".
 149. Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention Second periodic report of States parties due in 2009 Hong Kong Special Administrative Region, China [16 July 2010], CRC/C/CHN-HKG/2, August 24, 2012, https://www2.ohchr.org/english/bodies/crc/docs/CHN.HKG.CHI.2_en.pdf (para 105).
 150. Dannie Aildasani, "The NGO helping to empower Hong Kong's refugee population", YP, South China Morning Post, August 8, 2021, <https://www.scmp.com/yp/discover/lifestyle/article/3143971/ngo-helping-empower-hong-kongs-refugee-population>. See also Asian Migrant Centre, <https://www.asianmigrantcentre.org/>.
 151. Interview 8, July, 4, 2023.
 152. The CRC Committee has confirmed that this provision applies to separated or unaccompanied children who are outside their country of origin. CRC General Comment No. 6, Treatment of Unaccompanied and Separated Children outside their Country of Origin, CRC/GC/2005/6, September 1, 2005, <https://undocs.org/Home/Mobile?FinalSymbol=CRC%2FGC%2F2005%2F6&Language=E&DeviceType=Desktop&LangRequested=False>, para 39-40.
 153. Family Clic, "Children's Constitutional Rights", University of Hong Kong, <https://familyclic.hk/en/category/topics/child-and-youth-affairs/childrens-protection-and-welfare/>.
 154. UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of China, adopted by the Committee at its sixty-fourth session (16 September–4 October 2013), CRC/C/CHN/CO/3-4, October 29, 2013, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRC%2FC%2FCHN%2FCO%2F3-4&Lang=en, paras 29-30, 77. These were the most recent CRC Concluding Observations for China as of November 1, 2023.
 155. Id. at paras 31-32, 73-74, 82, 84(a).
 156. Id. at para. 84(c).
 157. Article 4 of the CRC says: "States Parties shall undertake all appropriate legislative,

administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation".

158. Pathfinders, "I need help: FAQs on giving birth in Hong Kong: What will be the immigration status of my child if I give birth in Hong Kong?", <https://www.pathfinders.org.hk/get-help/migrant-domestic-worker/>.

159. Casey Quackenbush, "Hong Kong Migrant Laws Failing Undocumented Children", Time, April 11, 2017, <https://time.com/4637218/hong-kong-stateless-children-domestic-workers/>; and Jessie Yeung and Xyza Cruz Bacani, "The Philippines' migrant workers, and the children left behind", CNN, November 2011, <https://edition.cnn.com/interactive/2020/11/asia/hong-kong-filipino-helpers-dst/>.

160. Fabio Arlyn Timogan & Ors [2020] HKCA 971 (November 27, 2020) https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=132136&currpage=T, paras 34-35, 49, 54.

161. Interview 8, July 4, 2023; Fiona Sun and Karen Zhang, "Facing poverty, precarity and unable to work, asylum seekers and their families in Hong Kong remain trapped in limbo as they long for a dignified life", South China Morning Post, June 29, 2019, <https://www.scmp.com/news/hong-kong/society/article/3016492/facing-poverty-precarity-and-unable-work-asylum-seekers-and>; and Justice Center Hong Kong, Parallel report to the Committee on the Elimination of Discrimination against Women Complimenting the ninth periodic report submitted by Hong Kong, China, February 2021, p 3.

162. Interview 8, July, 4, 2023.

163. CRC & CMW, Joint General Comment - No. 4 of the CMW and No. 23 of the CRC (2017) - on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, November 16, 2017, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/joint-general-comment-no-4-cmw-and-no-23-crc-2017>, paras 5-7, 11.

164. Immigration (Places of Detention) Order (1975), https://www.elegislation.gov.hk/hk/cap115B?xid=ID_1438402617037_001, Chapter 115B, Section 4 and Schedule 2. Section 4 states: "A person, who in the opinion of an immigration officer is under the age of 18 years, may be detained in any place set out in Schedule 2 and shall receive the same treatment as that which is accorded to a child or juvenile detained in a place of refuge under section 34E of the Protection of Children and Juveniles Ordinance (Cap. 213)".

165. See Immigration (Places of Detention) Order (1975), https://www.elegislation.gov.hk/hk/cap115B?xid=ID_1438402617037_001, Chapter 115B, Section 4 and Schedule 2. See also Social Welfare Department, "Tuen Mun Children and Juvenile Home", https://www.swd.gov.hk/en/pubsvc/offdr/cat_residentialb/crhomes/. We note that a freedom of information request seeking data about the migrant children held at Tuen Mun resulted in a response indicating that the information requested was not maintained by the Immigration Department. AccessInfo.hk, "Data on sections of IO migrant children at TMCJH are held under", response of June 1, 2022, https://accessinfo.hk/en/request/data_on_sections_of_io_migrant_c.

166. Interview 10, October 20, 2023.

167. Mihir Melwani, "Driven by desperation: Without the right to work, refugees in Hong Kong face impossible choices", Hong Kong Free Press, February 20, 2022.

168. International Social Service Hong Kong, "Administering and Delivery of Assistance for Non-Refoulement Claimants", https://www.issk.org/en/our_services/detail/21/.

169. We note the freedom of information request of Surabhi Chopra asking for data about the persons accommodated at this facility, and the response indicating that the Social Welfare Department does not have the information requested. AccessInfo.hk, "Number of persons held at the Anthony Lawrence International Refuge for Newcomers", Response dated October 22, 2021, https://accessinfo.hk/zh_HK/request/number_of_persons_held_at_the_an#incoming-2318.

170. Lars Hamer, "Dire situation': Hong Kong authorities urged to show compassion to seriously ill asylum seekers who need life-saving treatment", South China Morning Post, October 28, 2023.
171. See LCQ11, "Home-schooling", October 15, 2014, <https://www.info.gov.hk/gia/general/201410/15/P201410150219.htm>; and Education Ordinance (Cap 279), https://www.elegislation.gov.hk/hk/cap279?xpid=ID_1438402921690_004, sections 74 and 78.
172. Interview 8, July 4, 2023, and "2018 Policy Address - Strengthening Support for Ethnic Minorities", Education Bureau, Government of the Hong Kong SAR, https://www.edb.gov.hk/attachment/en/student-parents/ncs-students/about-ncs-students/2018%20Policy%20Address/Leaflet_support%20for%20EM_e.pdf.
173. For primary and secondary school, there are government schools (operated by the government), aided schools (financed by the government but operated by voluntary organizations), and private schools. Government and aided schools do not charge tuition fees, but aided schools charge certain other fees, which they can waive at their discretion. Private schools charge tuition fees. Mayer Brown, Access to Education: A guide for Non-Refoulement Claimants and Substantiated Claimants under the Unified Screening Mechanism in Hong Kong, UNHCR, 2022, https://www.unhcr.org/hk/wp-content/uploads/sites/13/2022/04/Access-to-Education-Guide_April-2022.pdf, p 17.
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