



Parallel report to the Committee on Economic Social and Cultural Rights

Completing the fourth periodic report submitted by Hong Kong, China

December 2020

1. Introduction

The Refugee Concern Network is a network of civil society organisations (“CSO”) and individuals working to advocate for and better the lives of refugees and asylum seekers in the Hong Kong Special Administrative Region, China (“Hong Kong”). We appreciate this opportunity to submit a parallel report to the Committee on Economic Social and Cultural Rights (“the Committee”) on issues affecting the refugee and asylum seeker community. We hope this report can complement the fourth periodic report submitted by Hong Kong and assist the Committee in its adoption of Hong Kong’s list of issues.

At the outset, we wish to acknowledge the strength, resilience and potential of the refugee community despite the many challenges they faced discussed below.

Primary information in this report is based on interviews with refugees, asylum seekers and CSO staff. We thank in particular Our Lives Matter, a self-advocacy group for long-term asylum seekers, for their contributions.

The Committee expressed concerns in its 2014 Concluding Observations that Hong Kong lacks “comprehensive legislation granting protection to refugees and asylum seekers [which] prevents them from enjoying economic, social and cultural rights, particularly in accessing legal employment, vocational training and adequate housing”¹. While there are some positive developments in the protection landscape since Hong Kong’s last review, the Hong Kong Government remains unwilling to grant additional protection to the refugee population beyond *non-refoulement* and there remains a lack of any comprehensive law and policy. We note that this lack of law and policy contributed to the difficulties faced by the community and many gaps, such as social welfare provision and education, are covered by CSOs.

2. General legal framework

2.1 The Unified Screening Mechanism

As a result of several landmark judicial challenges², the Hong Kong Government launched the “Unified Screening Mechanism” (“USM”) in March 2014 to screen *non-refoulement* claims on the following grounds:

- The prohibition of torture, with reference to the 1984 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment³;

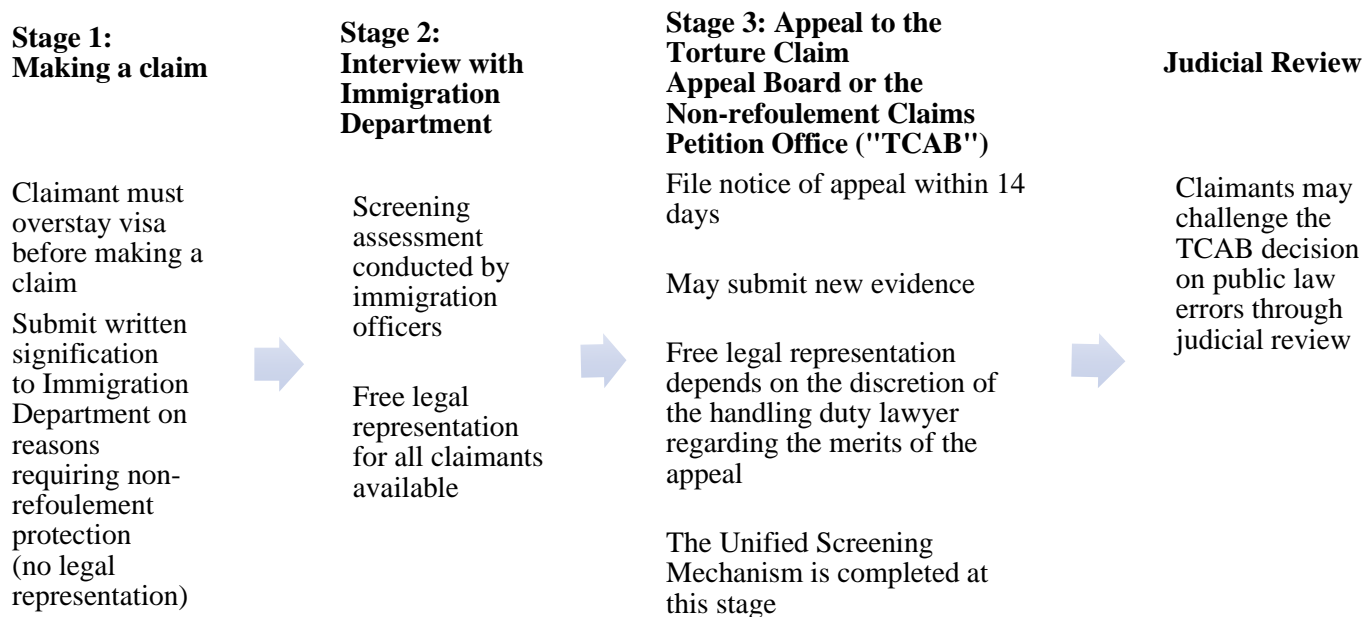
¹ At [42]

² *Ubamaka v Secretary for Security and Another* [2012] HKCFA 87; (2012) 15 HKCFAR 743; [2013] 2 HKC 75; FACV 15/2011 (21 December 2012) and *C and Others v Director of Immigration and Another* [2013] HKCFA 21; (2013) 16 HKCFAR 280; [2013] 4 HKC 563; FACV 19/2011 (25 March 2013)

³ Incorporated domestically via Immigration Ordinance (Cap 115) Part VIIC and *Secretary for Security v Sakthevel Prabakar* FACV No. 16 of 2003 (8 June 2004)

- The prohibition of cruel, inhuman or degrading treatment or punishment, with reference to Article 7 of the International Covenant on Civil and Political Rights (“ICCPR”)⁴;
- The right to life, with reference to Article 6 of the ICCPR⁵;
- The prohibition on return to risk of persecution, with reference to Article 33 of the 1951 Convention relating to the Status of Refugees (“Refugee Convention”)⁶;
- The prohibition on breaches of fundamental, non-derogable and/or absolute human rights on return or removal⁷. This ground is sometimes referred to as “all applicable grounds” but has not been defined by the Government.

The non-refoulement claims screening process is briefly as follows:



Various treaty bodies have expressed concerns that the USM falls short of Hong Kong’s international human rights obligations. For a detailed critique of the USM see Justice Centre Hong Kong’s parallel report to the Human Rights Committee for Hong Kong’s fourth review under the ICCPR⁸.

2.2 Policy of enforced illegality

The Government maintains that people seeking protection in Hong Kong are “illegal immigrants” and must not be treated as “asylum seekers” or “refugees” as the Refugee Convention has never been applied to Hong Kong⁹. However, this illegality is in part created

⁴ Incorporated domestically via the Hong Kong Bill of Rights Ordinance (Cap 383), Article 3

⁵ Incorporated domestically via the Hong Kong Bill of Rights Ordinance (Cap 383), Article 2

⁶ C and Others v Director of Immigration and Another [2013] HKCFA 21; (2013) 16 HKCFAR 280; [2013] 4 HKC 563; FACV 19/2011 (25 March 2013)

⁷ See for example, *Re Mohammad Palash* [2018] HKCA 417; CACV 297/2017 (23 July 2018) and *Re MD Zahidur Rahman Manik* [2018] HKCA 766; CACV 314/2018 (29 October 2018), which concern the right to fair trial

⁸ Available at: <https://www.legco.gov.hk/yr20-21/chinese/panels/ca/papers/ca20201116cb2-247-1-ec.pdf>

⁹ Fourth Report of the Hong Kong Special Administrative Region of the People’s Republic of China under the International Covenant on Economic, Social and Cultural Rights (“State Report”) (5 August 2020) at [27].

by Hong Kong’s statutory regime: section 37W of the Immigration Ordinance mandates that people seeking protection must overstay their visas – and henceforth become officially “illegal” – before they are eligible to lodge non-refoulement claims.

Claimants with substantiated claims are not given refugee or other immigration status but continue to be classified as illegal. A standard phrase from claimants’ acceptance letter reads:

“You are reminded that the decision not to return you to the country concerned for the time being should not be constructed as granting you permission to stay in Hong Kong. You are further reminded that the removal/ deportation order, if any, made against you is still in force and you may still be removed/ deported to the country concerned should there be changes to present circumstances which render your claim to be no longer substantiated.”

This illegal status is also inherited by children born to claimants in Hong Kong, who may be stateless¹⁰. The impact of this policy of enforced and perpetual illegality on claimants’ access to rights protected under the ICESCR is discussed in detail below.

3. Non-discrimination (Article 2)

The Government’s categorisation of people seeking protection in Hong Kong as “illegal immigrants” feeds into a discriminatory narrative that portrays people in need of international protection as abusers of the system or criminals. Since 2015, CSOs have observed the use of xenophobic terms such as “fake refugees”, “toxic tumours” and “Southeast Asian thieves” by the media and some politicians, especially in periods leading up to major elections¹¹. This Committee¹², the Committee on the Rights of the Child¹³ and Special Mandate holders¹⁴ have also expressed concerns over discrimination and the use of negative and stigmatising rhetoric towards refugees, migrants and ethnic minorities in Hong Kong.

Alarming, as part of the comprehensive review mentioned in Annex 2G of the State Report, the Government has proposed to enhance the use of immigration detention and allow immigration officers at detention centres to carry arms. These proposals reinforce false constructions of refugees and asylum seekers as criminals.

4. Right to adequate standard of living (Article 11)

4.1 Overview of humanitarian assistance for protection claimants

Non-refoulement claimants are provided with minimal humanitarian assistance through the Government’s outsourced service provider, the International Social Service (“ISS”). Unlike

¹⁰ Annie Li, “When ‘qualifying’ as a refugee gets you permanent ‘illegal’ status in Hong Kong”, *Oxford Monitor of Forced Migration* Volume 8, No.2 (January 2020), p.30. Available at: <https://www.oxfordmigration.com/post/when-qualifying-as-a-refugee-gets-you-permanent-illegal-status-in-hong-kong>

¹¹ Isabella Ng, Sharice Fungyee Choi and Ales Lihshing Chan, “Framing the Issue of Asylum Seekers and Refugees for Tougher Refugee Policy—a Study of the Media’s Portrayal in Post-colonial Hong Kong”, *Journal of International Migration and Integration* 20, 593-617 (2019)

¹² E/C.12/CHN/CO/2 at [41]

¹³ CRC/C/CHN/CO/3-4 at [29] – [30]

¹⁴ Communication No. CHN 14/2016. Available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22905>

other forms of welfare assistance provided by the Government, the level of humanitarian assistance has not been adjusted since 2014. The monthly assistance includes¹⁵:

- Food allowance: HK\$1,200 (EUR\$126) in the form of pre-paid supermarket cards
- Housing allowance: HK\$1,500 (EUR\$158) per adult and \$750 (EUR\$79) per child paid directly to the landlord
- Utilities: HK\$300 (EUR\$31)
- Transportation: HK\$200 – 420 (EUR\$21–44)
- Other basic necessities, such as toiletry items, diapers, menstrual products, provided in kind

The Government’s rationale for its humanitarian assistance policy is to avoid a “magnet effect”:

“[the Government] has commissioned a NGO to offer humanitarian assistance (including food, accommodation, utilities expenses, transportation allowance as well as other basic necessities) to non-refoulement claimants to prevent them from becoming destitute during their presence in Hong Kong, whilst avoiding any magnet effect which may have serious implications on the sustainability of the assistance programme and no our immigration control”¹⁶

As we detail below, the level of assistance is inadequate for protection claimants to enjoy an adequate standard of living, and many are in fact living in prolonged destitution below Hong Kong’s poverty line¹⁷, a situation compounded by the lack of right to work. It is also noteworthy that the humanitarian assistance package involves very little transfer of money to claimants, as the housing allowance is paid directly to the landlord and the food allowance is provided as a food card. This arrangement limits claimants’ cash liquidity needed for day-to-day expenses.

Poverty affects protection claimant’s enjoyment of human rights protected under the ICESCR, including the right to equality, adequate standard of living, health, education and social inclusion. In this regard we echo the Committee’s multi-dimensional definition of poverty as:

“a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.”¹⁸

4.2 Humanitarian assistance gaps

Section 37W(1) of the Immigration Ordinance provides: “A person may claim non-refoulement protection in Hong Kong only if the person is subject or liable to removal [...]”. In effect, this means protection claimants who entered Hong Kong with a valid visa must first overstay – hence become liable to removal – to be eligible to lodge non-refoulement claims. While people are waiting for their permission of stay to expire, they are unable to access the ISS’s

¹⁵ Secretary for Security, “Humanitarian assistance for non-refoulement claimants” (15 February 2017). Available at: <https://www.info.gov.hk/gia/general/201702/15/P2017021500554.htm>

¹⁶ State Report at [2], Annex2H

¹⁷Census and Statistics Department, “Poverty Situation”. Available at: <https://www.censtatd.gov.hk/hkstat/sub/so461.jsp>

¹⁸ Committee on Economic, Social and Cultural Rights, “Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights” (10 May 2001) at [8]. Available at: undoc.org/E/C.12/2001/10

humanitarian assistance, including food, shelter, or medical care. Depending on the claimant's national origin the permission to stay varies from 2 weeks to 3 months¹⁹.

Similarly, after filing a written signification (see step 1 of the USM above), it could take several weeks for protection claimants to be registered at the ISS, during which they have no access to humanitarian assistance.

Although some assistance is available via CSOs, many claimants experience hardships, including homelessness, during this period. Further, people's inability to access critical social welfare can be dangerously detrimental to their wellbeing. For instance, claimants with chronic diseases or medical complications are unable to access public health services unless they can pay for the charges as non-eligible persons²⁰; we have assisted protection claimants who were not able to access medication for epilepsy and HIV while they waited for their visas to expire or for their claims to be registered at the ISS.

4.3 Housing

As mentioned, the level of housing allowance provided to protection claimants is HKD\$1500 (EUR\$158) per adult and HKD\$750 (EUR\$79) per child, which is paid directly to the landlord. The value of rental assistance is grossly inadequate given Hong Kong's housing market is the world's least affordable²¹.

With this meagre amount, protection claimants often have to live in accommodation that is substandard, unsafe, overcrowded, with inadequate infrastructure and located in the outskirts of town. Oftentimes the housing allowance is insufficient to cover protection claimants' rent, and many people have to rely on CSOs or other means to cover the gap. For example, it is virtually impossible for a single parent with a young child receiving housing allowance at HKD\$2250 (EUR\$ 237) to find suitable accommodation without additional rental support from CSOs.

Additional rental allowance to the sum of HKD\$700-1000 (EUR\$73-105) is available for claimants with medical conditions, such as mobility issues. However, this additional medical allowance appears to have been cancelled in around November 2020 without clear communication to protection claimants, meaning claimants have had to move out due to the shortfall in rent.

Moreover, the housing allowance does not always cover the totality of housing costs, such as deposits and property agency fees. ISS provides one-off support for rental deposits (HKD\$3000/ EUR\$316 or an amount equivalent to two months of the rent) and property agency fees (HKD\$750/ EUR\$79 or an amount equivalent to the rent for half a month)²². As stated, this level of support may be insufficient to cover the costs. For example, the tenancy agreement may stipulate three months' rental deposit, or the property agent may charge a

¹⁹ Immigration Department, "Visit Visa / Entry Permit Requirements for the Hong Kong Special Administrative Region". Available at: <https://www.immd.gov.hk/eng/services/visas/visit-transit/visit-visa-entry-permit.html#notes>

²⁰ Hospital Authority, "Public Charges – non-eligible persons". Available at: https://www.ha.org.hk/haho/ho/cs/238767_en.pdf

²¹ Demographia, "16th Annual Demographia International Housing Affordability Survey" (20 January 2020). Available at: <http://demographia.com/dhimedia2020.pdf>

²² Secretary for Security, "LCQ3: Humanitarian assistance for non-refoulement claimants" (15 February 2017). Available at: <https://www.info.gov.hk/gia/general/201702/15/P2017021500554.htm>

substantial amount of agency fees (there is no statutory regulation on the rate of commission chargeable by property agents²³).

It must be stressed that support for rental deposit and property agency fees is one-off. This means ISS does not cover deposit or agency fees if protection claimants incurred these expenses subsequent to moving houses or renewing their contract. While in principle claimants should be able to retrieve their rental deposit from landlords, this does not always happen, as any initial refund is unlikely to be made in a timely enough manner to allow prepayment on a new property, and unscrupulous landlords often take advantage of protection claimants' precarious situation.

Because of these challenges, protection claimants are vulnerable to housing insecurity which may ultimately lead to periods of homelessness.

4.4 Food

Food allowance at HKD\$1200 (EUR\$126) per person per month is delivered in the form of pre-paid supermarket cards, which is an improvement from in-kind assistance. However, the level of assistance – approximately HKD\$40 (EUR\$4) per day – is not sufficient to last through the month, and many claimants rely on CSO community kitchens and food banks for additional food support. Some protection claimants report that they have had to skip meals or go to bed early due to food insecurity. Food insecurity also impacts claimants' physical and mental health, as they tend to purchase low-cost or filling food items that are not nutritionally adequate. The lack of key items such as refrigerators and cooking utensils also restricts claimants' access to food.

With the pre-paid supermarket cards, claimants can only shop for food at ParknShop, a local supermarket chain. Prices of food at ParknShop are generally more expensive compared to local stores or traditional markets²⁴. This means protection claimants are paying higher prices at supermarkets for food that is not necessarily better quality as prices are pushed up by added costs, mainly rent²⁵. ParknShop also lacks options for people with religious, cultural or medical dietary needs. A common complaint from claimants is the lack of cooking ingredients specific to their culture, such as spices, and halal food options at ParknShop. Although these items are available from local stores, claimants are not able to shop from these stores due to the lack of cash.

Protection claimants have experienced particular difficulties in obtaining food from ParknShop since the outbreak of COVID-19 in early 2020. Staple foods such as spaghetti, rice and yogurt are often out of stock due to spikes in demand. While the value of relevant subsidies has remained static, food prices have become sharply inflated. Protection claimants have also been unable to top-up their pre-paid cards as this requires appointments with ISS that have either

²³ See Part VI, Estate Agency Agreement, Estate Agents Ordinance (Cap. 511). Available at: <https://www.elegislation.gov.hk/hk/cap511>

²⁴ Food and Environmental Hygiene Department, "Survey on prices of fresh food items in different retail channels" (2016) at p.11. Available at: https://www.fehd.gov.hk/english/pleasant_environment/tidy_market/report_freshfood_survey.pdf

²⁵ Megan Leung, Doris Yu and Achlys Xu, "Hungry for a decent diet: poor families in Hong Kong can't afford to eat well" *Hong Kong Free Press* (27 November 2016). Available at: <https://hongkongfp.com/2016/11/27/hungry-decent-diet-poor-families-hong-kong-cant-afford-eat-well/> The authors of this article made a similar observation about prices at markets operated by real estate giants.

been delayed, or are unsafe due to the requirement to travel often long journeys on public transport without the adequate provision of facemasks.

4.5 Other daily necessities

Daily necessities, such as toiletry items, menstrual products, detergent and diapers are provided in kind. However, claimants reflect that these products are either of poor quality or insufficient, and many people rely on CSOs for additional support. Alarming, there are reports of young people skipping school because of period poverty.

5. Right to the highest attainable standard of physical and mental health (Article 12)

5.1 Accessing public healthcare services

Protection claimants face numerous barriers in accessing public healthcare services due to their immigration status, socio-economic condition, language barriers and discrimination.

Protection claimants are treated as “non-eligible persons” and are unable to use public health services at a discounted price. While they may apply for medical fee waivers to set aside their fees at public hospitals, there is a lack of information about its availability and the application process can be difficult to navigate. For example, the social welfare office at public hospitals where claimants need to attend to apply for fee waiver is only open during office hours, and there are also reports of claimants missing appointments due to the long wait at the social welfare office. Moreover, the fee waiver process can be inflexible, and the Hospital Authority tend to commence legal proceedings against claimants who did not apply for fee waiver in time due to the lack of information or other factors (such as mental health challenges), rather than granting retrospective fee waivers, despite that most claimants are unable to pay for their medical fees.

As discussed below, medical fee waivers are not available for all types of healthcare services. Importantly, access to dental health services for claimants is limited. Claimants can access Public Dental Clinics operated by the Government, but they will have to obtain the medical waiver the day before and queue from early morning as the number of quotas is limited. The Public Dental Clinics also only provides tooth extraction for emergency cases²⁶.

While the quality of healthcare in Hong Kong is generally excellent, the quality of treatment received by protection claimants varies between hospitals and clinics. Due to language barriers, unconscious bias, racism and other intersecting factors, claimants said that they are not always respected or listened to by healthcare staff, and many are subject to “Panadol therapy”, whereby paracetamol is prescribed by doctors for all health issues without proper diagnosis²⁷. For example, we assisted an asylum seeker who was prescribed with Panadol for their persistent ear pain, which turned out to be a tumour when CSO staff arranged a CT scan for them.

Public healthcare provision in Hong Kong is very strained, and people who are not able to afford private healthcare, such as refugees and asylum seekers, often have to wait for a long

²⁶ Health in Action, “Know your healthcare options & live a healthy life in Hong Kong” (2014) at p.45.

Available at: <https://hia.org.hk/wp-content/uploads/2018/10/Healthy-Living-Orientation-Booklet-for-Asylum-Seekers-and-Refugees-English.pdf>

²⁷ Puja Kapai, “Status of Ethnic Minorities in Hong Kong 1997 – 2014” *Faculty of Law, the University of Hong Kong* (2015) at p.15. Available at: https://fec852e0-797f-4982-8bed-d091603e2956.filesusr.com/ugd/5242b7_f0e1461b55b54f66b8af8c1badfb6ff7.pdf

time for specialist treatment²⁸. CSOs report that they refer 25 – 60% of refugees and asylum seekers to pro bono healthcare providers for treatment.

Mental health support beyond medication for psychiatric conditions is limited through the public healthcare system in general. Refugees and asylum seekers are likely to experience poor mental health, including depression, PTSD and other anxiety disorders, due to their pre-migration experiences (such as persecution, trauma, ill treatment and war) and post-migration conditions (such as poor housing and difficulties with asylum procedures)²⁹. While claimants can receive support through counselling services provided by ISS and other CSOs, the demand for mental health services is high.

The biggest challenge appears to be the lack of any coherent policy on the provision of healthcare services to refugees and asylum seekers in Hong Kong. As a result, information on protection claimants' rights to access public healthcare services is limited for both claimants and hospital staff, which often results in confusion and impacts treatment. Oftentimes hospital staff do not know that protection claimants are eligible for fee waiver, do not recognise protection claimants' Recognizance Form as a valid identity document, or are unsure about the types of treatment available to claimants. There are reports that claimants have been denied treatment, especially surgical procedures such as heart surgery and appendectomy, due to their immigration status. We are however unable to confirm whether the denial of treatments is based on a stated law, policy, or the discretion of hospital staff. Specifically, there are reports that claimants have been informed they are not eligible to receive organ transplant. Again, there appears to be no specific law and policy explicitly prescribing eligibility requirements for organ recipients, but Note 6, Form 2 of the Human Organ Transplant Ordinance (Cap 465A) does provide that the organ recipient must possess "identity document that has enabled the person to be granted permission to enter Hong Kong"³⁰. As discussed at section 2.2 above, refugees and asylum seekers are perpetually categorised as illegal or irregular, and therefore do not have permission to enter or remain in Hong Kong. Whilst we appreciate that medical resources, especially the demand for organs, is very strained in Hong Kong, claimants and healthcare professionals would benefit from a clear and coherent policy on refugee and asylum seekers' access to medical services.

The outbreak of COVID-19 highlighted a potentially devastating ramification of the lack of clear public health policies on refugees and asylum seekers. At the outset of the COVID-19 pandemic in Hong Kong, protection claimants were not provided with face masks and sanitation products such as hand sanitizers. Without face masks they were unable to travel for their legal, medical and social welfare appointments or for their recognizance reporting. There is no clear information on how protection claimants, in particular those with insecure immigration status, can safely access healthcare services if they develop COVID-19 symptoms. Most of the Government's public announcements are not accessible to protection claimants, as they are only in Chinese. There also appears to be missing information on the Government's

²⁸ Martin Choi, "Patients waiting more than three years for specialist care in Hong Kong, as doctors call for new department to manage public-private sector relationship" *South China Morning Post* (9 May 2019). Available at: <https://www.scmp.com/news/hong-kong/health-environment/article/3009592/patients-waiting-more-three-years-specialist-care>

²⁹ Mental Health Foundation, "Mental health statistics: refugees and asylum seekers". Available at: <https://www.mentalhealth.org.uk/statistics/mental-health-statistics-refugees-and-asylum-seekers>

³⁰ Available at: <https://www.hklii.hk/cgi-bin/sinodisp/eng/hk/legis/reg/465A/sch.html>

factsheets on disease prevention in minority languages, such as Hindi and Urdu³¹. While there are no reports of outbreaks in the refugee and asylum seeker community, there are reported cases among migrants in vulnerable situations, such as immigration detainees and migrant domestic workers³²

5.2 Accessing healthcare at immigration detention centres

Refugees and asylum seekers are particularly vulnerable to immigration detention under the Immigration Ordinance's wide powers. For example, they may have entered Hong Kong illegally or travelled with forged identification documents. Notably, asylum seekers can only commence their USM claims when they are subject or liable to removal from Hong Kong³³. This means people wanting to seek asylum must first overstay their visas, thereby committing an immigration offence, which increases their likelihood of being detained. As at November 2020, 211 claimants, including people with ongoing or rejected claims, are detained at immigration detention centres³⁴. There is very little publicly available information about the detainee population (such as their age, gender, immigration status and national origin), the duration of detention, and detention condition (including number of suicides and critical medical incidents)³⁵. There is no effective or independent complaints and monitoring mechanism.

The Government's limited Detention Policy states that the physical and mental health of a detainee is crucial to the ongoing assessment of the necessity, reasonableness and lawfulness of their detention³⁶. However, we observe that this policy is not always followed, and people with specific vulnerabilities, such as those who are suffering from health conditions, trauma, and have experienced torture or ill treatment, are frequently detained.

³¹ Observation made by Hong Kong Unison. See:

<https://www.facebook.com/HongKongUnison/photos/a.418223401543792/3414914495207986/?type=3&theater>

³²Jane Cheung and Mary Ann Benitez, "All domestic helpers offered free virus test" *the Standard* (17 December 2020). Available at: <https://www.thestandard.com.hk/sections-news-print/225791/All-domestic-helpers-offered-free-virus-test> ; Immigration Department, "A person transferred from Pik Uk Prison to Castle Peak Bay Immigration Centre for detention tests positive for Covid-19". 6 September 2020. Available at: <https://www.immd.gov.hk/eng/press/press-releases/20200906.html>; Immigration Department, "A detainee detained at Castle Peak Bay Immigration Centre tested positive for Covid-19". 19 August 2020. Available at: <https://www.immd.gov.hk/eng/press/press-releases/20200819b.html>.

³³ Immigration Ordinance, Section 37W(1).

³⁴ Immigration Department, "Response to untrue report on Castle Peak Bay Immigration Centre by individual media organisation" (18 December 2020). Available at: <https://www.info.gov.hk/gia/general/202012/18/P2020121800324.htm?fbclid=IwAR0uoUzxDgf9ustorRe1QKgdYk3CpoczBWwBC8JD5dwIAo2RQkWfKhUi8>

³⁵ Immigration Department, "Immigration Detention" (March 2020). Available at:

https://accessinfo.hk/en/request/immigration_detention_2#incoming-1323 ; Immigration Department, "Immigration Detention (Information)" (June 2019). Available at: https://accessinfo.hk/en/request/immigration_detention_informatio#incoming-1324

³⁶ Security Bureau, "Detention Policy". Available at:

<https://www.sb.gov.hk/eng/special/pdfs/Detention%20policy-e.pdf>; "Policy for detention pending final determination of the claimant's torture claim". Available at: https://www.immd.gov.hk/pdf/Detention_policy_en.pdf

Civil society groups have long expressed concerns about the substandard conditions at immigration detention centres, including poor hygiene, crowded environments and lack of access to healthcare³⁷.

There are alarming reports about the quality of medical treatment at detention facilities. Reports from detainees and the Castle Peak Bay Immigration Detention Centre (“CIC”) Concern Group suggest that detainees are subject to “Panadol therapy” described above³⁸. Some detainees with serious medical conditions, such as leukaemia and HIV, report that they are either not able to access public hospitals or their medication is confiscated by immigration officers; moreover, when detainees attend public hospitals, healthcare professionals tend to communicate with immigration officers, rather than with the detainees. As a result, detainees are often not informed of their diagnosis.

Despite that detention can have a devastating impact on the mental health of detainees³⁹, we note with concern that mental health support is virtually non-existent at detention centres. We are aware of at least one case of a detainee attempting suicide due to their prolonged detention, and one case of a detainee committing suicide in detention⁴⁰.

Apart from issues with healthcare access, there are alarming allegations of human rights violations - including the punitive use of solitary confinement and strip search - at the CIC, which is the main immigration detention facility⁴¹. In this regard we recall the Committee’s

³⁷ Anna Tsui, “Organising for change: how we supported covid-19-stuck and hunger striking detainees in Hong Kong” *COVID-19 impacts on immigration detention: global responses* at p.24. Available at:

<https://idcoalition.org/wp-content/uploads/2020/10/COVID-19-Impacts-on-Immigration-Detention-Global-Responses-2020.pdf#page=21> and Westbrook, Laura, “Coronavirus: Hong Kong lawyers, lawmakers flag hygiene issues at detention centre, but Immigration says health measures in place” *South China Morning Post*, 16 April 2020. Available at: <https://www.scmp.com/news/hong-kong/health-environment/article/3081544/coronavirus-hong-kong-lawyers-lawmakers-flag>

³⁸ Grassmedia Action, “In week four of hunger strike, migrant justice and sex work organizers rally around immigration detainees” *Lausan* (23 July 2020). Available at: <https://lausan.hk/2020/week-four-of-hunger-strike-immigration-detainees/>

³⁹ Griffiths M, Living with Uncertainty: Indefinite Immigration Detention. *Journal of Legal Anthropology*, 2013. 1(3): p. 263-286; 34. Keller AS, et al., Mental health of detained asylum seekers. *Lancet*, 2003. 362: p. 1721-3; Jacobson J and Hough M, Unjust deserts (on the impact of indefinite detention. Prison Reform Trust. *Prison Reform Trust*, 2010 [accessed at <http://www.prisonreformtrust.org.uk/uploads/documents/unjustdesertsfinal.pdf>]; Phelps J, et al., Detained lives. the real cost of indefinite immigration detention, *London Detainee Support Group*, 2009. [accessed at <https://detentionaction.org.uk/wp-content/uploads/2018/12/Detained-Lives-report1.pdf>].

⁴⁰ Immigration Department, “Person under detention committed suicide” (7 July 2019) <https://www.info.gov.hk/gia/general/201907/07/P2019070700938.htm> and Cheng Tze-yu 鄭祉愉, “Vietnamese Refugee Golden Eagle’s second life sentence 海上出世的越南難民「金鷹」出獄後的「第二次」終身監禁”, *Ming Pao Weekly* (28 July 2018) (in Chinese). Available at:

<https://www.mpweekly.com/culture/%E8%B6%8A%E5%8D%97-%E8%B6%8A%E5%8D%97%E6%88%B0%E7%88%AD-%E8%B6%8A%E5%8D%97%E8%88%B9%E6%B0%91-79490>

⁴¹ “Subdued during strip-search and medications withheld: CIC detainees allege abuse 遭赤裸制服、被拒提供藥物 青山灣中心 羈留人士控訴受虐” *Stand News* (8 June 2020) (in Chinese). Available at: <https://www.thestandnews.com/society/%E9%81%AD%E8%B5%A4%E8%A3%B8%E5%88%B6%E6%9C%8D-%E8%A2%AB%E6%8B%92%E6%8F%90%E4%BE%9B%E8%97%A5%E7%89%A9-%E9%9D%92%E5%B1%B1%E7%81%A3%E4%B8%AD%E5%BF%83%E7%BE%88%E7%95%99%E4%BA%BA%E5%A3%AB%E6%8E%A7%E8%A8%B4%E5%8F%97%E8%99%90/>; “CIC detainees allege inhuman treatment. Concern group accuses Immigration of distorting facts, suppressing the fourth estate CIC 羈留人士稱被不人道

General Comment 14, which states that the right to health encompasses the right to be free from torture⁴².

6. Right to education

6.1 Kindergarten, primary and secondary education

As mentioned in the State Report, refugee and asylum-seeking children are able to access free basic education including six years of primary education and six years of secondary education, subject to approval from the Immigration Department⁴³. Their realisation of the right to education is however hampered by financial constraints and their immigration status.

Refugee and asylum seeker children enrolled in kindergarten can apply for Student Financial Assistance to cover school fees, and children enrolled in primary and secondary schools can apply for textbook, travel costs and internet access charges assistance⁴⁴. It is important to note that Student Financial Assistance does not cover all school related expenses. The kindergarten scheme does not cover uniforms, transportation and educational materials like textbooks, and the primary and secondary scheme does not cover uniforms and educational materials, such as stationery and computers. In particular, because kindergarten is not part of the 12-year free basic education, parents may not be able to afford to send their children to kindergarten due to ancillary costs. Some financial aid and support are available through CSOs⁴⁵.

Further, it takes several months for payments under the Student Financial Assistance scheme to be processed, which means parents have to make the relevant payments first and be reimbursed. For example, payments for the School Textbook Assistance Scheme is often made in October, but students usually have to purchase textbooks before the academic year starts in September. This arrangement is difficult for refugees and asylum seekers as they are unable to become self-sufficient through employment and lack cash liquidity.

Refugees and asylum seekers, including children, are required to regularly report to the authorities in person; most are required to report once or twice per month⁴⁶. This means children have had to skip school for up to 13 days each academic year to fulfil their reporting requirements. Missing school impacts children's learning as well as their conduct assessment.

Refugee and asylum-seeking children's access to extracurricular activities is generally limited, mainly due to financial constraints. Specifically, these children are not able to participate in school trips abroad or attend international competitions as their non-refoulement claims are considered withdrawn if they leave Hong Kong⁴⁷. There are reports of children unable to attend events and competitions in Japan, Korea and Mainland China, for example. This is one of the

對待關注組斥入境處歪曲事實、打壓第四權” Independent Media (19 August 2020) (in Chinese). Available at: <https://www.inmediahk.net/node/1076597>

⁴² E/C.12/2000/4 at [8]

⁴³ State Report at [3] Annex 2H

⁴⁴ Student Finance Office, “Pre-primary level: Financial Assistance Schemes”. Available at: <https://www.wfsfa.gov.hk/sfo/en/preprimary/index.htm>

⁴⁵ See for example Christian Action, “Refugees in Hong Kong”. Available at: <https://www.christian-action.org.hk/en/hong-kong/humanitarian-social-services/refugees> and Branches of Hope “Keeping Kids in Kindergarten”. Available at: <https://brancheshofhope.org.hk/sponsor-a-k3-child>

⁴⁶ Immigration Ordinance, Section 36.

⁴⁷ Immigration Ordinance, Section 37ZF(1)

many ramifications of refugees and asylum seekers' lack of access to legal status and perpetual illegality.

More generally, ethnic minority children, including refugees and asylum seekers, continue to be impacted by *de facto* racial segregation in kindergartens and public school systems, which is caused by, *inter alia*, the lasting impact of the Government's now abolished designated schools policy⁴⁸.

6.2 Tertiary education and adult learning opportunities

Education opportunities beyond the 12-year primary and secondary education is limited for refugees and asylum seekers.

Eligible people can apply to local higher education institutions subject to approval from the Immigration Department. However, the main obstacle is that non-refoulement claimants are treated as non-local students and must pay full tuition fees. For reference, the tuition fees at the University of Hong Kong is HK\$42,100 (EUR\$4437) for local students and HK\$ 171,000 (EUR\$18,020) for non-local students per academic year. Moreover, there are reports that the Immigration Department have refused to grant permissions for refugees and asylum seekers to enrol in programmes with internship or work placement requirements, such as social work programmes, due to the prohibition of taking paid or unpaid employment⁴⁹.

Some CSOs offer financial sponsorships and scholarships for refugees and asylum seekers to attend university and high education programmes, in addition to supporting a range of adult learning opportunities, such as online university courses, English language programmes, and computer classes. The demand for higher education opportunities remains high, especially as more young adults are graduating from secondary schools. There is a great need for Hong Kong to improve the accessibility of higher education opportunities.

7. Right to work and right to just and favourable conditions of work (Article 6, 7)

As stated in paragraph 1, Annex 2H of the State Report, non-refoulement claimants do not have the right to work. Section 38AA of the Immigration Ordinance prohibits non-refoulement claimants from taking any employment, whether paid or unpaid. Further, the Court of Final Appeal held in *GA v Director of Immigration* (2014) that claimants do not enjoy the right to work, and that, *inter alia*, the applicants in that case were not able to rely on ICESCR Article 6 as the ICESCR has not been incorporated into domestic law, and a reservation on Article 6's application in immigration matters was entered into when ICESCR was ratified in 1976.

That said, substantiated refugees may apply to the Immigration Department for permission to take employment on a discretionary basis. We appreciate that the number of permissions approved by the Immigration Department has increased steadily since 2014, from an approximately 20% approval rate in 2014 to 100% in 2020.

⁴⁸ For a detail analysis on this see Puja Kapai, "Status of Ethnic Minorities in Hong Kong 1997 – 2014" p.17. See also E/C.12/CHN/CO/2 [52] – [53]

⁴⁹ Immigration Ordinance, S38AA

Year	Applications received	Applications approved	Applications rejected	Applications withdrawn/ no further actions
2014	21	5	3	10
2015	10	2	2	9
2016	24	14	5	9
2017	36	19	0	10
2018	62	42	0	7
2019	69	84	0	8
2020 (as at April)	37	38	0	1
Total	259	204	10	54

Table 1: The number of discretionary permissions to work processed by the Immigration Department (2014-2020 April)⁵⁰.

Despite these positive developments, the process of applying for a permission to work remains onerous to refugees. Refugees are required to have a job offer from an employer before they are eligible to apply for permission, and it takes on average 3 - 4 weeks for the Immigration Department to process the permission. The permission to work is only granted for a six-month period, which means people need to reapply frequently. These requirements make hiring refugees a protracted and cumbersome process for employers, and undermines refugees' competitiveness in the employment market.

Moreover, the need to reapply for permission every six months and the time needed for processing the permission mean that some refugees may experience gaps between their contracts, during which they are not eligible for social welfare assistance from the ISS. This means refugees may go for several weeks without an income or support while they are waiting for their new contract to be processed.

The inadequate level of humanitarian assistance offered to protection claimants means that many live in protracted destitution below the poverty line⁵¹. Some claimants may be forced to take up unlawful employment for subsistence, and their precarious status often exposes them to a series of risks, exploitation and abuse, such as unsafe work conditions, long working hours, low wages and lack of legal protection.

8. Suggested questions

Regarding the right to non-discrimination, can the Government provide information on steps taken to combat discrimination against refugees and asylum seekers based on their race, national origin, or immigration status?

⁵⁰ Secretary for Security, "LCQ9: Non-refoulement claims" (20 May 2020). Available at: <https://www.info.gov.hk/gia/general/202005/20/P2020052000659.htm> . Note that applications processed in a given year may not be those received in total in the same year.

⁵¹Office of the Government Economist Financial Secretary's Office and Census and Statistics Department "Hong Kong Poverty Situation Report 2018" (December 2019) at p.21. Available at: <https://www.statistics.gov.hk/pub/B9XX0005E2018AN18E0100.pdf>

Regarding the right to an adequate standard of living, can the Government provide justifications for not reviewing or adjusting the level of humanitarian assistance provided to protection claimants? Can the Government clarify the justifications for limiting claimants' cash liquidity?

Regarding the right to health, can the Government clarify its policy on refugees and asylum seekers' access to public medical services, and in particular whether certain medical procedures can be denied on the basis of protection claimants' immigration status? If such policy does not exist, can the Government provide justifications for not adopting a clear and coherent public health policy on refugees and asylum seekers?

Regarding the right to health in detention settings, can the Government provide statistical data on the detainee population disaggregated by age, sex, immigration status and country of origin? Can the Government clarify whether pre-detention screening is conducted to ensure vulnerable people are not detained? Can the Government clarify its policy on detainees' access to healthcare services? Can the Government clarify whether mental health support is available to detainees? Can the Government respond to allegations of human rights violations at detention centres and clarify steps taken to improve the transparency and accountability of detention facilities?

Regarding the right to education, can the Government clarify the justification for requiring school-aged children to attend regular, in person recognizance reporting? Can the Government clarify whether considerations have been given to either reduce children's reporting frequency or allow children's reporting to take place via teleconferencing? Can the Government provide justifications for not allowing school-aged children to travel internationally for school-related activities? Can the Government provide justifications for not allowing refugees and asylum seekers to enrol in higher education programmes with internship or work placement requirements?

Regarding the right to work is beneficial to both refugees and host economies. Can the Government clarify the rationale for limiting substantiated claimants' permission to work to work to six-month periods? Can the Government clarify justifications for not allowing asylum seekers to take up any employment, including unpaid work such as apprenticeships or volunteering? Can the Government clarify whether it plans to review the existing policy on permission to work, in particular whether considerations have been given to extending the permission to 12 months?