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# IMMIGRATION DETENTION IN HONG KONG A PRELIMINARY ANALYSIS



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Immigration Detention and Vulnerable Migrants in Hong Kong:  
Evaluating the System, Facilitating Reform

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**Cover photo caption:** A protest in support of hunger striking detainees outside Hong Kong's largest immigration detention centre in July 2020.

Source: [CIC Detainees' Rights Concern Group, Hong Kong](#) (with thanks to Fish Ip and Anna Tsui)

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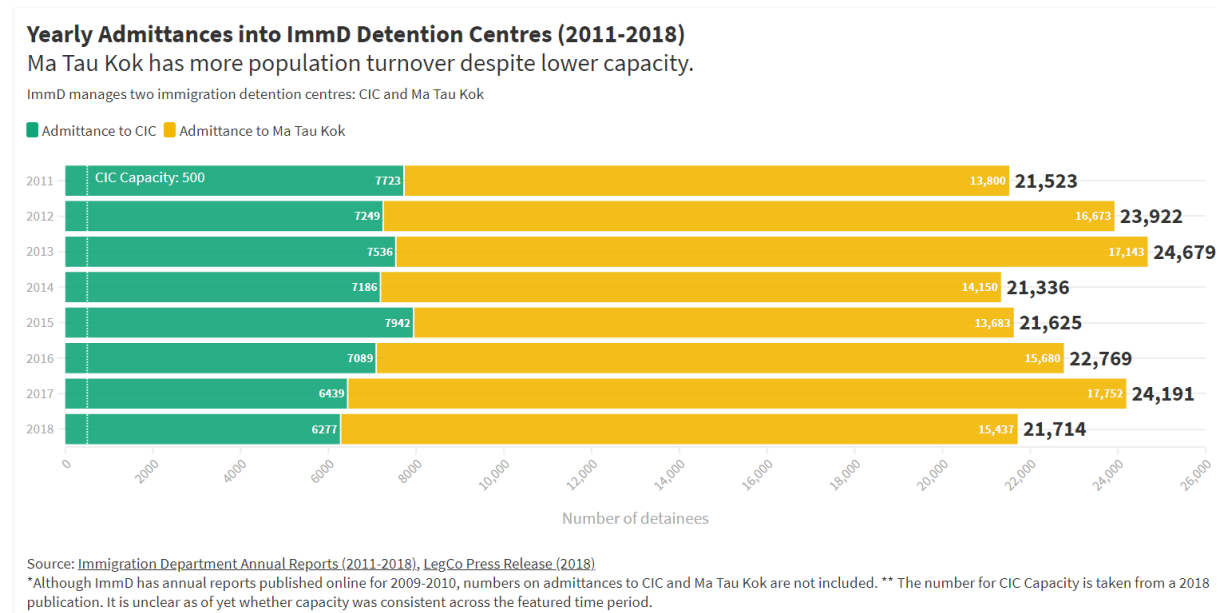
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### *Immigration Detention in Hong Kong: A Preliminary Analysis*

Immigration detention refers to the practice of confining individuals for the purpose of immigration control in government facilities. Official figures show that between [2014](#) to [2018](#), the number of people admitted to immigration detention each year has ranged from [21,336](#) to [21,714](#).<sup>1</sup>

**Figure 1**



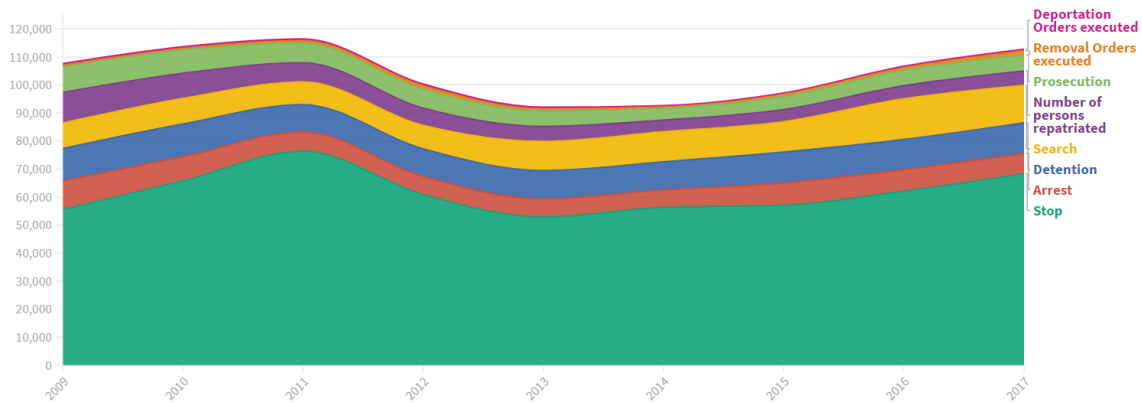
Despite these high numbers, immigration detention in Hong Kong has attracted very little academic or media scrutiny. Our project, [Immigration Detention and Vulnerable Migrants in Hong Kong](#), is attempting to change that. Through documentary and data analysis as well as field research, we are examining how the immigration detention system operates in relation to vulnerable migrant groups, including torture survivors, victims of trafficking, and low-income migrant workers. In this research brief, we highlight (1) key aspects of the immigration detention system in Hong Kong, (2) recent changes to the detention regime, and (3) information scarcity about immigration detention and our efforts in this regard.

### **Detention powers and detention facilities**

Figure 2, overleaf, shows the different types of powers that Immigration Department officials exercise in relation to migrants in Hong Kong.

Figure 2

## ImmD Enforcement Actions Yearly (2009-2017)



Source: Immigration Department Annual Report (2011), Immigration Department Annual Report (2014), Immigration Department Annual Report (2017)

Immigration and police officers have the power to stop, search, and arrest migrants. The Immigration Department can remove, deport, or repatriate a migrant to his or her country of origin, where deportation refers to non-voluntary return and repatriation refers to voluntary return. In addition, the government has wider powers of immigration detention under the Immigration Ordinance.<sup>2</sup> These powers are supplemented by rules under the Immigration (Places of Detention) Order<sup>3</sup> and operational policies.<sup>4</sup> The chart above shows that powers to stop and arrest migrants are exercised most frequently. A significant number of people are detained each year. As far as leaving Hong Kong is concerned, repatriation is more frequent than removal, which in turn is more frequent than deportation.

The Immigration Ordinance specifies a number of criminal offences related to breaching immigration laws, including: (i) failure to produce proof of identity,<sup>5</sup> presenting false information or forged travel documents,<sup>6</sup> unlawful entry into Hong Kong,<sup>7</sup> overstaying an entry permit, breach of conditions of stay in Hong Kong,<sup>8</sup> and unauthorised employment.<sup>9</sup> Immigration officers or police officers over the rank of superintendent have the power to detain individuals under the Immigration Ordinance in order to inquire into suspected breaches of the Ordinance.<sup>10</sup> For example, they could detain an individual or family to establish whether the person/s concerned have entered Hong Kong unlawfully and decide whether to grant or deny them permission to enter,<sup>11</sup> or to confirm whether an individual has been found guilty of a criminal offence in Hong Kong and is therefore liable to be deported.<sup>12</sup> The Immigration Ordinance specifies maximum permissible time periods for these three categories of detention. Detention is permissible under the law for an initial 48 hours, and then a further five days.<sup>13</sup> But other types of immigration detention are not subject to statutory time limits. Once a deportation or removal order is made against an individual, he or she can be detained<sup>14</sup> and the Immigration Ordinance does not provide a maximum time period for this type of detention.<sup>15</sup> A person who applies for protection from *refoulement* i.e., forcible return to their country can also be detained pending the determination of their non-refoulement claim by a body (the Universal Screening Mechanism) tasked with reviewing these claims. This category of detention too is not subject to a time limit.<sup>16</sup>

The lack of a time limit is particularly concerning once we note that immigration detention is a form of *administrative not judicial* detention. Under Hong Kong law, if a person is suspected of committing a crime, detention in police custody or on remand in prison would

need to be authorised by a court if it extends beyond twenty-four hours.<sup>17</sup> By contrast, when the Immigration Department decides to detain someone, the judiciary does not oversee this decision. Thus, immigration detention lacks a crucial check that is an essential component of criminal imprisonment. The potential for prolonged detention without a statutory cap is especially jarring in relation to non-refoulement claimants, who might be survivors of torture or persecution and at particularly high risk of re-traumatization.

Following amendments to the Immigration Ordinance in April 2021,<sup>18</sup> the government's immigration detention powers are even less amenable to scrutiny. For many years, immigration detention that did not have a specified time limit under the IO was nevertheless subject to an accountability principle known as the *Hardial Singh* principles.<sup>19</sup> Under the *Hardial Singh* standard, immigration detention was only justifiable (1) for a *reasonable period*, (2) for the *purpose of deportation*, and the authorities had to act with (3) *reasonable diligence and efficiency* to remove the detained person from Hong Kong. However, this standard has been drastically weakened by recent amendments to the Immigration Ordinance.

The April 2021 amendments have (among other changes) expanded the circumstances under which the **length of detention** pending removal, deportation, or determination of a *non-refoulement* claim would be considered reasonable. If a detainee challenges their detention as unreasonable, the government can now justify the length of detention with reference to (1) the number of other persons pending removal or other USM claims pending final determination, and (2) the manpower and financial resources allocated for removal or final determinations. An extended period of detention would also be reasonable if it were due to factors that are beyond the Director of Immigration's control and directly or indirectly prevent or delay the detained person's removal.

Under the *Hardial Singh* standard, infrastructure limitations or factors beyond the authorities' or the individual's control could not be used to justify lengthy detention.<sup>20</sup> A similar approach is adopted in criminal law. Bearing in mind that confinement by the state is a complete restriction of individual liberty, systemic resource constraints do not factor into decisions about bail or imprisonment. But after the recent amendments to the Immigration Ordinance, an indeterminate and unpredictable set of factors can determine length of time in detention. Particularly worrying is the wide and malleable category of "factors beyond the government's control" to justify prolonged detention. The *Hardial Singh* standard, which imposed some accountability on length of detention in the absence of statutory time-limits, has effectively been undermined.

When determining whether to detain someone or release them on recognizance, police and immigration officials consider a range of factors, including (1) whether releasing that person would create a public safety risk, (2) whether they are likely to abscond, (3) whether they have a close connection to or fixed place of residence in Hong Kong, (4) whether their identity has been satisfactorily established. For a person due to be removed from Hong Kong, the authorities would additionally consider (5) whether removal can be effected within a reasonable length of time.<sup>21</sup> For example, if it is difficult to establish the person's country of origin, immigration officials might be unable to remove that person from Hong Kong expeditiously, resulting in extended detention. In such circumstances, that person should be allowed to live in the community until reasonably swift removal is possible. It is worth noting that many migrants might find it difficult to meet the close connection / fixed place of residence requirement, and end up in detention even if they present no risk of threatening public safety or of absconding.

## Information Scarcity

Given the lack of judicial involvement in immigration detention, proactive transparency about this type of detention is particularly important. But our efforts to map immigration detention facilities reveal a serious dearth of publicly available data.

Many HKSAR government departments, including the Immigration Department, routinely disclose data through the [data.gov](https://data.gov.hk/) website.<sup>22</sup> However, the Immigration Department's data disclosure does not cover immigration detention. Instead, compiling official data on immigration detention entails extracting information from multiple sources including annual reports (often from appendices), submissions to the Legislative Council, and reports to the United Nations. Information from these sources on some very basic questions – for example, how many people were repatriated or removed from Hong Kong in a given year – is unclear and difficult to reconcile across different official sources.

Other, even more basic, information – such as the average daily population or the number of people released from Hong Kong's largest immigration detention facility, Castle Peak Bay Immigration Centre ("CIC"), is available only through Access to Information ("ATI") applications. Further, official responses to our ATI applications indicate that significant categories of information are not maintained at all. For example, while we have managed to obtain some detainee population data for Hong Kong's two main detention facilities, i.e., Castle Peak Bay Immigration Centre and Ma Tau Kok detention centre (Figure 1), we have received almost no information in response to our queries about a network of smaller detention facilities or detention at Hong Kong airport.<sup>23</sup> So opaque is immigration detention in these smaller facilities, that it took a series of ATI queries even to establish which government department administers them.

We highlight our experience because this acute information-scarcity hinders analysis as well as accountability. It is particularly problematic in relation to immigration detention, which involves loss of liberty in closed institutions and engages fundamental rights protected under the Hong Kong Basic Law and the Hong Kong Bill of Rights Ordinance. Our conversations with CSOs suggest that many people are detained short-term in airport facilities before being removed from Hong Kong without the benefit of legal advice, and that children too have been detained in these "air side" facilities. These claims deserve attention, but the complete lack of official data makes it difficult to understand the ground realities in this regard.

If we as researchers face these challenges, CSOs or detainees will find securing relevant information very daunting. Greater transparency is essential to ensure that the immigration detention system is operating fairly. Increased transparency would also foster deeper understanding of constraints that migrants encounter in Hong Kong. For example, if particular ethnicities or nationalities are overrepresented in immigration detention relative to numbers of migrants from those countries, this might point to specific economic and linguistic barriers, or highlight risks related to trafficking and exploitation.

## Comparative insights

While information on immigration detention in Hong Kong is sparse, there is considerable research on this phenomenon in Western Europe, the United States, and Australia. Immigration detention has risen significantly in all these regions over the past twenty years, in parallel with increasing criminalisation of irregular migration. This expansion and



overlapping of criminal prosecution and administrative detention of migrants is sometimes described as “crimmigration” or “immcarceration”.<sup>24</sup>

Research shows that immigration detainees in these different parts of the world often face procedural unfairness, insufficient access to justice, and harsh detention conditions.<sup>25</sup> Across different geographies, research reveals a sharp mental health toll on detainees, as a result of isolation, separation from family, indeterminate waiting times for decisions, loss of liberty, and past trauma.<sup>26</sup> In addition, researchers and advocacy groups have highlighted abusive and degrading treatment in immigration detention facilities in many countries, violating detainees’ right to freedom from torture and cruel, inhuman and degrading treatment.<sup>27</sup>

Comparative analysis also shows that low-income migrants are disproportionately likely to be in immigration detention, and once detained, spend longer periods of time in detention. Multiple factors contribute to this. Immigration regulations in high-income countries tend to favour wealthier migrants (even when the receiving country faces labour shortages in lower-paid jobs). Migrants who are socially, economically, or politically vulnerable are more likely to face unsafe work and living conditions, as well as inadequate information about immigration regulations.<sup>28</sup> Lower-income migrants are also more exposed to “push factors” in the countries they come from, whether economic instability or violence. Once suspected of immigration breaches, they also tend to face financial and linguistic challenges.<sup>29</sup> For example, poorer migrants will have less access to legal advice. They often struggle to meet bail sureties or other bail conditionalities such as a fixed address, and therefore spend longer periods in immigration detention.<sup>30</sup>

Our research indicates that socio-economically disadvantaged migrants in Hong Kong face similar challenges. Regulatory frameworks heighten their vulnerability to immigration detention. As just one example, a refugee entering Hong Kong is required to overstay their visa, thereby breaching immigration rules, before they can file a claim for protection from refoulement under the Universal Screening Mechanism.<sup>31</sup> While an applicant’s Unified Screening Mechanism claim is pending, they are legally barred from working. Instead, USM claimants receive a subsistence allowance from the government. Schooling or health costs, amongst other expenses, might drive someone to work illegally as a means of extra income, which in turn creates the possibility of detention.

If a detainee wants to challenge their detention in court, their only recourse is a *habeas corpus* application. If successful, such an application would require the government to release the detained individual. While in theory, legal aid is available for habeas corpus applications, in practice it is granted very rarely.<sup>32</sup> Thus far, there have been no successful habeas corpus claims by immigration detainees in Hong Kong.

### **Conditions in detention**

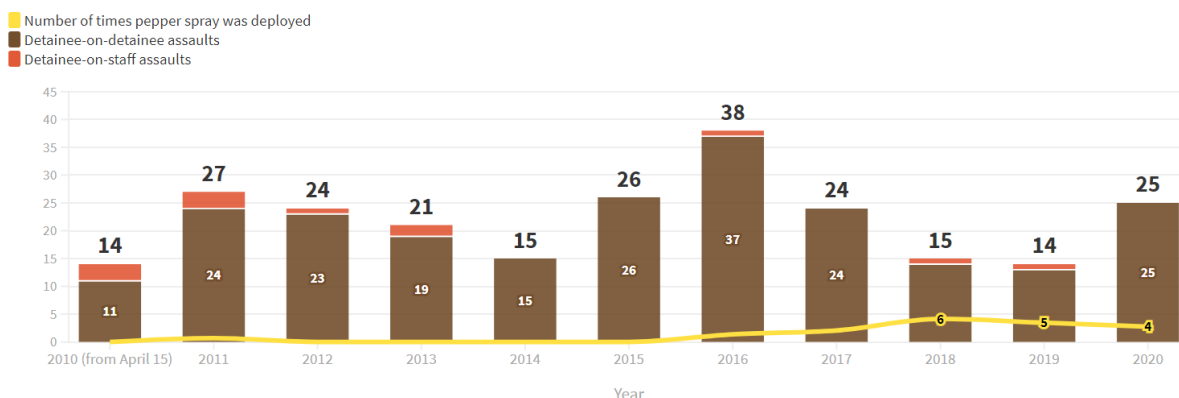
Basic standards for living conditions at Castle Peak Bay<sup>33</sup> and Ma Tau Kok<sup>34</sup> detention centres are outlined in government regulations. Additional operational rules for CIC were laid down in 2010, when management of the facility was taken on by the Immigration Department. However, these rules (like other basic information about immigration detention) are not publicly accessible and it is unclear if they have been updated in the intervening decade. In 2020, a group of CIC detainees went on an extended hunger strike protesting, *inter alia*, conditions in detention.<sup>35</sup> Legislators who visited CIC also raised concerns about unsanitary conditions, particularly in the wake of the Covid-19 epidemic.<sup>36</sup>

Detainees who breach CIC rules can face punishments, including handcuffing, solitary confinement for up to seven days, and physical and mechanical restraint.<sup>37</sup> Punitive measures permissible in Ma Tau Kok detention centre are not laid down in the same degree of detail.<sup>38</sup> Punishment in CIC is subject to an inquiry, where the detainee has the opportunity “to exculpate” themselves,<sup>39</sup> but it is unclear whether detainees can be legally represented during such inquiries. Media coverage<sup>40</sup> and court judgments<sup>41</sup> related to unlawful detention show that CIC staff have used disproportionate force and subjected detainees to degrading treatment in at least some instances. Migrants’ rights CSOs have repeatedly criticised the excessive use of restraint and solitary confinement at CIC.<sup>42</sup> Moreover, the United Nations Committee Against Torture has expressed concern about inadequate safeguards on punitive custodial powers in Hong Kong, and recommended that custodial staff (including detention centre staff) should be trained in duties under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment<sup>43</sup> (the Torture Convention) as well as the Istanbul Protocol (which focuses on accountability for breaches of the Torture Convention).<sup>44</sup>

Recent statutory amendments have heightened the risk of disproportionate force in immigration detention facilities. The Immigration (Amendment) Ordinance 2020 expanded the powers of immigration officers to carry firearms and weapons. The government clarified during Legislative Council discussions that these expanded powers would only be used at CIC. However, the actual wording of the amended legislation is not specific to CIC; thus, as a matter of law, immigration officers may carry arms at other immigration detention centres and at the airport too. The motivation for these enhanced coercive powers is unclear. **Figure 3** below is based on information received in response to ATI applications. Government data shows that almost all the physical confrontations at CIC over the past decade were between detainees, rather than involving detainees and guards. It also shows that pepper spray has rarely been used in CIC. These figures seem to suggest that current powers of restraint are more than adequate.

**Figure 3**

**Number of Physical Confrontations at CIC (2010 - 2020)**



Source: ImmD Response to ATI Request

\* 2010 only involves incidents from 15th of April as ImmD took over the management of CIC from CSD on that day.

Moreover, detainees are in custody not because they have been convicted of criminal offences but because they are being investigated or are going to be removed from Hong Kong. The reports of disproportionate force and degrading treatment in the past by detention



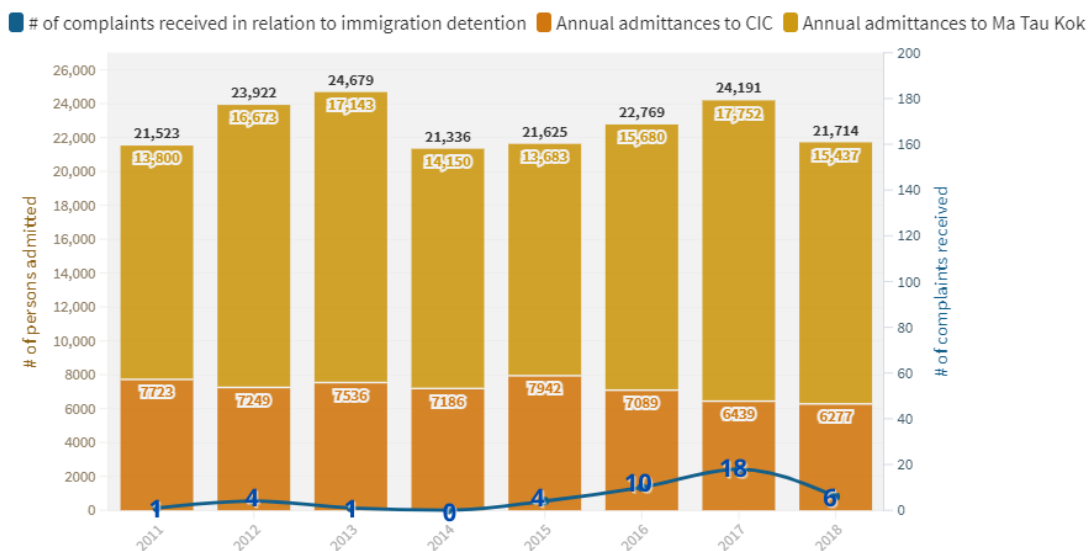
centre staff raise genuine concerns about these new powers.<sup>45</sup> With enhanced coercive powers in place, such excesses could now have even more serious consequences.

### Monitoring and complaints' mechanisms

Given that immigration detention takes place in closed institutions, there is relatively little public disclosure about it, and detainees themselves are likely to have few resources or sources of support in Hong Kong, robust monitoring and complaints mechanisms are extremely important. Currently, complaints by detainees at Castle Peak Bay and Ma Tau Kok detention centres are investigated by the Superintendent (at CIC) and an official at the Assistant Principal Immigration Officer level (at MTK). Within the context of a closed institution, the lack of an independent complaints' mechanism is likely to deter complaints, particularly as many inmates would be worried about their ability to remain in Hong Kong. There is also no indication that complaints are handled confidentially, which would further inhibit genuine complaints. This is borne out by a decade worth of complaints statistics, in Figure 4 below.

Figure 4

#### Complaints to Immigration Department regarding immigration detention (2010 - Nov 2020)



Sources: Immigration Department Response to ATI Request (2020), Immigration Department Annual Reports (2011-2018), Immigration Department Response to ATI Request (2021)

\* None of the complaints in this time period were substantiated. Thus, no disciplinary action against ImmD staff was enforced.

In Figure 4, data from 2011 to 2018, disclosed in response to an ATI application, indicates that the number of complaints at CIC was very low when compared with the detainee population. On average, the number of complaints was five percent or less of the population in any given year. Internal investigations might, in practice, be conducted to a high standard, but the lack of external scrutiny would still cause inmates to self-censor. The lack of an independent complaints' mechanism falls short of international human rights standards.<sup>46</sup> The fact that not a single complaint made at CIC over the past decade were substantiated indicates an urgent need to meet the international baseline in this regard.

The existing monitoring mechanism consists of visits by Justices of the Peace to the two main detention centres in Hong Kong. Recent annual reports suggest that Justices of the Peace visit CIC regularly (24 visits in 2019) and Ma Tau Kok infrequently (4 visits in 2019). The 2019 Justices of the Peace annual report states that twelve complaints and 260 requests were received from CIC inmates that year. Again, the low number of complaints is likely due to the fact that complainants are not guaranteed confidentiality. In response to complaints, Justices of the Peace made eight suggestions to CIC authorities in 2019.<sup>47</sup> It is doubtful whether the Justice of the Peace provides adequate monitoring and, when needed, advocacy on behalf of detainees. Our initial discussions with CSOs suggest that detainees fear reprisals by detention centre staff if they make formal complaints. The United Nations Committee against Torture has emphasised the need for a monitoring mechanism with the power and mandate to carry out unannounced visits to all detention facilities in Hong Kong.<sup>48</sup> This is particularly important in relation to immigration detention because this form of detention lacks judicial scrutiny and many detainees lack a social support network in Hong Kong as well as the resources for professional support. Here too, the current institutional arrangement in Hong Kong falls short of international standards and best practice.

### What next?

In May 2021, the Tai Tam Gap Correctional Institute was converted into a detention centre,<sup>49</sup> increasing the number of places in Hong Kong's immigration detention estate by one-third. Thus, over the past year, the Hong Kong government's immigration detention *capacity* as well as *powers* have expanded. Understanding the operation and effects of the immigration detention system is more important than ever. This research brief laid out some of our early findings. As we research further, we will be interviewing a range of stakeholders to better understand detention pathways and experiences. We are seeking to understand migrant experiences of detention, as well as CSO and government perspectives and challenges.

Our research so far has flagged the need to examine the treatment of detainees following recent legal amendments, access to legal services for detainees, and police action against migrants. We are also examining the experiences of some of the most vulnerable stakeholders affected by immigration detention, including children, trans-persons, and survivors of human trafficking. We look forward to collaborating and sharing our work with the wider civil society and research community working to better protect the rights of migrants in Asia.

<sup>1</sup> Immigration Department Annual Reports (2011-2018); LegCo Press Release (2018).

<sup>2</sup> Immigration Ordinance (Cap 115), < <https://www.elegislation.gov.hk/hk/cap115> >

<sup>3</sup> Immigration (Places of Detention) Order (Cap115B) < <https://www.elegislation.gov.hk/hk/cap115B>>. See also Immigration Service Ordinance (Cap 331), <<https://www.elegislation.gov.hk/hk/cap331>>.

<sup>4</sup> Security Bureau, Government of HKSAR, *Detention Policy* <<https://www.sb.gov.hk/eng/special/pdfs/Detention%20policy-e.pdf>>; Security Bureau, Government of HKSAR, *Information Paper for LegCo Panel on Administration of Justice and Legal Services. Policy and Practice on Removal and Deportation 1999-2000* (Government of HKSAR 2000) < <https://www.legco.gov.hk/yr99-00/english/panels/ajls/papers/b848e03.pdf> >.

<sup>5</sup> Section 17D, IO.

<sup>6</sup> Section 42, IO.

<sup>7</sup> Section 56(1A)(b), IO.

<sup>8</sup> Section 56(1A)(b) and Section18(1), IO.

<sup>9</sup> Section 56(1A)(b), IO.

<sup>10</sup> Section 26, IO.

<sup>11</sup> Section 27, IO.

<sup>12</sup> Section 29, IO.

<sup>13</sup> Section 26, IO.

<sup>14</sup> Section 32, IO.

<sup>15</sup> Section 16 and Section 27, IO.

<sup>16</sup> Section 37ZK, IO.

<sup>17</sup> Section 52(1) [Police Force Ordinance](#) (Cap 232).<sup>2</sup>

<sup>18</sup> Immigration (Amendment) Bill 2020 < [b202012041\\_brf.pdf \(legco.gov.hk\)](#)>, passed on 28 April 2021 to amend the Immigration Ordinance, the Weapons Ordinance (Cap.217) and the Firearms and Ammunition Ordinance (Cap. 238).

<sup>19</sup> The *Hardial Singh* principles were adopted by the Court of Final Appeal in *Ghulam Rbani v Secretary for Justice for and on behalf of the Director of Immigration* (2014) 17 HKCFAR 138.

<sup>20</sup> Hong Kong Bar Association Submission [to the Legislative Council] on the Immigration Amendment Bill 2021, 2 February 2021, paragraphs 19-20,

<[https://www.hkba.org/sites/default/files/Immigration%20\(Amendment\)%20Bill%202020\\_0.pdf](https://www.hkba.org/sites/default/files/Immigration%20(Amendment)%20Bill%202020_0.pdf)>.

<sup>21</sup> Security Bureau, *Detention Policy* (n 4).

<sup>22</sup> [DATA.GOV.HK](#)

<sup>23</sup> Response by Department of Correctional Services dated 23 June 2021 to an ATI query dated 11 March 2021 originally sent to the Immigration Department

<[https://accessinfo.hk/en/request/number\\_of\\_detainees\\_held\\_under\\_i#incoming-1658](https://accessinfo.hk/en/request/number_of_detainees_held_under_i#incoming-1658)>.

<sup>24</sup> Kalhan, Anil, ‘Rethinking Immigration Detention’ (2010) 110 *Columbia Law Review*, *Sidebar* 42, 42-43);

Ghezlbash, Daniel, ‘The Rise and Rise of Mandatory Immigration Detention’ in Mary Crock and Lenni B. Benson (eds), *Protecting Migrant Children: In Search of Best Practice* (Edward Elgar Publishing 2018).

<sup>25</sup> Essex, Ryan, ‘Healthcare and Clinical Ethics in Australian Offshore Immigration Detention’ (2016) *The International Journal of Human Rights* 20(7), 1039; Sinha, Anita, ‘Arbitrary Detention? The Immigration Bed Quota’ (2017) *Duke Journal of Constitutional Law and Public Policy* 12(2) 77.

<sup>26</sup> Turnbull, Sarah, ‘Stuck in the Middle: Waiting and Uncertainty in Immigration Detention’ (2016) *Time and Society* 25(1), 61; Mary Bosworth, ‘The Impact of Immigration Detention on Mental Health: A Literature Review’ (2016) *Review into the Welfare in Detention of Vulnerable Persons*, Cm 9186. London: HSMO; Criminal Justice, Borders and Citizenship Research Paper No. 2732892.

<sup>27</sup> See for example, United Kingdom House of Commons Home Affairs Committee, ‘Immigration Detention: Fourteenth Report of Session 2017–19 Report, together with formal minutes relating to the report’ (UK House of Commons 2019) <<https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf>>; See also Nethery, Amy and Holman, Rosa, ‘Secrecy and Human Rights Abuse in Australia’s Offshore Immigration Detention Centres’ (2016) *The International Journal of Human Rights* 20(7).

<sup>28</sup> Sassen, Saskia, *Expulsions: Brutality and Complexity in the Global Economy* (Harvard University Press 2014), 1-11).

<sup>29</sup> Ahmed, Saba, Appelbaum, Adina and Jordan, Rachel, ‘The Human Cost of IIRIRA - Stories from Individuals Impacted by the Immigration Detention System’ (2017) *Journal on Migration and Human Security* 5(1), 194.

<sup>30</sup> See for example, Srikantiah, Jayashri, ‘Reconsidering Money Bail in Immigration Detention’ (2018) *U.C. Davis Law Review* 52(1), 521.

<sup>31</sup> 37W(1) IO provides: “A person may claim non-refoulement protection in Hong Kong only if the person is subject or liable to removal [...]”. This can be read to mean that protection claimants who entered Hong Kong with a valid visa must first overstay, thereby becoming liable to removal, to be eligible to lodge non-refoulement claims.

<sup>32</sup> Refugee Concern Network, *Submissions to the Bills Committee on Immigration (Amendment) Bill 2020*, LC Paper No. CB(2)741/20-21(08), February 2021, <[bc53cb2-741-8-e.pdf \(legco.gov.hk\)](#)>, citing an ATI query by Justice Centre Hong Kong in August 2020, p. 4.

<sup>33</sup> Section 35(1), Immigration (Treatment of Detainees) Order (Cap 115) <<https://www.elegislation.gov.hk/hk/cap115E>>.

<sup>34</sup> Immigration Service (Treatment of Detained Persons) Order (Cap 331C) <<https://www.elegislation.gov.hk/hk/cap331C>>, pursuant to Section 13A, Immigration Service Ordinance (Cap 331) <<https://www.elegislation.gov.hk/hk/cap331>>.

<sup>35</sup> Tsui, Anna, “Organising for Change: How We Supported COVID-19 – Struck and Hunger Striking Detainees in Hong Kong” in Chew, V., Phillips, M. & Yamada Park, M. (eds), *Covid-19 Impacts on Immigration Detention: Global Responses* (International Detention Coalition and HADRI/Western Sydney University, 2020), 24-26 <<https://idcoalition.org/wp-content/uploads/2020/10/COVID-19-Impacts-on-Immigration-Detention-Global-Responses-2020.pdf>>.

<sup>36</sup> Westbrook, Laura, “Coronavirus: Hong Kong lawyers, lawmakers flag hygiene issues at detention centre, but Immigration says health measures in place”, *South China Morning Post*, 26 April 2020 <<https://www.scmp.com/news/hong-kong/health-environment/article/3081544/coronavirus-hong-kong-lawyers->

lawmakers-flag >; “Asylum seekers and migrant workers speak up about horrific conditions in Hong Kong immigration detention”, *Grassmedia Action*, 19 July, 2020 <https://lausan.hk/2020/horrific-conditions-in-hong-kong-immigration-detention/>.

<sup>37</sup> Rule 13 and Rule 14, Immigration (Treatment of Detainees) Order (n 27).

<sup>38</sup> Rule 16, Immigration Service (Treatment of Detained Persons) Order (n 28).

<sup>39</sup> Rule 13, Immigration (Treatment of Detainees) Order (n 27).

<sup>40</sup> See United Nations, Committee Against Torture (n 34). See also Raquel Carvalho, “[Hong Kong rights lawyers allege pattern of mistreatment in immigration detention centre](#)” *South China Morning Post*, 12 July 2017; “CIC detainees kept naked in detention & received only diapers. Lawyers suspect torture. (青山灣有羈留者須赤 裸僅獲尿片如廁 律師質疑屬酷刑)”, *RTHK News*, 14 December 2020 <<https://news.rthk.hk/rthk/ch/component/k2/1565171-20201214.htm>>; “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 <<https://www.thestandnews.com/society/遭赤裸制服-被拒提供藥物-青山灣中心羈留人士控訴受虐/>>.

<sup>41</sup> *Abid Saeed v Secretary for Justice and Others* [2015] 1 HKLRD 1030.

<sup>42</sup> United Nations, Committee Against Torture, *Concluding Observations to Third UNCAT Report* (5th report of Hong Kong S.A.R., China), 3 February 2016, CAT/C/CHN-HKG/CO/5 <[https://www.cmab.gov.hk/doc/en/documents/policy\\_responsibilities/CAT\\_C\\_CHN-HKG\\_CO\\_5\\_22478\\_E.pdf](https://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/CAT_C_CHN-HKG_CO_5_22478_E.pdf)>.

<sup>43</sup> UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <https://www.refworld.org/docid/3ae6b3a94.html>

<sup>44</sup> United Nations, Committee Against Torture (n 34) [para 24]. For international guidance on monitoring mechanisms, see UNHCR, *Monitoring Immigration Detention: Practical Manual*, June 2015 <<https://idcoalition.org/wp-content/uploads/2015/06/Monitoring-Immigration-Detention-PracticalManual.pdf>>.

<sup>45</sup> Refugee Concern Network (n 30) 4-5.

<sup>46</sup> UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: resolution / adopted by the General Assembly*, 9 December 1988, A/RES/43/173, available at: <https://www.refworld.org/docid/3b00f219c.html>. See also UNHCR, COMPILATION OF INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS ON IMMIGRATION DETENTION, 2018, available at: <https://www.unhcr.org/protection/detention/5afc1b927/compilation-international-human-rights-law-standards-immigration-detention.html>.

<sup>47</sup> Chief Secretary for Administration’s Office, *2019 Annual Report on Justices of Peace Visits* (Government of Hong Kong SAR) [https://www.info.gov.hk/jp/files/anreport19\\_eng.pdf](https://www.info.gov.hk/jp/files/anreport19_eng.pdf), p. 31.

<sup>48</sup> United Nations Committee against Torture, *Concluding observations on the fifth periodic report of China with respect to Hong Kong, China\** (CAT/C/CHN-HKG/CO/5, 3 February 2016) [https://www.cmab.gov.hk/doc/en/documents/policy\\_responsibilities/CAT\\_C\\_CHN-HKG\\_CO\\_5\\_22478\\_E.pdf/](https://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/CAT_C_CHN-HKG_CO_5_22478_E.pdf/).

<sup>49</sup> See information at [Tai Tam Gap Correctional Institution \(csd.gov.hk\)](http://Tai Tam Gap Correctional Institution (csd.gov.hk)).