

Hong Kong (China)

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Immigration and detention policies in Hong Kong have been driven in part by concerns over migration flows from mainland China and neighbouring countries in Southeast Asia, in particular Vietnam. For many years, Hong Kong (officially, the Hong Kong Special Administrative Region of the People's Republic of China) called itself the "first port of refuge" for refugees fleeing Vietnam, even though most arriving Vietnamese "boat people" were held in deplorable conditions at secure detention camps (Ripley 1989; Refugee Action 1986). Since China resumed sovereignty over it, Hong Kong has ended its practice of accepting Vietnamese migrants and vigorously defended its policy of refusing all asylum seekers, who are generally treated as unauthorized immigrants (HKHRM 2008; Minghua 2001).

Detention policies. Since unification with China in 1997, Hong Kong has been governed by the Basic Law of the Hong Kong Special Administrative Region. The Basic Law establishes the "One Country, Two Systems" framework, according to which Hong Kong retains a degree of autonomy in setting domestic policy, including on immigration issues. China is party to the 1951 Refugee Convention, but the rights and duties set out in this convention have not been extended to Hong Kong (CAT 2009).

Many immigration offenses, which are established in the [Immigration Ordinance](#), are criminalized under Hong Kong law, including unauthorized presence in Hong Kong. Offenses include:

- "Overstaying" an entry permit, which is grounds for expulsion from Hong Kong and can lead to criminal prosecution (CLIC website; Chan 2009);
- "Breaches of conditions of stay," such as working without appropriate permission, which according to [Section 41](#) of the Immigration Ordinance is considered "an offence" and makes a person "liable on conviction to a fine ... and to imprisonment for 2 years";
- Presenting false information or forged travel documents, which [Section 42](#) of the ordinance states makes a person, "on conviction on indictment, [liable] to a fine of \$150,000 and to imprisonment for 14 years."

The Immigration Ordinance authorizes specific officials within the Hong Kong Security Bureau—including officers of the Immigration Service and ranking members of the police force—to order the detention of people for a number of immigration-related reasons, including:

- "Detention for inquiry": Immigrants suspected of having violated the ordinance can be detained for investigation for an initial period of 48 hours, which can be extended for 5 additional days ([Section 26](#)).
- "Detention pending examination and decision as to landing": People suspected of having arrived in Hong Kong without appropriate authorization can be held "for not more than 24 hours pending the examination; and ... for

not more than a further 24 hours pending a decision to give or refuse him permission to land” ([Section 27](#)).

- “Detention for inquiry as to deportation”: The Secretary for Security can issue a detention warrant to hold a foreigner for up to 14 days if there are reasonable grounds for suspecting that the person is deportable because he/she has been found guilty in Hong Kong of an offence punishable with imprisonment for not less than 2 years and/or the governor deems it to be conducive to the public good. Under certain conditions, this period of detention can be extended to a maximum of 28 days ([Section 29](#) and [20](#)).
- “Detention pending removal or deportation”: This category of detention covers a number of different scenarios, but generally authorizes the detention of non-residents who have been issued a deportation or removal order. In most instances, there is no specified limit on the length of detention ([Section 32](#)).

The Immigration Ordinance authorizes the secretary for security to “designate any place as a detention centre for the detention of persons” who are awaiting a decision on permission to stay in Hong Kong or who have been ordered removed ([Section 13H](#)). Detention centres “shall be under the control and management of an officer appointed by the Secretary for Security and the officer appointed shall be: (a) the Commissioner of Correctional Services; (b) the Commissioner of Police; or (c) the Chief Staff Officer, Civil Aid Service” ([Section 13H](#)).

The Hong Kong government maintains a “firm policy not to grant asylum” (HKHRM 2008, pg 16). According to the Hong Kong Human Rights Monitor, “There is no law or policy in Hong Kong offering protected status for refugees or asylum seekers. Neither the Immigration Ordinance (Cap.115) nor immigration guidelines provide for any different treatment for asylum seekers or refugees from other persons seeking entry to Hong Kong. The Government does not have a [refugee determination procedure] but instead relies on the UNHCR’s Hong Kong sub-office to process asylum applications. The UNHCR communicates its decision on the status of the asylum seeker to the Director of Immigration, who has unfettered discretion to decide whether or not to abide by the decision or choose to ignore it in making its immigration decision (HKHRM 2008, pg 17).

Because asylum seekers are generally treated as unauthorized immigrants in Hong Kong, they are vulnerable to detention and deportation. According to the Hong Kong Human Rights Commission, asylum seekers “are denied access to health care, education, welfare, and housing, and are furthermore subject to detention. ... If they approach the Immigration Department to extend visas or get recognition they are often rejected and will be asked to leave Hong Kong” (HKHRC et al 2007).

Unauthorized minors are also subject to detention. According to Hong Kong Regulations, “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](#) [which designates the Tuen Mun Children and Juvenile Home] and shall receive the same treatment as that which is accorded to a child or juvenile

detained in a place of refuge” (Hong Kong Regulations, Chapter 115 B, Section 4, [“Treatment of children and juveniles”](#)).

The Immigration Ordinance contains several sections that deal specifically with the treatment of “residents or former residents of Vietnam.” Beginning on 2 July 1982, any person (including children) from Vietnam who arrives without proper authorization is to be detained “pending a decision to grant or refuse him permission to remain in Hong Kong or, after a decision to refuse him such permission, pending his removal from Hong Kong” ([Section 13D](#)). This policy, which was established in the Immigration (Amendment) Bill 1982, led to the establishment of the first secure detention camps for asylum seekers in Hong Kong (Cheung 1982).

While the [Refugee Convention](#) has not been extended to Hong Kong, there are procedures in place for assessing torture claims made under the [Convention against Torture](#) (for a discussion of the convention’s application in Hong Kong, see [‘A’ et al and Director of Immigration](#) 2008a, §1-5; HKHRM 2008). Despite serious criticism of these procedures (see, for example, HKHRM 2008, pp 18-19), they have led to positive outcomes for claimants in Hong Kong courts. In July 2008, a Hong Kong Court of Appeals ruled that the government had unlawfully detained four non-residents who had filed torture claims under the convention. The court found that while the powers to detain under Section 32 of the Immigration Ordinance pending verification of a torture claim were lawful under domestic law, they nonetheless violated article 5(1) of the Hong Kong Bill of Rights, which requires that detention must not be arbitrary and the grounds and procedure for detention must be certain and accessible. The court found that there was no published policy describing the circumstances under which the government could exercise its power to detain pending verification of the torture claims ([“A” et al and Director of Immigration](#) 2009, §3).

In March 2009, a Hong Kong court ruled that the government had to pay monetary damages to the four non-residents who had filed torture claims ([“A” et al and Director of Immigration](#) 2009). According to one source interviewed by the Global Detention Project, while the long-term impact of the rulings remains unclear, shortly after the 2009 ruling several dozen immigrants were released from detention (Chan 2009).

Detention infrastructure. Hong Kong has a sprawling immigration detention complex that encompasses several dozen current and former detention camps, prisons, and other holding facilities (see the complete [List of Detention Sites](#)). Overall numbers of detainees, however, have gone down significantly since Hong Kong officially ended its policy of accepting Vietnamese migrants in the late 1990s. On 18 July 2008, the government reported that 387 persons were in immigration detention ([“A” et al and Director of Immigration](#), 2008b, §3). This compares to the single-day total of 23,203 “illegal Vietnamese immigrants” held in detention camps as of 1 April 1993 (House of Lords 1993).

The Immigration Ordinance authorizes the secretary for security to “designate any place as a detention centre for the detention of persons” who are awaiting a decision on permission to stay in Hong Kong or who have been ordered removed ([Section 13H](#)). Detention centres “shall be under the control and management of an officer appointed by the Secretary for Security and the officer appointed shall be: (a) the Commissioner of Correctional Services; (b) the Commissioner of Police; or (c) the Chief Staff Officer, Civil Aid Service” ([Section 13H](#)).

According to Hong Kong Regulations ([Chapter 115B, Schedule 3](#)), there were 20 facilities in use as of mid-2009. However, the Global Detention Project (GDP) has found evidence that many of these facilities are either closed or used for purposes other than immigration detention, including: the Victoria Road Centre (aka “The Zoo”), a notorious prison once used to hold political detainees during the 1960s and 1970s but which the Hong Kong government apparently now rents out, including to film producers (*South China Morning Post* 2006); the British Military Hospital in Kowloon, which was closed down in the mid-1990s during the lead up to the handover of Hong Kong to China (Lee 1995); the Whitehead Detention Centre, an infamous detention camp for Vietnamese boat people, which was closed in the late 1990s and turned into a golf course (Chen Min 2005); and the New Horizons Vietnamese Refugee Departure Centre, the Kai Tak Vietnamese Migrant Transit Centre, and the High Island Detention Centre, which were closed in the late 1990s to consolidate the location of remaining Vietnamese migrants in Hong Kong (USCR 1999).

In addition, many of the detention sites listed in the regulations are “detention quarters” or “rooms” located at ports of entry—including land borders with mainland China, ferry terminals, and the Hong Kong Airport—most of which appear to be used only as short-term holding facilities (Hong Kong Regulations [Chapter 115B, Schedule 3](#); Chung 2009). Except for the airport, which according to one source often holds people for several days, the Global Detention Project has been unable to confirm if these sites confine people for more than a few hours (Chung 2009).

As of June 2009, the GDP was able to confirm the “in use” status of 12 detention facilities (see [Map of “In Use” Detention Sites](#)). These facilities include prisons, custodial wards in hospitals, dedicated migrant detention centres, the airport detention quarters, and one juvenile detention centre. Some of the sites, like the Green Island Reception Centre, are apparently only standby facilities to be used in cases of massive influx of migrants (Chung 2009).

All facilities are under the authority of the Security Bureau except the Tuen Mun Children and Juvenile Home, which is part of the Labour and Welfare Bureau’s Social Welfare Department’s residential treatment service for children, juveniles, and young offenders (Social Welfare Department 2009). The other 11 sites are run by the Correctional Services Department or the Immigration Department, both of which are part of the Security Bureau. (For

more information about “in use” and “closed” detention sites, see the complete [List of Detention Sites](#)).

Facts and figures. According to government statistics, in 2007, more than 5,000 people were arrested on charges related to “illegal immigration”—3,007 immigrants from mainland China, and 2,041 “Vietnamese illegal immigrants and other non-ethnic Chinese illegal immigrants” (Hong Kong Government 2007, p. 302). However, the Immigration Department reports that during fiscal year 2007-2008, it “detained” 12,374 people and “arrested” 11,937 (Immigration Department 2008). In addition, during this period the department “prosecuted” 11,316 people, “repatriated” 13,404, “removed” 451, and “deported” 727 (Immigration Department 2008).

On 18 July 2008, the government reported that 387 persons were in immigration detention, 139 of whom were torture claimants ([“A” et al and Director of Immigration](#), 2008b, §3). This compares to the single-day total of 23,203 “illegal Vietnamese immigrants” held in detention camps as of 1 April 1993 (House of Lords 1993).

As of mid-2009, Hong Kong Regulations ([Chapter 115B, Schedule 3](#)) listed 20 immigration detention sites. The Global Detention Project was able to confirm that 12 sites qualified as “in use” sites (see the complete [List of Detention Sites](#)).

At the end of 2007, there were 94 asylum seekers with pending cases residing in Hong Kong (UNHCR 2008). During fiscal year 2007-2008, there were 2,783 “illegal immigrants from the Mainland” in Hong Kong, down from 23,132 in 1996-1997 (Immigration Department 2008).

Acronyms

AHRC Asian Human Rights Commission
CLIC Community Legal Information Centre (Hong Kong)
HKHRC Hong Kong Human Rights Commission
HKHRM Hong Kong Human Rights Monitor
USCR U.S. Committee for Refugees

Quick Facts

Detention sites: **12** (2009)
Reported single-day pop.: **387** (18 July 2008)
Asylum Seekers: **94** (end 2007)
Detention for deportation inquiry: **max. 28 days**
Detention pending deportation: **no time limit**
Deported and/or removed: **1,178** (FY 2007-2008)

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