

## **SUBMISSION TO THE SUBCOMMITTEE TO FOLLOW UP ISSUES RELATING TO THE UNIFIED SCREENING MECHANISM FOR NON-REFOULEMENT CLAIMS OF THE LEGISLATIVE COUNCIL**

### On the Screening of Non-Refoulement Claims and Appeal Procedures

May 2018

Justice Centre Hong Kong ('Justice Centre') makes the following submissions to the Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims ('the Subcommittee') of the Legislative Council of the Hong Kong Special Administrative Region ("Hong Kong") for the agenda item 'Screening and appeal procedures in respect of the unified screening mechanism', ahead of its meeting on 21 May 2018.

Justice Centre welcomes the Subcommittee's discussion of the issue. Individuals seeking non-refoulement protection may be at risk of persecution, torture and/or death if returned to their countries of origin. It is paramount that the Administration's evaluation of non-refoulement claims (including appeal procedures) is subject to the anxious scrutiny of the Legislative Council, civil society and the wider public to ensure they comply with international human rights standards.

The United Nations Committee against Torture (CAT); the Human Rights Committee (HRC); the Committee on Economic Social and Cultural Rights (CESCR); and the Committee on the Rights of the Child (CRC) have all raised concerns and made recommendations specifically about the rights and recognition of asylum seekers/torture claimants and refugees in Hong Kong.<sup>1</sup> The concerns and recommendations of treaty bodies relating to the handling

<sup>1</sup> 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, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/017/38/PDF/G1601738.pdf?OpenElement>, Human Rights Committee, "Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107<sup>th</sup> session (11 – 28 March 2013)", CCPR/C/CHN-HKG/CO/3, 29 April 2013, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkG1d%2fPPRiCAqhKb7yhsr2bAznTlrkyo4FUNHETCQOY7P%2fow040gd8LZ9d1NQukCEhx4dNtgXsWJSk7fStTBMEzKOWsqHv9SIKqzioKxDQTLMy%2fCcDkaXOWTD%2feb8avpf8ty9DnWWTyISVEmRoVg%3d%3d>, Committee on Economic Social and Cultural Rights, "Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China", E/C.12/CHN/CO/2, 13 June 2014, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/CHN/CO/2&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/CHN/CO/2&Lang=En), and Committee on the Rights of the Child, "Concluding observations on the combined third and fourth periodic reports of China, adopted by the Committee at its sixty-fourth session (16 September–4 October 2013)", CRC/C/CHN/CO/3-4, 29 October 2013, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/CHN/CO/3-4&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/CHN/CO/3-4&Lang=En), accessed on 11 May 2018.

PROTECTING FORCED MIGRANTS' RIGHTS

Justice Centre Hong Kong Ltd. - L1, The Sparkle, 500 Tung Chau Street, West Kowloon. 西九龍通州街500號星匯居L1

Tel + 852 3109 7359 | Fax + 852 3422 3019 | Email: info@justicecentre.org.hk | Justice Centre Hong Kong Ltd is a registered charity (IR91/9790)

of claims will be elaborated below. Moreover, the Hong Kong UPR Coalition, a coalition of civil society organisations that Justice Centre facilitates together with non-governmental organisation members of a Steering Committee, has lodged a joint civil society Universal Periodic Review (UPR) submission with the United Nations High Commissioner for Human Rights covering the rights of asylum seekers/torture claimants and refugees in Hong Kong.<sup>2</sup> The Hong Kong UPR Coalition has met with many consulates in Hong Kong about the Universal Periodic Review as it relates to Hong Kong. Several have shown interest in refugee issues in Hong Kong. One has started discussions on making a recommendation specifically for Hong Kong on protecting and promoting the rights of refugees. It is likely that there will be Universal Periodic Review recommendations specifically relating to Hong Kong's policies on refugees in the session on China, including Hong Kong and the Macau Special Administrative Region, in November 2018.

Actions by the Legislative Council and the Administration to improve laws and policies to ensure consistency with international human rights obligations relating to refugees are long overdue. However, treaty body recommendations were not mentioned in any of the Administration's paper to the Legislative Council.<sup>3</sup> The Administration must acknowledge and consider these recommendations in any proposed review, demonstrating their ongoing commitment to international human rights and the rule of law.

### **Quality of the decision-making of the Immigration Department and the Torture Claims Appeal Board**

From Justice Centre's experience of providing legal and psychosocial assistance to non-refoulement claimants, we observe significant problems in the evaluation of non-refoulement claims of the Immigration Department and the Torture Claims Appeal Board (TCAB). Basic mistakes are frequently noted including such matters as the country claimants come from (in more than one case); and TCAB adjudicators using information from Wikipedia as country of origin evidence to determine claims.<sup>4</sup>

---

<sup>2</sup> Hong Kong UPR Coalition, "Joint Civil Society Submission from the Hong Kong UPR Coalition", March 2018, available at: <http://www.justicecentre.org.hk/policy-advocacy/universal-periodic-review/>, accessed on 16 May 2018.

<sup>3</sup> The papers were Security Bureau, Hong Kong, 'An update on the comprehensive review of the strategy of handling non-refoulement claims', paper for the Panel on Security of the Legislative Council, LC Paper No. CB(2)1533/16-17(03), June 2017, available at: <http://www.legco.gov.hk/yr16-17/english/panels/se/papers/se20170606cb2-1533-3-e.pdf>, Security Bureau, Hong Kong, 'Comprehensive review of the strategy of handling non-refoulement claims', paper for the Panel on Security of the Legislative Council, LC Paper No. CB(2)110/16-17(06), November 2016, available at: <http://www.legco.gov.hk/yr16-17/english/panels/se/papers/se20161111cb2-110-6-e.pdf>, Security Bureau and Immigration Department, Hong Kong, 'Comprehensive review of the strategy of handling non-refoulement claims', paper for the Panel on Security of the Legislative Council, LC Paper No. CB(2)648/15-16(05), January 2016, available at: <http://www.legco.gov.hk/yr15-16/english/panels/se/papers/se20160202cb2-648-5-e.pdf>, accessed on 22 January 2018.

<sup>4</sup> See, for example, *Md Nazir Ahmed Sarkbar v Torture Claims Appeal Board* [2018] HKCFI 801, available at: [http://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=114733&QS=%2B&TP=JU](http://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=114733&QS=%2B&TP=JU), accessed on 11 May 2018.

These problems in the decision-making of the Immigration Department and the TCAB raise concern about fairness within the USM, and with it the risks of claimants being potentially returned to situations where they face persecution, torture and/ death. The substantiation rate of non-refoulement claims in Hong Kong, 0.7%, is one of the lowest in the developed world.<sup>5</sup> In quarter 1 of 2018, the Immigration Department substantiated none of the 1,352 claims it determined.<sup>6</sup> In contrast, the substantiation rates in the United Kingdom, Germany and Canada are 28%, 25% and 62% respectively.<sup>7</sup>

In its concluding observations on Hong Kong in 2016, CAT has commented that the low number of claims substantiated by the Hong Kong Government indicated a distinctly high threshold for granting protection, and, on that basis, recommended Hong Kong enhance the fairness and transparency of the screening process, by *inter alia*, ensuring that non-refoulement claims are thoroughly and individually examined; and allowing sufficient time for claimants to fully indicate the reasons for their application, and obtain and present crucial evidence including independent medical expert evidence.<sup>8</sup> HRC also urged Hong Kong not to set an inappropriate high threshold for recognising a real risk of ill-treatment on return in its concluding observations in April 2013.<sup>9</sup>

Accepting and implementing the recommendations of CAT and HRC will not only better protect the rights of non-refoulement claimants but will increase efficiency and save costs for the Hong Kong Government. Poor quality decision-making leads to the need for more appeals and judicial review challenges. This is a public expense which can be avoided by getting the decision right first time.

---

<sup>5</sup> Immigration Department, Hong Kong, "Enforcement", available at: <http://www.immd.gov.hk/eng/facts/enforcement.html>, and Hong Kong Government, "LCQ4: Torture claims", press release, 7 May 2014, available at: <http://www.info.gov.hk/gia/general/201405/07/P201405070624.htm>, both accessed on 3 May 2018.

<sup>6</sup> Immigration Department, Hong Kong, "Enforcement", available at: <http://www.immd.gov.hk/eng/facts/enforcement.html>, and Security Bureau, "Torture Claims Appeal Board- Q1, 2018", response to an access to information request, 27 April 2018, available at: [https://accessinfo.hk/en/request/torture\\_claims\\_appeal\\_board\\_q1\\_2#incoming-733](https://accessinfo.hk/en/request/torture_claims_appeal_board_q1_2#incoming-733)

<sup>7</sup> See asylum tables volume one on Home Office, United Kingdom, "How many people do we grant asylum or protection to?", 21 March 2018, available at: <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2017/how-many-people-do-we-grant-asylum-or-protection-to>, United Nations High Commissioner for Refugees (UNHCR), "Country Update: Germany | Q1 2018", 13 November 2017, available at: [http://www.unhcr.org/dach/wp-content/uploads/sites/27/2018/03/Factsheet\\_Germany\\_01\\_2018.pdf](http://www.unhcr.org/dach/wp-content/uploads/sites/27/2018/03/Factsheet_Germany_01_2018.pdf), and UNHCR, "Population Statistics", [http://popstats.unhcr.org/en/asylum\\_seekers](http://popstats.unhcr.org/en/asylum_seekers), accessed on 11 May 2018.

<sup>8</sup> Committee against Torture, "Concluding observations on the fifth periodic report of China with respect to Hong Kong, China".

<sup>9</sup> Human Rights Committee, "Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107<sup>th</sup> session (11 – 28 March 2013)".

### **Lack of transparency about the decision-making of the TCAB**

TCAB decisions are not made publicly available, which prevents non-refoulement claimants, civil society and the wider public from being able to monitor the quality of decision making. This is despite CAT's recommendation that Hong Kong publish redacted TCAB decisions.<sup>10</sup> Similar decisions are also published in other common law jurisdictions including Australia, Canada, New Zealand and the United Kingdom.<sup>11</sup> In a meeting of the Panel on Security of the Legislative Council on 6 June 2017, when asked about this CAT recommendation, the Security Bureau responded that the TCAB was considering the recommendation without giving any further information regarding the factors they were considering, or the timeframe.<sup>12</sup> The Chairperson of the TCAB issued directions to the effect that the TCAB is an independent body. However, that should not be a reason for not reporting on the progress of the consideration of the Committee's recommendations.<sup>13</sup> Publishing redacted TCAB decisions will enhance transparency and allow civil society to monitor the quality of the decision-making of the TCAB.

The need for greater transparency of the decision-making process of the TCAB has been highlighted in a judicial review challenge brought by a client of Justice Centre. The pregnant asylum seeker was compelled by the TCAB to go ahead with her hearing, despite going into labour.<sup>14</sup> Improper and unfair decisions like this will unlikely be known to civil society or the public at large if judicial review challenges are not brought. There is also little transparency about the appointment of TCAB adjudicators, including application procedures and selection criteria.<sup>15</sup>

---

<sup>10</sup> Committee against Torture, "Concluding observations on the fifth periodic report of China with respect to Hong Kong, China".

<sup>11</sup> See Administrative Appeals Tribunals, Australia, "Decisions", <http://www.aat.gov.au/decisions>, Immigration and Refugee Board of Canada, "Decisions", <http://www.irb-cisr.gc.ca/Eng/BoaCom/decisions/Pages/index.aspx>, Ministry of Justice, New Zealand, "Decisions", <https://www.justice.govt.nz/tribunals/immigration/immigration-and-protection/decisions/> and United Kingdom Government, "Immigration and asylum chamber: decisions on appeals to the Upper Tribunal", <https://tribunalsdecisions.service.gov.uk/utiac>.

<sup>12</sup> Minutes of the meeting of the Panel on Security on 6 June 2016, available at: <https://www.legco.gov.hk/yr16-17/english/panels/se/minutes/se20170606.pdf>, accessed on 30 April 2018.

<sup>13</sup> Betty Kwan, Chairperson of the Torture Claims Appeal Board, *Principles, Procedures and Practice Directors of the Torture Claims Appeal Board*, 12 September 2016, available at: <http://www.sb.gov.hk/eng/links/tcab/PPP.pdf>, accessed on 25 April 2018.

<sup>14</sup> Villarico Loutheliz Talag v. Torture Claims Appeal Board [2018] HKCFI 468; HCAL 179/2017, available at: <http://hklii.hk/eng/hk/cases/hkcfi/2018/468.html>, accessed on 3 April 2018.

<sup>15</sup> The Immigration Ordinance, Cap. 115 provides for the eligibility for membership of the Torture Claims Appeal Board but not the selection criteria and procedure. The Principles, Procedures and Practice Directors of the Torture Claims Appeal Board does not provide for the selection or appointment of members. See division 3, part VIIC of the Immigration Ordinance, available at: [http://www.blis.gov.hk/blis\\_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/\\$FILE/CAP\\_115\\_e\\_b5.pdf](http://www.blis.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/$FILE/CAP_115_e_b5.pdf), accessed on 25 April 2018 and Betty Kwan, Chairperson of the Torture Claims Appeal Board, *Principles, Procedures and Practice Directors of the Torture Claims Appeal Board*.

### **Inadequate legal aid**

As raised in Justice Centre's submission to the Panel on Administration of Justice and Legal Services of the Legislative Council in July 2017 and submission in response to the consultation for the Budget 2018/19, access to justice for non-refoulement claimants is limited.<sup>16</sup> A claimant's duty lawyer in the Immigration Department's evaluation stage decides whether to continue to represent them at the appeal stage. Only 9% of non-refoulement claimants are represented for their petitions/appeals at the Torture Claims Appeal Board ('the TCAB').<sup>17</sup> The distinctly low proportion of claimants represented at the TCAB stage shows that there is a systematic problem in the policy and procedures of the duty lawyers of the Public-funded Legal Assistance Scheme for Convention Against Torture & Non-Refoulement Claims, as administered by the Duty Lawyer Service. There is little publicly available information about the legal aid policy relating to these petitions/appeals and independent research should be carried out to understand the reasons for this problem. There is a lack of guidelines or policy to assist in determining whether a claimant should be represented. It appears that the duty lawyer of a claimant who has assisted with the claim at first instance is granted too wide a discretion as to whether to continue to represent before the TCAB.<sup>18</sup> Claimants are not allowed to appeal decisions of duty lawyers not to represent them at the TCAB and Justice Centre is not aware of any oversight or supervision provided. This is detrimental to claimants' right to a fair hearing and to the prompt and efficient operation of the TCAB.

Legal aid is particularly important to non-refoulement claimants, who often do not have the financial capacity to get legal representation themselves. Claimants have no right to work in Hong Kong and rely on Government allowance of about HKD\$3,000 a month for all expenses, including housing, food and transportation.<sup>19</sup> It is extremely unlikely for claimants to be able to afford a private lawyer for their claims. Moreover, if more non-refoulement claimants are represented at the TCAB and their cases are argued properly, there may be fewer applications for judicial review of TCAB decisions, saving public funds.

---

<sup>16</sup> Justice Centre Hong Kong, "Submissions to the Panel on Administration of Justice and Legal Services: Legal aid for non-refoulement claimants", LC Paper No. CB(4)1427/16-17(01), July 2017, available at: <https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170718cb4-1427-1-e.pdf>, and Justice Centre Hong Kong, "Submissions for the 2018-19 Budget Consultation", January 2018, available at: <http://www.justicecentre.org.hk/framework/uploads/2013/08/Justice-Centre-Hong-Kong-Budget-2018-19-Consultation-Submission.pdf>, both accessed on 17 May 2018.

<sup>17</sup> Access to information request, "Torture Claims Appeal Board Operations", available at: [https://accessinfo.hk/en/request/torture\\_claims\\_appeal\\_board\\_oper#incoming-512](https://accessinfo.hk/en/request/torture_claims_appeal_board_oper#incoming-512), accessed on 17 July 2017.

<sup>18</sup> *Ibid.*

<sup>19</sup> Response of the Security Bureau, Immigration Department and Social Welfare Department, Hong Kong, to the Subcommittee on Children's Rights of the Legislative Council, LC Paper No. CB(4)1642/16-17(01), September 2017, available at: [https://www.legco.gov.hk/yr16-17/english/hc/sub\\_com/hs101/papers/hs10120170724cb4-1642-1-e.pdf](https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs101/papers/hs10120170724cb4-1642-1-e.pdf), accessed on 18 May 2018.

Moreover, Hong Kong is one of the few common law jurisdictions that do not have community legal centres or other not-for-profit legal structures. There are publicly-funded law centres in comparable common law jurisdictions, including Australia, Canada and the United Kingdom.<sup>20</sup> This issue has been raised in Justice Centre's submissions in response to the consultation on the Budget 2018-2019 and the Hong Kong UPR Coalition's joint civil society submission for the Third Cycle UPR as it relates to Hong Kong made to the United Nations.<sup>21</sup> The Administration remove regulatory barriers for NGOs and other not-for-profit organisations to employ lawyers in the provision of pro bono/government funded legal representation. The Administration should also establish independent, not-for-profit legal structures, including government-funded community law centres to provide specialist, free legal advice and representation. This will not only enhance the provision of legal representation to vulnerable individuals, but also increase the number of lawyers trained in this area of law and increase the efficiency of the USM.

### **Concerns over inadequate protection of children's rights**

As raised in Justice Centre' submission to the Subcommittee on Children's Rights of the Legislative Council in July 2017, from our experience of providing legal and psychosocial support to asylum seekers, an accompanied child in Hong Kong will almost always be considered as merely a dependent upon their parent/s.<sup>22</sup> Indeed, we have seen no instances in which the specific rights and protection needs of asylum-seeking children have been recognised as existing in their own right. There does not appear to be any policy or guidance available, nor training given to Immigration officers, to ensure a child-centred approach is adopted within the USM. This absence is of key concern – we are not aware of any procedural safeguard in place to ensure sensitivity towards the factors and challenges specific to children's claims, such as: increased and various forms of vulnerability; varying levels of maturity and corresponding dependency upon adults; child-specific forms and manifestations of persecution, for example the trafficking of children for sex work and the risks of female genital mutilation.

### **Delay in the evaluation of claims**

Many of Justice Centre's clients have faced delay in the evaluation of claims for reasons out of their control. There have been cases of clients waiting for two years or more after registering a claim to have the first screening interview with the Immigration Department for a lack of interpreters or even unknown reasons. On average, Justice Centre's clients who registered their claims within the last two years have/had to wait for more than half a year after claim registration to have the first screening interview.

---

<sup>20</sup> DLA Piper and PILnet, *This Way: Finding Community Legal Assistance in Hong Kong*, May 2017, p. 56, available at: [https://www.dlapiper.com/~/\\_media/Files/News/2017/05/REPORT\\_THIS\\_WAY\\_31%20May%202017.pdf](https://www.dlapiper.com/~/_media/Files/News/2017/05/REPORT_THIS_WAY_31%20May%202017.pdf), accessed on 18 May 2018.

<sup>21</sup> Justice Centre Hong Kong, "Submissions for the 2018-19 Budget Consultation", and Hong Kong UPR Coalition, "Joint Civil Society Submission from the Hong Kong UPR Coalition".

<sup>22</sup> Justice Centre Hong Kong, "Submissions to the Subcommittee on Children's Rights of the Legislative Council: Rights of Refugee Children", July 2017, available at: <http://www.justicecentre.org.hk/framework/uploads/2014/03/Justice-Centre-Hong-Kong-submissions-to-Subcommittee-on-Childrens-Rights.pdf>, accessed on 17 May 2018.

When the Administration explained the time taken to process claims to the Legislative Council, it cited examples of claimants "seeking extension to submit supporting documents but not submitting any in the end, requesting that an interview be conducted in a rare dialect (whilst the claimant could previously clearly communicate with the ImmD in English), refusing to undergo medical examinations arranged on the claimant's own request and challenging the professional qualification of medical practitioners from the Hospital Authority and its data storage security arrangement, etc".<sup>23</sup> Such explanations for delay without the context or background are not conducive to having informed policy discussions to address delay. Without the background or giving the relevant claimants an opportunity to respond to these explanations for delay in the policy context, the Administration's explanations may also, in an unfair way, give the impression that the relevant claimants are abusing the USM. The picture of delay given by the Administration is also inconsistent with the experiences of Justice Centre of providing legal assistance to non-refoulement claimants, as mentioned in the preceding paragraph.

The Administration should be more transparent about the overall situation of delay so that the Legislative Council and civil society can start informed discussions of how to address the problem. Justice Centre shares the Administration's objective of speeding up the evaluation of claims while ensuring the fairness and transparency of the USM.

### **Protection should be accessible to all persons in need regardless of immigration status**

Non-refoulement claims are not entertained unless the person concerned is liable to removal.<sup>24</sup> In other words, a person has to overstay his or her visa or wait till his or her visa-free period of stay in Hong Kong expires to be able to make a non-refoulement claim. This forces individuals in need to become 'illegal' to access protection. The Administration should accept and implement CAT's recommendation that it ensure unhindered access to the USM to all individuals wishing to claim protection, irrespective of their immigration status.<sup>25</sup>

### **Consultation with non-refoulement claimants, civil society and the wider public**

Although the Security Bureau is conducting a 'comprehensive review' of the strategy of handling non-refoulement claims since February 2016, it has not conducted a formal consultation on the review to proactively and systematically seek the views of non-refoulement claimants, civil society and the wider public. Civil society organisations, such as Justice Centre, who work directly with non-refoulement claimants have relevant expertise that could greatly assist the review process.

---

<sup>23</sup> Secretary for Security, Hong Kong, "Replies to initial written questions raised by Finance Committee Members in examining the Estimates of Expenditure 2017-18", reply no. SB182, March 2017, available at: [https://www.legco.gov.hk/yr16-17/english/fc/fc/w\\_q/sb-e.pdf](https://www.legco.gov.hk/yr16-17/english/fc/fc/w_q/sb-e.pdf), accessed on 17 May 2018.

<sup>24</sup> Immigration Department, Hong Kong, "Notice to Persons Making a Non-refoulement Claim", 4 September 2017, available at: [https://www.immd.gov.hk/pdf/notice\\_non-refoulement\\_claim\\_en.pdf](https://www.immd.gov.hk/pdf/notice_non-refoulement_claim_en.pdf), p.6, accessed on 11 May 2018.

<sup>25</sup> Committee against Torture, "Concluding observations on the fifth periodic report of China with respect to Hong Kong, China".

### **Public education about the USM**

The Administration should conduct public education on the USM, including the rights of non-refoulement claimants and the grounds for seeking protection. Members of the public have made remarks that suggest misunderstanding of the screening of claims in the USM. The Administration has not taken any action in response. For example, Justice Centre has observed remarks made by members of the public that non-refoulement claimants coming from countries such as Pakistan are “fake”, apparently because they see Pakistan as a peaceful country. This shows a misunderstanding of the USM, country conditions and the relevant law. For example, for claims made on torture grounds, the test is whether there are substantial grounds for believing that the person would be in danger of being subjected to torture, not whether there is a war/s or generalized violence taking place in the country of origin. In fact, the Immigration Department and the TCAB have substantiated 16 non-refoulement claims made by Pakistani nationals, the highest number among all nationalities.<sup>26</sup> The Administration should conduct public education on the USM, including the rights of claimants, and correct any misunderstanding about the mechanism proactively.

### **Recommendations**

Justice Centre recommends that the Panel request the Administration to:

- Accept and implement recommendations that CAT, HRC, CESRC and CRC have made in relation to asylum seekers, refugees and victims of torture for Hong Kong;
- Request the extension of the 1951 Convention relating to the Status of Refugee and its 1967 Protocol to Hong Kong;
- Conduct regular meaningful, considered consultations with non-refoulement claimants, civil society and the wider public on the comprehensive review on the strategy of handling non-refoulement claims;
- Commission an independent review of the quality of decision making of the Immigration Department and the Torture Claims Appeal Board;
- Increase transparency about the evaluation of non-refoulement claims, including publishing redacted TCAB decisions;
- Commission an independent study on the reasons for the distinctly small number of non-refoulement claimants represented at the TCAB to ensure the protection of the right to a fair hearing of every claimant;
- Remove regulatory barriers for NGOs and other not-for-profit organisations to employ lawyers in the provision of pro bono/government-funded legal representation;
- Establish independent, not-for-profit legal structures, including government funded community law centres to provide specialist, free legal advice and representation;
- Introduce a policy to ensure a child-centred approach towards handling non-refoulement claims and publish such a policy;
- Ensure unhindered access to the USM to all individuals wishing to claim protection, irrespective of their immigration status;

---

<sup>26</sup> | Immigration Department, Hong Kong, “Enforcement”.



- Make arrangements for further increasing resources for the Immigration Department and the TCAB for handling non-refoulement claims; and
- Conduct public education on the USM, including the rights of claimants, and correct any misunderstanding about the mechanism proactively.

### Questions for the Administration

- Who conducts country of origin research for TCAB adjudicators? What training do TCAB adjudicators and any staff of the TCAB that conducts research for the adjudicators receive (both in advance and on an ongoing basis)? What was the amount of expenses spent in each of the years from 2014/15 to 2017/18 on such research, including the gathering of data and translation, and training? What is the budget for such expenses in 2018/19?
- How are Immigration Department officials, TCAB adjudicators and any staff of the TCAB conducting research for the adjudicators held accountable for mistakes about the countries that the claimants come from and for using unreliable sources of information such as Wikipedia?
- What is the TCAB's progress of considering CAT's recommendation to publish redacted decisions? How can the Administration ensure there is no delay in placing this into operation?
- Has the Administration studied why only 9% of appellants are legally represented at the TCAB?
- What is the Administration's position on the establishment and funding of community legal centres or enabling other non-profit structures to provide direct legal services?
- Civil society has raised concerns over an apparent lack of child-centred approach to handling non-refoulement claims of children in the Subcommittee on Children's Rights of the Legislative Council in July 2017. Has the Administration taken any action since then to address such concerns? Do Immigration officers and TCAB adjudicators receive training on child-specific forms of persecution and torture and on how to interview children in a sensitive manner? What are the Immigration Department's and the TCAB's policies of processing non-refoulement claims of children?
- What is the Administration's position regarding CAT's recommendation that it ensure unhindered access to the USM to all individuals wishing to claim protection, irrespective of immigration status?
- Why does the Administration never mention recommendations made by treaty bodies in its papers for the Legislative Council about the USM?

Justice Centre welcomes the opportunity to provide further information to members of the Subcommittee in writing or in person.

Please contact Annie Li, Research and Policy Officer ( [REDACTED] [annie@justicecentre.org.hk](mailto:annie@justicecentre.org.hk)), for any enquiries.

**About Justice Centre Hong Kong**

Justice Centre Hong Kong is a non-profit human rights organisation working to protect the rights of Hong Kong's most vulnerable forced migrants: refugees, other people seeking protection, and survivors of torture, human trafficking and forced labour.

For more information please visit: [www.justicecentre.org.hk](http://www.justicecentre.org.hk)