

## A chronology of asylum policy changes

- 9 Dec 1992 [United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (CAT) was extended to Hong Kong by the United Kingdom. Article 3 of CAT prohibits the *refoulement* of torture victims. It provides that “*No State Party shall expel, return (‘refouler’), or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture*”. This is known as the Principle of Non-refoulement and asylum seekers are often referred to as non-refoulement claimants, particularly in public discourse.
- 10 Jun 1997 People’s Republic of China confirmed the extension of CAT to post-handover Hong Kong.
- 1993 - 2004 Hong Kong Government insisted on “**a firm policy not to grant asylum**”, yet [relied on UNHCR’s Hong Kong sub-office to process asylum seekers’ claims](#) under the “1951 Convention Relating to the Status of Refugees” (the Refugee Convention) not extended to Hong Kong. There was no formal arrangement for Immigration officers to direct asylum seekers to the UNHCR. Border control officers had, and continue to have, absolute discretion in refusing entry to those without the right to land in Hong Kong.
- 8 Jun 2004 [Prabakar judgment](#): the Court of Final Appeal ruled that a torture screening mechanism ought to be made available. Given the momentous importance of a determination on torture claims to claimants, “high standards of fairness” must be demanded to allow every reasonable opportunity for claimants to establish their claim. The judgment held, “*Here, the context is the exercise of the power to deport. The determination of the potential deportee’s torture claim by the Secretary in accordance with the policy is plainly one of momentous importance to the individual concerned. To him, life and limb are in jeopardy and his fundamental human right not to be subjected to torture is involved. Accordingly, high standards of fairness must be demanded in the making of such a determination.*”
- 2004 - 2008 **Non-statutory, Administrative Torture Screening Mechanism** conducted by Immigration Department for the assessment and determination of torture claims, without the provision of free legal advice and interpretation. There was no independent appeal system and appeals were simply reviewed by a different immigration officer.

- 5 Dec 2008 **FB judgment:** The Court of First Instance held that the policy of denying legal representation to torture claimants was unlawful and failed to meet high standards of fairness. It required that the Immigration Department conduct assessments with torture claimants in the presence of publicly-funded legal representatives, with the assistance of interpreters. The Immigration Department was also required to establish an appeal system.
- Dec 2008 After the FB judgment was handed down, the Immigration Department suspended screenings to reformulate assessment procedures in compliance with the rulings of the Court of First Instances, which decision was not appealed. [A 6 June 2012 Press Release](#) confirmed that **“Only one case was substantiated before December 2009”** (from 1992).
- 20 Jan 2009 **Memorandum of Understanding between Hong Kong Government and UNHCR,** seconding Immigration officers with duties, *“including conducting RSD interviews, drafting RSD assessments and formulating recommendations to UNHCR on the merits of refugee status applications, in accordance with UNHCR policies and standards. Recommendations on refugee status determination will be signed by the Seconded and reviewed and signed by UNHCR, which will take and sign the final decision. UNHCR will take full responsibility for these decisions.”*
- 24 Dec 2009 **Enhanced Torture Screening Mechanism** is launched introducing significant changes: strengthened training for screening officers; decision by screening officers; provision of publicly-funded legal assistance administered by the [Duty Lawyer Service](#) (DLS); unsuccessful torture claimants may lodge petition against the determination by the Immigration Department to the Security Bureau within 14 days of determination; petitions to be decided by independent persons with legal background; if the claimants are aggrieved by the refusal, they may apply for judicial review to challenge the refusal decision. The Immigration Ordinance will be amended with these changes in Dec 2012.
- 27 Oct 2010 **Usman Butt judgment:** The High Court set sentencing guidelines imposing 15 months’ imprisonment on illegal immigrants and others pending removal who are arrested working illegally. The court assumed that: *“A genuine torture or refugee claimant deserves sympathy and should not be left in a destitute state during the determination of his status. However, his basic needs such as accommodation, food, clothing and medical care are provided by the Government ... The provision of that assistance clearly removes the need of a genuine claimant to seek employment pending the determination of his claim”.*

- 21 Dec 2012 **Ubamaka judgment:** The Court of Final Appeal held that the right to freedom from torture and “cruel, inhuman or degrading treatment or punishment” (CIDTP) as enshrined in Article 3 of the Hong Kong Bill of Rights, as contained in the Hong Kong Bill of Rights Ordinance (Cap. 383 of the Laws of Hong Kong) is an absolute and non-derogable right to which there are no exceptions. The judgment noted that *“the approach of the respondents that a person (not having the right to be in Hong Kong) was liable to be deported to a place even where it could manifestly be demonstrated that he would be subject to cruel, inhuman or degrading treatment or punishment in that place, was a deeply unattractive submission.”*
- January 2013 Vision First started actively promoting CIDTP claims. Vision First called for an effective, credible and expert-driven screening system based on international standards that fully respects refugee rights. To promote the Ubamaka judgment, Vision First raised awareness with refugees about their right to lodge CIDTP claims fifteen months before its inclusion in the Unified Screening Mechanism in March 2014.
- 25 Mar 2013 **C, KMF, BF judgment:** The Court of Final Appeal held that the Immigration Department could not rely solely on the results of the UNHCR's refugee status determination (RSD) to assess persecution risk, but was obliged to make independent assessments of persecution claims under Article 33 of the Refugee Convention. The judgment reads, *“In respect of each of these three appellants, the government must, doing so properly as explained above, make its own determination on the question of whether his asserted fear of persecution in the event of return is well-founded and, doing so properly as explained above, give its reasons for any determination adverse to any appellant.”*
- 7 May 2014 **Press Release:** Hong Kong Government would introduce an enhanced administrative screening mechanism for torture claims in December 2009. At that time, 6395 torture claims were outstanding. In addition, from December 2009 to February 2014, the ImmD received 4969 new torture claims, making a total of 11 364 claims. **During the same period, Immigration determined 4755 torture claims, 22 substantiated and 4733 rejected.**
- 3 Mar 2014 **Unified Screening Mechanism** (USM) was launched for all “non-refoulement claimants”, as asylum seekers are called by Hong Kong Government. USM seeks “to determine claims for non-refoulement protection against expulsion, return or extradition from Hong Kong to another country on applicable grounds including risks of (i) **torture** under Part VIIC of the

Immigration Ordinance, Cap. 115; (ii) torture or **cruel, inhuman or degrading treatment or punishment** under Article 3 of Section 8 of the Hong Kong Bill of Rights Ordinance, Cap. 383; and (iii) **persecution** with reference to the non-refoulement principle under Article 33 of the 1951 Convention relating to the Status of Refugees (the Refugee Convention).”

- March 2014 Following the launch of USM, [UNHCR stopped officially screening refugees](#) in Hong Kong.
- 14 Feb 2014 [Hong Kong Bar Association is very critical of USM](#), *“the Security Bureau has never consulted the legal profession on the operation details of the USM ... The HKBA deplores this highly unsatisfactory situation, which has left significant changes and proposals uncommented ...”*
- January 2015 Vision First voiced concerned over the absence of a mechanism to assess [Hong Kong Bill of Rights Ordinance, Art 2 “Right to life” claims](#). Vision First raised awareness among refugees about their right to raise so called “BOR 2 claims” in conjunction with USM. The credibility of the USM is questioned as legal professionals call for Hong Kong Government to follow recommendations and seek widen consultations. [Open letter to Immigration on BOR 2](#).
- 26 Jan 2015 [Hong Kong Bar Association expresses “strong reservations”](#) towards fast-tracking of USM procedures, including: pre-scheduling and expedient screening, shorten claim forms, prepared screening bundles, standardize and capping legal fees and assignment/change of lawyers by their diaries.
- 7 July 2015 [Security Bureau submission to Legco](#) describes asylum seekers as *“foreigners who smuggle themselves into Hong Kong and visitors who overstay their limits of stay ... collectively ‘illegal immigrants’”*. When USM commenced, there were 6699 non-refoulement claims pending screening; by end May 2015, 1873 claims were determined by Immigration and 1403 were withdrawn, whilst another 6461 claims were received, bringing the total number of claims pending screening to 9884. Amongst the 1873 non-refoulement claims determined by Immigration, **8 were substantiated, including 2 substantiated by the Torture Claims Appeal Board (CAT claims)**.
- 7 Aug 2015 [An article on the ejinsight website](#) provides the latest unofficial acceptance figure: “Immigration authorities had approved 12 out of 2200 applications as of July 26.”

## Effective refugee protection as of ...

1992 – Dec 2008	<a href="#">1 successful claim</a>
Dec 2008 – Dec 2009	Screening is suspended
Dec 2009 – Feb 2014	<a href="#">22 successful claims</a>
Mar 2014 – Jul 2015	<a href="#">8 successful claims</a>

From 1992 till present, Hong Kong Immigration identified 31 refugees who “illegal immigrant” status does not change. They are not granted right of abode, nor issued with ID cards. Further, they enjoy no economic rights and will be jailed for 15 months if arrested working, just like a newly arrived asylum seeker. [Is USM a mechanism of border control not refugee protection?](#)