

Attn: News Desks

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Hong Kong Government is failing to protect victims of trafficking for forced labour.

Time is right to raise the benchmark to a higher standard.

A new report by two leading NGOs claims that the Hong Kong Government is failing to protect people, including foreign domestic workers, trafficked into forced labour in the region and calls on the government to work with NGOs to raise the benchmark to a higher standard.

How Many More Years A Slave? Trafficking for Forced Labour in Hong Kong, a joint publication by Justice Centre Hong Kong (formerly Hong Kong Refugee Advice Centre) and Liberty Asia, is the first comprehensive analysis of human trafficking for forced labour in the HKSAR territory.

The paper asserts that the Hong Kong Government is not fully complying with the minimum standards for the elimination of trafficking for forced labour and highlights gaps in existing legislation, which it says is failing to safeguard the rights of migrant workers trafficked for forced labour, neglecting to prosecute perpetrators and to prevent future abuses.

Forced labour, modern slavery, debt bondage and human trafficking are all terms that have recently hit the headlines in Hong Kong in the context of reports of alleged abuse of foreign domestic helpers, such as the much-publicised cases of Kartika Puspitasari and Erwiana Sulistyarningsih, whose next court hearing is scheduled for tomorrow. (Tuesday March 25)

According to the International Labour Organisation (ILO), nearly 21 million people are victims of forced labour worldwide in a variety of sectors such as domestic work, agriculture, fishing, construction and prostitution. The Asia-Pacific region accounts for the largest number of forced labourers, 56 per cent of the global total, or 11.7 million people.

As an important regional hub in the Asia-Pacific region, Hong Kong is both a destination and transit territory for human trafficking. But the true situation on the ground in Hong Kong is largely unknown, the report claims, because gaps in legislation mean that situations of trafficking for forced labour are not being adequately monitored, investigated or prosecuted.

Unlike other countries in the region, Hong Kong has no comprehensive anti-human trafficking law – existing legislation merely prohibits human trafficking “for the purpose of prostitution”, but not for the purpose of forced labour or other forms of trafficking. The UN Trafficking Protocol has not been extended to HKSAR; neither does Hong Kong have a national plan of action nor a concerted strategy. Rather, legislation is scattered across different ordinances, leading to significant legislative gaps and critical difficulties with enforcement. The limited scope of the legislation has been criticised by several human rights organisations, the US State Department’s Trafficking in Persons Report (TIP), as well as many UN bodies.

The report claims that victims of trafficking for forced labour in Hong Kong are often foreign domestic workers (who at around 320,000 persons, comprise three per cent of the total Hong Kong population) from the Philippines, Indonesia, Thailand, Myanmar, Bangladesh, Nepal, Pakistan and Sri Lanka. As Hong Kong continues to widen its search for sources of cheap labour from other countries in the region, the report warns that new vulnerable groups may also be prey to trafficking for involuntary domestic servitude in the near future.

A 2013 survey with 3,000 foreign domestic workers conducted by Mission for Migrant Workers (MFMW), found that well over half of those surveyed stated that they had suffered verbal abuse, one in five had suffered physical abuse and six per cent had suffered sexual abuse. An earlier 2005 study found that 93 per cent of those surveyed reported employment agency overcharging, more than half underpayment of salary, 45 per cent reported denial of rest days, 57 per cent denial of statutory holidays, 40 per cent a confiscation of passport and employment contracts and 57 per cent long working hours.

The report argues that foreign domestic workers who may have been trafficked to Hong Kong for forced labour and suffered such abuse also face steep barriers that prevent them from accessing justice. Irrespective of how badly foreign domestic workers are treated by their employer, they have a mere two weeks before their employment visa lapses automatically. They have the right to take disputes with their employer or agency to the Labour Department and may be granted visa extensions (but only on a visitor visa with different terms and restrictions), subject to the payment of a renewal fee for the period while their dispute is heard and adjudicated upon. However, they have no right to legal representation at the Labour Tribunal and, during this time, have no permission to work (and consequently in most cases, no source of income on which to live) and must bear responsibility for the payment of visa extensions and living expenses themselves. This, the report says, often compels them to accept low settlements or to simply drop the case and many cases where the markers of trafficking are present are rarely investigated and/or prosecuted.

The result of this limited anti-human trafficking legislation, the report says, is that Hong Kong's criminal justice system is excluding from its remit a large number of cases, victims are slipping through the net and perpetrators are able to operate unhindered. Between January and July 2013 alone, 2,172 foreign domestic workers were granted visa extensions to resolve legal disputes with employers or agencies, and yet, in 2013, not a single case of trafficking for forced labour was identified by Hong Kong authorities. Between 2008 and 2012, merely 14 trafficking in person cases (for the purpose of prostitution) were effected, none of which involved foreign domestic workers. Moreover, despite a record number of complaints against recruitment agencies in 2013, the Labour Department revoked the licence of a mere four agencies out of more than 1,200 agencies currently operating in Hong Kong.

Aleta Miller, Executive Director of Justice Centre Hong Kong, said:

“Around half of the world’s slaves are in Asia, yet the Hong Kong Government is failing to act to protect victims, including foreign domestic workers, on their own doorstep. The new US Department’s Trafficking in Person’s Report is due in June 2014. For the past five years, this worldwide trafficking benchmark has said that Hong Kong has failed to comply with the minimum standards for the elimination of trafficking.

With the recent alleged abuses of foreign domestic workers in the region and the government’s lack of action in improving legislation to protect them and other workers trafficked into forced labour, what will Hong Kong have to show for itself on this global stage? Very little, unless it takes action now.”

Justice Centre Hong Kong is a new non-profit NGO, launching today (Monday March 24), working to protect Hong Kong’s most vulnerable forced migrants. Formerly Hong Kong Refugee Advice Centre, an organisation that over a period of seven years helped over 2,000 refugee men, women and children on the road to a new life, Justice Centre Hong Kong has identified a clear need for an increased response to tackling trafficking and modern slavery in Hong Kong and, building on their proven expertise in refugee issues, has extended their remit to fill this gap. It has also expanded its work on refugee issues.

Archana Sinha Kotecha, Head of Legal at Liberty Asia, an organisation whose mission is to decrease the number of people in modern-day slavery in the region, said:

“Scattered legislation over different ordinances creates little appetite to address the full scope of trafficking for forced labour in Hong Kong. There is no one piece of legislation that is robust enough, which creates significant issues in relation to enforcement, victim identification, and access to justice.

As trafficking for forced labour is not recognised as a crime under Hong Kong law, there is no sense of the numbers of people who are likely affected by it. There is a lack of systematic data collection, monitoring and reporting on the situation; there is also no ability for victims to even bring a case forward or make a complaint about trafficking for forced labour, and no way for authorities to conduct investigations and prosecute traffickers.

Even if prohibition of slavery and freedom from forced labour is enshrined in the Hong Kong Bill of Rights, there is nothing incorporated into the Criminal Code to give these provisions any legal “bite”. The time is ripe to work together to make Hong Kong’s efforts to combat modern slavery another leading example in Asia. Let’s raise the benchmark to a higher standard.”

How Many More Years A Slave makes recommendations to the Hong Kong Government to improve the situation by (1) developing a broader definition of human trafficking which encompasses all forms of human trafficking as set out in the UN Trafficking Protocol (2) creating a national plan of action to combat human trafficking (3) adopting a comprehensive anti-human trafficking law and (4) offering more robust labour protections against forced labour.

The report is available at www.justicecentre.org.hk and www.libertyasia.org

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Notes to Editors

According to the International Labour Organisation (ILO), Forced Labour is all work or service which is a) not voluntary and b) enacted under the menace of penalty. For full definitions of Forced Labour, Human Trafficking, Involuntary Domestic Servitude and Debt Bondage, please see the report at www.justicecentre.org.hk or www.libertyasia.org

The UN Trafficking Protocol, or the Palermo Protocol, requires the criminalisation of both trafficking and attempts to commit a trafficking offence, participation as an accomplice in such an offence, or organising or directing others to commit an offence. According to the United Nations Office on Drugs and Crime, the definition of trafficking in national legislation should be flexible in order to encompass the broad definition of human trafficking as set out in the Protocol, including the acknowledgement that human trafficking:

- occurs both across borders and within a country (not just cross-border);
- is for a range of exploitative purposes (not just sexual exploitation);
- affects children, women and men; and
- takes place with or without the involvement of organised crime groups.

Justice Centre Hong Kong (formerly Hong Kong Refugee Advice Centre) is a human rights organisation working fearlessly to protect the rights of Hong Kong’s most vulnerable forced migrants - refugees, other people seeking protection and survivors of modern slavery. Justice Centre Hong Kong provides one-to-one specialised support and services, campaigns for adequate legislation and policies, conducts research and work with schools, universities and the media to fight root causes and change systems and minds. www.justicecentre.org.hk

Liberty Asia is a project under Share (Asia Pacific) Limited, a HK-registered charity, that constrains and affects the environment in which trafficking and slavery thrives and provides solutions to support and enhance frontline NGOs in the field. Liberty Asia makes collaborative resources available for organisations in the field in Asia by coordinating activities, particularly across-borders; sharing information, expertise, evidence, case studies and operations; providing a regional contact point for those threatened and victimised; and creating and sharing education programmes and awareness campaigns. www.libertyasia.org

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