

HOW MANY MORE YEARS A SLAVE?

Trafficking for forced labour in Hong Kong

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I. EXECUTIVE SUMMARY

Forced labour, modern slavery, debt bondage and human trafficking are all terms that have recently made their way into headlines in Hong Kong. These have often been in the context of multiple accounts of alleged abuse of foreign domestic helpers, such as the much-publicised cases of Erwiana Sulistyarningsih and Kartika Puspitasari in the past year.

There are currently 11.7 million people in forced labour conditions in the Asia-Pacific region. As an important regional hub and both a destination and transit territory for human trafficking, Hong Kong is failing to fully comply with the minimum standards for the elimination of trafficking.

Current legislation merely prohibits human trafficking “for the purpose of prostitution”, but not for forced labour or other forms of trafficking, which has been criticised in the US State Department’s Trafficking in Persons Report, as well as by UN bodies and several human rights organisations.

This briefing – the first of a joint series examining modern day slavery in Hong Kong and offering policy solutions – will provide clarity about the distinguishing features and overlaps between forced labour and human trafficking, with reference to international standards.

It will go on to identify the gaps in existing legislation, which is currently failing to provide redress in cases of trafficking for forced labour and to prevent further abuses, is neglecting to prosecute traffickers and is not offering adequate protection to victims of trafficking for forced labour in the HKSAR territory.

The briefing calls on the Hong Kong Government to: (1) develop a broader definition of human trafficking which encompasses all forms of human trafficking as set out in the UN Trafficking Protocol (2) create a national plan of action to combat human trafficking (3) adopt a comprehensive anti-human trafficking law and (4) offer more robust labour protections against forced labour.

Doing so is crucial to prevent further human rights abuses at a time when Hong Kong is looking at other emerging markets for sources of labour. At this critical juncture, the Hong Kong Government has an opportunity and the resources to redouble its efforts to combat modern forms of slavery and serve as a model in the Asia-Pacific region.

II. INTRODUCTION

According to the International Labour Organisation (ILO), nearly 21 million people are victims of forced labour worldwide, 90% of whom are exploited in the private sector. 14.2 million of these people are forced into economic activities like agriculture, fishing, domestic work or construction, while 4.5 million are forced into prostitution.¹ The Asia-Pacific region accounts for the largest number of forced labourers, 56% of the global total, or 11.7 million people.²

It's a lucrative business; after drugs and arms trafficking, human trafficking is the third-largest global criminal industry.³ Indeed, the trafficking of persons for the purpose of forced labour constitutes 68% of total trafficking,⁴ and it alone generates an annual profit of \$32 billion a year.⁵ It persists because traffickers are always able to find new communities of vulnerable people to prey on and exploit and because market incentives provide a high-profit, low-entry cost and low-risk environment. In short, forced labour is used as it makes business sense to do so from the traffickers' perspective.⁶ Both these supply-side and demand-

side factors must be addressed to combat human trafficking effectively.⁷

As an important regional hub in the Asia-Pacific region and both a destination and transit territory for human trafficking, the Hong Kong Special Administrative Region (HKSAR) is failing to fully comply with the minimum standards for the elimination of trafficking.⁸ Current legislation merely prohibits human trafficking "for the purpose of prostitution", but not for the purpose of forced labour or other forms of trafficking. Its limited scope has been criticised by several human rights organisations, the US State Department's Trafficking in Persons Report, as well as many UN bodies.⁹ These omissions also mean that situations of trafficking for forced labour are not being monitored and there is no way to get a grasp of the situation on the ground.

Alleged incidences of human rights violations against foreign domestic helpers at the hands of their employers, such as the much-publicised cases

of Erwiana Sulistyaningsih or Kartika Puspitasari for example, coupled with a recent report by Amnesty International,¹⁰ have shown how some employment agencies may recruit and traffic women into situations of exploitation and forced labour, and how the Hong Kong Government has failed and is failing to adequately safeguard the rights of these migrant workers.

Trafficking occurs in every single country in the world; "modern-day slavery" is very real and thriving in Hong Kong, affecting different vulnerable groups and cutting across many sectors. Human trafficking also affects local Hong Kong communities and there are increasing reports of vulnerable girls from Hong Kong being deceived and exploited in the sex industry.¹¹ Human trafficking comes at a very high cost to migrant source countries, but also to local communities, and it must therefore be more holistically addressed by authorities in both source and destination countries.¹²

¹ Liberty Asia, "From Experience: how to combat slavery in our generation", Discussion Paper, February 2014, at p. 10, available at: http://libertyasia.org/sites/default/files/how-to-combat-slavery-in-our-generation_anti-slavery-think-tank_final-20jan2014.pdf

² ILO, "21 Million People Are Now Victims of Forced Labour, ILO Says" Press Release, 1 June 2012, available at: http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181961/lang-en/index.htm

³ UN Office on Drugs and Crime (UNODC)

⁴ ILO, "2012 Global Estimate of Forced Labour: Executive Summary", available at: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_181953.pdf

⁵ Jordan, Ann, "Slavery, Forced Labor, Debt Bondage and Human Trafficking: From conceptual confusion to targeted solutions", Issue Paper 2, February 2011, at p. 2, available at: <http://rightswork.org/wp-content/uploads/2012/05/Issue-Paper-2.pdf>

⁶ Alain, Jean; Crane, Andrew; LeBaron, Genevieve and Behbahani, Laya. "Forced Labour's Business Models and Supply Chains", Joseph Roundtree Foundation, November 2013, at p. 5, available at: <http://www.jrf.org.uk/sites/files/jrf/forced-labour-business-full.pdf>

⁷ Polaris Project, "Why Trafficking Exists", available at: <http://www.polarisproject.org/human-trafficking/overview/why-trafficking-exists>

⁸ US State Department, "2013 Trafficking in Persons Report – Hong Kong", 19 June 2013, available at: <http://www.refworld.org/docid/51c2f3b84d.html>

⁹ For example, see: Sto. Domingo, Bernadette, "IOM Hits HK Trafficking Law", Hong Kong News, 14 December 2012, available at: <http://hongkongnews.com.hk/iom-hits-hk-trafficking-law/>; Amnesty International "Hong Kong: Submission to the Legislative Council's Panel on Manpower – Policies Relating to Foreign Domestic Helpers and Regulation of Employment Agencies", LC Paper No. CB (2)870/13-14(03), February 2014; UN Human Rights Committee, "Concluding Observations: Hong Kong, China", UN Doc.: CCPR/C/CHN-HKG/CO/3, 29 April 2013, at para. 20

¹⁰ Amnesty International, "Exploited for Profit, Failed by Governments: Indonesian migrant domestic workers trafficked to Hong Kong", November 2013, available at: <https://www.amnesty.org/en/library/asset/ASA17/029/2013/en/d35a06be-7cd9-48a1-8ae1-49346c62ebd8/asa170292013en.pdf>

¹¹ Salvation Army, "Human Trafficking in Canada: Frequently Asked Questions", available at: <http://salvationist.ca/wpcontent/uploads/2011/08/Human-Trafficking-in-Canada-FAQs.pdf> and New Zealand Network against People Trafficking, "Local and International Trafficking", available at: <http://www.nznap.org.nz/trafficking.html>

¹² For more analysis of the costs of trafficking, see: UNODC and UN.GIFT, "An Introduction to Human Trafficking: Vulnerability, Impact and Action", Background Paper, 2008, available at: http://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf

III. CONCEPTS AND DEFINITIONS

Forced Labour

The ILO Convention No. 29 (1930) – commonly known as the “Forced Labour Convention” – was ratified by the British Government in 1931 and extended to the Hong Kong territory in 1957 and is therefore legally binding in the HKSAR. The definition of **forced labour** in the Convention includes: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily”.¹³ In order for a situation to constitute one of forced labour, rather than mere worker exploitation, there must be **involuntariness** and a **menace of penalty**.

ILO Forced Labour Convention No. 29 (1930)

Forced labour is all work or service, which is:

- 1) not voluntary
- 2) enacted under the menace of a penalty

Involuntary means that a person is prevented by their employer from leaving or is faced with a situation where removing themselves from that situation is not a choice that they are free/able to make. In many instances, a forced labourer may have originally entered into the arrangement voluntarily; however, the circumstances that were present at the time they initially agreed to work for the employer may have changed.

Forced labour occurs when the worker is no longer able to walk away from the situation and must submit to conditions they never agreed to. Given that the person is recruited by means of deception and fraud about the conditions and nature of the work, their initial consent is rendered irrelevant by the circumstances as they truly exist.¹⁴

A **menace of penalty** refers to a worker’s inability to extract themselves from an exploitative employment situation due to credible threats or actions (legal, physical or psychological) that could include:

- physical or sexual violence, torture and abuse
- restrictions on freedom of movement
- financial penalties, such as unmanageable debt burden or delaying payment of wages
- threats of deportation or reporting worker to authorities
- denial of personal documents, such as the confiscation of identity documents or copy of a work contract
- termination or exclusion from future employment
- isolation from community and social life
- refusal of food, shelter or other socio-economic rights
- transfer to worse working conditions removal of rights or privileges

¹³ The Convention, under Art. 2(2) stipulates that forced labour does not include: (a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character; (b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations; (d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; (e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

¹⁴ ILO, “A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and rights at Work, 2005”, at p. 6. For more information on the validity of consent, see the following case law from the European Court of Human Rights: *Van der Musselle v. Belgium*, 8919/80, 23 November 1983 and *Siliadin v. France*, 73316/01, 26 July 2005.

A forced labour situation is determined by the nature of the relationship between a person and an “employer”, and not by the type of activity performed. It can occur in many industries, such as construction, domestic work, prostitution, or begging; it need not be explicitly recognised as an “economic activity”; nor is the legality or illegality of the activity under national law relevant to determine whether or not the work is forced.¹⁵

Human Trafficking

Human trafficking is an umbrella term that entails many different activities, but it is essentially the trade of people for the purpose of exploitation. One misconception is that trafficking is exclusively a transnational issue – there are many examples of trafficking that happens within borders and victims need not have moved across borders in order to have been trafficked.

As per the 2000 UN Trafficking Protocol,¹⁶ human trafficking contains three dimensions. First, there must be an **act**. This could consist of recruitment, either formal, such as through registered agencies, or informal, such as through family, community members or other intermediaries. The act could also be a transfer, any kind of handling over or transmission of a person to another person; transportation, the physical movement of victims under the control of traffickers; harbouring, accommodating or housing persons either on their journey or at the place of exploitation; or, receipt, meeting victims at agreed places on their journey to give them further information.

The **means or ways** of trafficking are numerous. These can include threat, force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or giving or receiving payments or benefits to achieve the consent of the person having control over another person. The “means dimension” in the human trafficking definition is not a requirement in cases that relate to children; no force, violence, deception or coercion is required in these situations.

The **purpose** of trafficking is always for exploitation, which could include prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs.¹⁷

The essence of human trafficking is **exploitation** and not movement. This element is much more relevant than the manner in which the individual was brought to the exploitative situation.

¹⁵ ILO, 2005, p. 6

¹⁶ The full name is the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. It is one of three Palermo Protocols adopted by the United Nations to supplement the 2000 Convention against Transnational Organized Crime (the Palermo Convention)

¹⁷ Although the Palermo Protocol draws distinctions between trafficking for forced labour and trafficking for sexual exploitation, this does not signify that sexual exploitation as a result of coercion does not constitute forced labour. In fact, the ILO Supervisory bodies regularly deal with forced prostitution and sexual exploitation under the forced labour conventions.

In order for a situation to be considered human trafficking, all three elements (act, means and purpose) must be present. These could include the following scenarios¹⁸.

ACT	+	MEANS	+	PURPOSE
SUCH AS				
<ul style="list-style-type: none"> Recruitment Transportation Transferring Harboring Receiving 		<ul style="list-style-type: none"> Threat Coercion Abduction Fraud Deceit Deception Abuse of power 		<ul style="list-style-type: none"> Sex work Pornography Violence or Sexual Exploitation Forced labour Involuntary servitude Debt bondage Slavery/similar practices
IN THE CASE OF CHILDREN, AN ACT AND A PURPOSE IS ENOUGH. NO MEANS IS REQUIRED.				

Other Interrelated Concepts:

Slavery

Few practices conjure more emotion and condemnation than slavery. It is the complete ownership of a person over another as their property and the legal entrenchment that certain human beings are inferior and without rights. It is a permanent and absolute state. The UN Slavery Convention (1926), in Art. 1(1), defines slavery as “the status or condition of a person over whom any or all of the powers attaching the right of ownership are exercised.”

Virtually everyone thinks slavery is wrong and, as one of the most widely accepted international norms, it has been abolished in every single country in the world. Slavery is often seen as a problem of the past; however, in practice it persists.

Moreover, human trafficking, forced labour, involuntary domestic servitude and debt bondage, while different in nature to the transatlantic slave trade of the 18th century, are considered to be contemporary forms of “modern-day slavery”; these don’t necessarily rely on chains and shackles, but rather, more subtle means of control.

Debt Bondage

Debt bondage or “bonded labour” is a form of coercion and is defined in the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery (1957) as: “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature

of those services are not respectively limited and defined.”¹⁹ The Convention also states that forced labour can develop into conditions analogous to slavery such as instances of debt bondage which often lie at the borderline between forced labour and slavery.

This essentially translates to a situation where a person’s labour is demanded as a means of repayment for a loan. They are then tricked and/or entrapped into working for little or no pay, for long hours, often under surveillance, and with such unfavourable terms (e.g. very high interest rates) such that it is often very difficult if not impossible to pay off the debt. Family members may even share the debt and thus inherit it and can eventually be recruited to work as well. Quitting the job is not an option given the exorbitant costs borne on the employee of terminating the arrangement, which would require immediate repayment of the debt and additional placement fees required to find another job.

Debt bondage is the most common method of enslaving people around the world today, with the sole aim of obtaining cheap labour. The value of the work generated and, more importantly, the inflated charges imposed on the individual concerned (monetary and non-monetary) far surpass the real cost of the original sum of money that is borrowed. The perpetrator often operates under a false veneer of lawfulness, although the hold the employer has over the worker is largely the result of deception about the debt and rights of the worker and deliberate undervaluing of the employee’s work. This is coupled with ingenious ways to extend the debt – which may be incurred in recruitment and transportation, training, food or accommodation expenses.

Forced labour cuts across several industries, such as agriculture, construction, fisheries, garments manufacturing, and many others, but one unique sector where workers are highly vulnerable to forced labour is domestic work. This includes occupations such as maids, cooks, carers for children or the elderly, gardeners and other household workers. The vast majority of domestic workers are women and girls from developing countries, many of whom are migrants who send remittances to their families in their countries of origin.

Involuntary Domestic Servitude

Involuntary domestic servitude is a type of forced labour where a domestic worker becomes trapped in an exploitative situation and is unable to escape. Workers may experience arbitrary deductions to their wages or may have them withheld entirely. They may have their passports confiscated; be granted little or no time off; experience confinement or restriction of freedom; substandard or even degrading living conditions, as well as many other hallmarks of forced labour conditions. However, what sets involuntary domestic servitude apart is that exploitation takes place primarily in or around the household of the perpetrator(s).²⁰

It may be one party alone that can confine the foreign domestic worker to a situation of exploitation with no choice to leave, or there may be collusion between the agency, the employer and/or the money-lending agency. Exorbitant agency fees have a huge role to play in the exercise of control over the employee, who fears losing their job and thus being unable to pay back their debts.

The domestic work industry can be high-risk for forced labour for several reasons. For one, by

¹⁸ UNODC, “Human Trafficking”, available at: <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menuaside>

¹⁹ Art. 1 of the UN Supplementary Convention states that “debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”

²⁰ Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian to the Human Rights Council, Fifteenth session, UN Doc.: A/HRC/15/20, 18 June 2010, available at: http://www.ohchr.org/Documents/Issues/Slavery/SR/A.HRC.15.20_en.pdf

nature it takes place in private homes, hence making monitoring and regulation of the labour conditions of these workers very difficult compared to the formal workplace. Arrangements are frequently casual and the line between on-duty and off-duty hours can often be blurred, where the worker is at beck and call of the employer, which leads to long hours, gruelling work and insufficient rest-time. Such an environment can also make victims invisible, and vulnerable to physical, sexual and emotional abuse; neglect and social isolation. It can also make it more difficult for the employee to eventually seek help as their movements are more controlled than if they were living outside the employer's house. As such, many abuses remain largely unreported.

Secondly, domestic work is often excluded from the full scope of domestic labour laws, such as those guaranteeing a minimum wage, overtime pay, a safe and healthy working environment, maximum working hours, collective bargaining rights and protection against workplace discrimination and harassment. Domestic workers may even have differential immigration status and privileges than other categories of migrant workers. These may also be a barrier for them being able to report abuse due to fear of reprisals or losing their job, hence jeopardising their stay in the host country

Drawing Distinctions: The "Continuum of Exploitation"

Not every instance of a labor violation presents a scenario of forced labour and certainly not necessarily one of human trafficking for the purpose of forced labour. The latter involves an accumulation of human rights abuses rather than individual violations of labour laws, such as the withholding of wages or the unlawful termination of an employment contract.

ILO Convention on Domestic Workers No. 189 (2013)

Having entered into force in September 2013, the new Domestic Workers Convention is a landmark document that, for the first time, sets out the basic labour rights of domestic workers.

These include decent working conditions, such as a minimum wage, maximum working hours, and the right to choose where to live. It also includes protective measures against violence and in the recruitment process, among many other provisions.

So far 11 countries have ratified the Convention, and Hong Kong is being urged to become a leader in the Asia-Pacific region and adopt the provisions in this international treaty.

Trafficking for forced labour is the extreme end of a **continuum of exploitation** that ranges from forced labour on one side to **decent work** on the other. Along this continuum, exploitation involves a spectrum of abuses and labour law violations that get progressively serious and, at its most extreme, can amount to trafficking for forced labour. People often get trapped into situations of forced labour gradually over time rather than from one day to the next. Migrants become increasingly vulnerable as they become subject to immigration control, incur a high debt burden and are removed from their social networks, for example. This has been likened to "an ever narrowing labyrinth where the decision-making power of the worker is surrendered in the end."²¹

²¹ Beirnaert, Jeroen, "Chapter 10: A Trade Union Perspective on Combating Trafficking and Forced Labour in Europe" *Combating Trafficking in Human Beings for Labour Exploitation*, Ed: Rijken, Conny, ILO, March 2011, at p. 472, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_155937.pdf

This continuum is not simply related to the acts of exploitation, but also to the kinds of interventions and different applications of justice that are appropriate to remedy the violations and prevent the problem from occurring in the future.²² Trafficking cannot be addressed as an isolated problem; protection from any form of exploitation along the continuum should be seen as a way to interrupt the process leading to forced labour, while also preventing future abuse.²³

While forced labour is often a subset or a consequence of trafficking, not all instances of forced labour involve trafficking. Forced labour will only amount to trafficking when the three (act, means and purpose) elements in the definition of human trafficking as per the Trafficking Protocol are present.²⁴ According to the ILO, 14 million people worldwide are forced into labour and approximately 2.45 million individuals are victims of forced labour as a result of being trafficked; about one in every five persons who are forced labourers are victims of trafficking.²⁵

While most state-imposed forced labour is prohibited, governments are failing to tackle and often even turn a blind eye to forced labour taking place in the private sector.²⁶

²² Skrivankova, Klara, "Between Decent Work and Forced Labour: examining the continuum of exploitation", JRF Programme Paper: Forced Labour, November 2010, at p. 4, November 2010, available at: <http://www.jrf.org.uk/sites/files/jrf/forced-labour-exploitation-full.pdf>

²³ Beirnaert, 2011, at p. 472

²⁴ Kneebone, Susan, and Debeljak, Julie. "Implementing the Trafficking Protocol", *Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion*. Milton Park, Abingdon, Oxon: Routledge, 2012, at p. 123

²⁵ Belser, Patrick; de Cock, Michaëlle; and Mehran, Farhad, "ILO Minimum Estimate of Forced Labour in the World" ILO, 2005, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081913.pdf and ILO, "2012 Global Estimate of Forced Labour", available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_181921.pdf

²⁶ Lee, Peggy W.Y. and Peterson, Carole J., "Forced Labour and Debt Bondage in Hong Kong: a study of Indonesian and Filipina migrant domestic workers", Centre for Comparative and Public Law, University of Hong Kong, Occasional Paper No. 16, May 2006, at p. 8

²⁷ For a more detailed set of operational indicators on forced labour, please see: ILO, "Operational Indicators of Trafficking in Human Beings: Results from the Delphi Survey implemented by the ILO and European Commission", March 2009, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf

ILO Indicators of Forced Labour ²⁷

A list of six broad indicators was developed by the ILO to assist identification of forced labour. Usually, a combination of these is inflicted on a worker. If **two or more** are present, there is a strong indication of forced labour:

- Threats of or actual physical or sexual violence
- Restriction of movement and confinement, to the workplace or to a limited area
- Debt bondage: where a worker works to pay off debt or loan, and is not paid for their services
- Withholding of wages, refusing to pay the worker at all or excessive wage reductions
- Retention of passports and identity documents
- Threat of denunciation to the authorities

Since the adoption of the ILO's Conventions No. 29 and 105,²⁸ the context and forms of forced labour have continued to evolve, particularly in the context of globalisation, which in many respects has made human trafficking more lucrative and commonplace than ever before.²⁹ While around the world, certain traditional practices may perpetuate forced labour, it is largely driven by market demand, which can create push and pull forces that are conducive to human trafficking. Human trafficking for forced labour is often the lucrative business of crime syndicates in the illegal, underground economy, but with inadequate regulation, it can just as easily manifest itself in the global supply chains of legitimate companies as well.³⁰

What Everyone Should Know about Human Trafficking

- **Trafficking occurs in both illegal and formal markets**

Trafficking, like most criminal activities, is often associated with illicit, underground, black market economies. However, forced labour activities can occur in legitimate business environments in the formal economy, especially in increasingly complex supply chains as a result of globalisation and more extensive outsourcing practices.

- **Trafficking happens all over the world, including Hong Kong**

Human trafficking occurs everywhere; however, it is a crime that often goes undetected, unreported and therefore unperceived. The top ten countries with the highest number of enslaved people account for over three-fourths of the global total. Of these ten countries, six are located in the Asia-Pacific region.³¹

- **Victims consist of women, children and men**

Many people associate human trafficking with prostitution and with women and children. However, the majority of victims are trafficked for the purpose of forced labour in economic sectors outside the sex industry. Sometimes, male victims might not be properly identified by authorities due to gender bias, and they even often end up being erroneously treated as irregular migrants.

- **Trafficking does not require movement across borders**

Many trafficking situations occur within borders, and movement across borders is not a requirement for a situation to constitute human trafficking. When there is transnational movement, someone who has crossed a border legally can be just as much a victim as someone compelled to enter the territory illegally.

- **Victims do not always know their rights and don't self-identify**

Traffickers often use victims' social isolation, lack of awareness of their rights and a tendency to self-blame, as well as threats of reprisals and even violence towards the victim and/or their family as methods of control. Some may even develop Stockholm Syndrome, irrationally empathising with their trafficker, defending them and even refusing help initially.³²

²⁸ The Forced Labour Convention (1930) and the Abolition of Forced Labour Convention (1957), respectively.

²⁹ ILO, Forced Labour and Human Trafficking, 19th International Conference of Labour Statisticians, Geneva, 2-11 October 2013, at para. 3, available at: http://www.ilo.org/wcmsp5/groups/public/-/dgreports/-/stat/documents/meetingdocument/wcms_222037.pdf

³⁰ For more, see: UN Special Rapporteur on trafficking in persons, especially women and children, Ms. Joy Ngozi Ezeilo, "Human Trafficking and Global Supply Chains: A Background Paper", prepared for the expert meeting in Ankara, Turkey, 12-13 November 2012, available at: <http://www.ohchr.org/Documents/Issues/Trafficking/Consultation/2012/BackgroundPaper.pdf>

³¹ These are: India, China, Pakistan, Nigeria, Ethiopia, Russia, Thailand, Democratic Republic of Congo, Myanmar and Bangladesh. See: Walk Free Foundation, The Global Slavery Index 2013 at: <http://www.globalslaveryindex.org/>

³² "Stockholm Syndrome, also known as capture bonding, has been seen in a number of trafficking in persons cases. It may be difficult to determine if a person is complying with traffickers because they are suffering from the syndrome (an apparently irrational bond with their victimizers) or because they have made a rational decision that compliance is required to survive." UNODC and UN.GIFT, Anti-Human Trafficking Manual for Criminal Justice Practitioners: Module 4 on Control Methods in Trafficking in Persons, 2009, at p. 9, available at: http://www.unodc.org/documents/human-trafficking/TIP_module4_Ebook.pdf

IV. HUMAN TRAFFICKING FOR FORCED LABOUR IN HONG KONG

Snapshot on the Ground

Hong Kong is a global city, and like any other important economic hub, it is also as such a prime ground for trafficking activity. **Victims** are often foreign domestic workers (who comprise 3% of the total Hong Kong population, roughly some 320,000 persons)³³ 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, new vulnerable groups may also be prey to trafficking for involuntary domestic servitude in the near future.³⁴ Nonetheless, human trafficking for forced labour is not exclusive to this sector, and there are many construction workers, particularly from Mainland China, who are often victims as well. Persons with irregular legal status, such as undocumented migrants or asylum seekers and refugees who do not have the right to work in Hong Kong, could also be prone to exploitative working conditions in order to make ends meet.

In Hong Kong, identifying **perpetrators** is complex because they are multitudinous, ranging from placement agencies, loan companies and employers who work in collusion and prey on these workers' vulnerabilities to abuse them. It is often at the labour recruitment stage that a worker is most susceptible to being trafficked,³⁵ and workers

can be put into forced labour situations by the placement agencies themselves, as well as by unscrupulous employers who take advantage of gaps in the system. Those who fall prey to debt bondage as a result of excessive placement fees fall within a jurisdictional grey area given that neither the source nor the destination country takes ownership over the issue. Hong Kong's much criticised two-week rule and live-in policy to which foreign domestic workers are subjected also contribute to a system that perpetuates exploitation and abuse.³⁶

The main **reason** for trafficking is simple: Hong Kong has a high demand for cheap labour and there is a proximate abundance of supply from neighboring countries in the Asia-Pacific region. Indeed, in the past year, Hong Kong has expanded the number of source countries to include Bangladesh and Myanmar. The first batch of Bangladeshi foreign domestic workers arrived in May 2013 while the first group of Myanmar domestic workers arrived in February 2014.³⁷ Since their arrival, there has already been a high-profile case of abuse,³⁸ and many advocates have called for the government to improve regulation of the domestic work industry before further new groups of domestic workers arrive into the HKSAR territory.

³³ De Moustier, Gratiene, "Hong Kong's Indentured Servants", *New York Times*, 13 February 2014, available at: http://www.nytimes.com/2014/02/14/opinion/hong-kongs-indentured-servants.html?_r=0

³⁴ Lam, Jeffie, "Myanmar May Be Next Source of Domestic Helpers to Hong Kong after Bangladeshis", *South China Morning Post*, 14 December, 2013, available at: <http://www.scmp.com/news/hong-kong/article/1379991/myanmar-may-be-next-source-domestic-helpers-hong-kong> and Butt, Rachel, "Hong Kong Police Arrest Woman in New Domestic-Helper Abuse Case", *Bloomberg*, 27 January 2014, available at: <http://www.bloomberg.com/news/2014-01-27/hong-kong-police-arrest-woman-in-new-domestic-helper-abuse-case.html>

³⁵ Liberty Asia, "From Experience: how to combat slavery in our generation", at p. 40

³⁶ For an in-depth look at the impact of these rules on foreign domestic workers, refer to the written submissions to the LegCo Special Meeting of the Panel on Manpower, "Policies Relating to Foreign Domestic Helpers and Regulation of Employment Agencies", 27 February 2014, available at: <http://www.legco.gov.hk/yr13-14/english/panels/mp/agenda/mp20140227.htm>

³⁷ Shadbolt, Peter, "Hong Kong Calls on Bangladesh to Fill Domestic Helper Shortage", *CNN*, 14 May 2013, at: <http://edition.cnn.com/2013/05/14/business/hong-kong-maids/> and Siu, Phila, "Greater Protection for Foreign Domestic Helpers Urged as First Myanmar Workers Arrive", *South China Morning Post*, 24 February 2014, available at: <http://www.scmp.com/news/hong-kong/article/1434015/beef-protection-maids-groups-urge-hong-kong-government>

³⁸ "Hong Kong Housewife Arrested for 'Abusing' Bangladeshi Aid", *Agence France-Presse*, 27 January 2014, available at: <http://www.thejakartaglobe.com/international/hong-kong-housewife-arrested-for-abusing-bangladeshi-aid/>

With the arrival of these new migrant workers to Hong Kong – who do not have existing networks for support – and without proactive government action, these abuses are likely to become more entrenched.

Erwiana’s Story: slipping through the cracks in the system

On the January 10, 2014, Riyanti, an Indonesian domestic worker in Hong Kong was at Chek Kap Kok airport on her way home to Indonesia when she spotted a severely bruised, frail and emaciated woman scared, alone, unable to walk and covered in several layers of clothing. Riyanti approached the woman and asked her about her condition. The woman, after some hesitation, told her that she had been dropped off by her employer, who she alleged had been beating her for several months and had kept her as a virtual prisoner in her place of work.³⁹

Riyanti assisted the woman to the gate, helped her board her China Airlines flight to Jakarta and took pictures of her body to document the physical injuries which were evident on her body. The woman purportedly told Riyanti that she was afraid to report the incident to the police because her employer had allegedly threatened to kill her and her family. Like so many of the thousands of domestic workers who come to work in this city each year, the woman left Hong Kong

as anonymously as she had entered the HKSAR territory seven months ago.⁴⁰

However, several days later, while she was recovering from her extensive injuries in an Indonesian hospital, Erwiana’s story and the photos taken of her would come to light on social media and grip public attention, making international headlines, causing unprecedented outcry and ultimately leading to an investigation which culminated in the arrest of the employer.⁴¹ Erwiana’s story, although at time of writing as yet untried in court, demonstrates the many failings of a system where those responsible for the safety and welfare of foreign domestic workers simply turn a blind eye to their plight and fail to protect them.

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 6% had suffered sexual abuse.⁴² An earlier 2005 study found that 93% of those surveyed reported employment agency overcharging, more than half underpayment of salary, 45% reported denial of rest days, 57% denial of statutory holidays, 40% a confiscation of passport and employment contracts and 57% long working hours.⁴³

³⁹ Shadbolt, Peter, “Indonesian migrant worker tells of abuse as thousands protest in Hong Kong”, *CNN*, 21 January 2014, available at: <http://edition.cnn.com/2014/01/20/world/asia/hong-kong-maid-indonesia/> and Chiu, Joanna, “Indonesian maid Erwiana was ‘prisoner’ in employer’s home, father claims”, *South China Morning Post*, 21 January, 2014, available at: <http://www.scmp.com/news/hong-kong/article/1410136/indonesian-maid-erwiana-was-prisoner-employers-home-father-claims>

⁴⁰ Hewson, Jack, “Hong Kong’s domestic worker abuse”, *Al-Jazeera*, 19 January 2014, available at: <http://m.aljazeera.com/story/20141199347455882>

⁴¹ “Hong Kong arrests employer of ‘tortured Indonesian maid’”, *BBC*, 20 January 2014, available at: <http://www.bbc.com/news/world-asia-25809596>

⁴² Mission for Migrant Workers, “Live-in Policy Increases Female FDW’s Vulnerability to Various Types of Abuse”, April 2013, at p. 10, available at: http://issuu.com/mfmw/docs/primer_live-in_english

⁴³ Lee, Peggy W.Y. and Peterson, Carole J., “Forced Labour and Debt Bondage in Hong Kong: A study of Indonesian and Filipina migrant domestic workers”, Centre for Comparative and Public Law, University of Hong Kong, Occasional Paper No. 16, May 2006, at p. 16, available at: <http://www.law.hku.hk/ccpl/pub/Documents/16-LeePeterson.pdf>

Relevant International Standards

The UN International Covenant on Civil and Political Rights (ICCPR), in Art. 8, enshrines the right to freedom from slavery. Under the ICCPR, State parties are committed to taking positive measures to ensure the realisation of the rights enshrined in this instrument, such as prohibiting by law all forms of slavery, servitude, debt bondage and other types of slavery-like practices, and adopting effective judicial, administrative and other measures to enforce these prohibitions. The Hong Kong Bill of Rights Ordinance (HKBORO) (Cap. 383), which incorporates this international treaty into national legislation, prohibits “slavery and the slave trade in all their forms” and provides that “no one shall be held in slavery [...] [or] be required to perform forced or compulsory labour” in Art. 4. Other relevant international standards are spelled out in several other human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and ILO Conventions 29 and 105, which are all applicable to Hong Kong.

The relationship between forced labour and human trafficking was first formalised in the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, otherwise known as the UN Trafficking Protocol or the “Palermo Protocol”, which supplements the UN Convention against Transnational Organised Crime.⁴⁴ It also offered UN member states an internationally agreed-upon definition of human trafficking.

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 (UNODC), the definition of trafficking in national legislation should be flexible and dynamic 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.

Key International Standards

- UN Convention to Suppress the Slave Trade and Slavery (1926)
- International Labour Convention No. 29 Concerning Forced or Compulsory Labour (1930)
- Universal Declaration of Human Rights (1948), Arts. 4, 23 and 24
- ILO Convention No. 105 concerning the Abolition of Forced Labour (1957)
- International Covenant on Civil and Political Rights (1976), Art. 8
- International Covenant on Economic, Social and Cultural Rights (1976), Arts. 6-7
- Convention on the Elimination of All Forms of Discrimination against Women (1979), Art. 11
- Convention on the Rights of the Child (1990), Art. 34
- UN Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplement to the UN Convention against Transnational Organized Crime (2000)

⁴⁴ Although the Palermo Protocol draws distinctions between trafficking for forced labour and trafficking for sexual exploitation this does not mean that sexual exploitation achieved as a result of coercion does not constitute forced labour.

Legislation in Hong Kong Relevant to Trafficking for Forced Labour

It is just as important for authorities to address the reasons why people are trafficked (for exploitation) as much as how they are trafficked.⁴⁵ There is growing consensus among experts that only a **two-pronged approach** will be best suited to tackling human trafficking, forced labour, and the nexus thereof. This requires addressing forced labour with both a human rights lens to ensure adequate labour protections and promote decent working conditions as well as a criminal justice lens to address human trafficking from a law enforcement perspective, while always giving precedence to the victims' rights.⁴⁶

Currently, Hong Kong has no comprehensive anti-human trafficking law, a national plan of action or even a concerted strategy; rather, legislation is scattered across different ordinances, leading to significant legislative gaps and critical difficulties with enforcement. Section 129 of the **Crimes Ordinance** (Cap. 200) stipulates that "a person who takes part in bringing another person into, or taking another person out of, Hong Kong for the purpose of prostitution shall be guilty of the offence of trafficking in persons to or from Hong Kong". There are also relevant provisions under the **Immigration Ordinance** (Cap. 115) (mostly in relation to conditions of stay) and the **Offences against the Person Ordinance** (Cap. 212). The **Employment Ordinance** and the **Employee's Compensation Ordinance** (Cap. 282) govern local and migrant

workers' rights and duties of employers and their rights, while the **Sexual Discrimination Ordinance** (Cap. 480) prohibits sexual harassment of foreign domestic workers by their employer and anyone living in the household.

Since 2009, Hong Kong has been given a Tier 2 status in the US State Department's annual Trafficking in Persons Report. This category consists of countries whose governments do not fully comply with the minimum standards for the elimination of trafficking in persons as set out in the US Trafficking in Victims Protection Act, but are making significant efforts to bring themselves into compliance with those standards.⁴⁷

Limited Definition of Trafficking in the Crimes Ordinance

A key shortcoming of the Crimes Ordinance – the only legislation that addresses human trafficking explicitly – is that it **places emphasis on transnational movement rather than on exploitation**. This effectively runs the risk of creating a hierarchy of victims where "the more worthy" victims are those who are compelled to cross into Hong Kong illegally as compared to those who enter Hong Kong legally. It leads to the misconception that a migrant worker who is legally present in the territory cannot possibly have been trafficked. The focus on movement also frames the issue as an immigration problem, rather than a gross violation of human rights, which often leads to the criminalisation of victims, particularly

when they have entered the territory illegally or are in breach of their conditions of stay. Moreover, the Ordinance **exclusively focuses on human trafficking for the purpose of prostitution**. This restrictive scope only focuses on one form of exploitation and does not therefore recognise the issue of trafficking for forced labour, involuntary domestic servitude, debt bondage, slavery and other slavery-like practices.

No Comprehensive Anti-trafficking Legislation

Scattered legislation over the different ordinances creates little appetite to take concerted action to address the full scope of trafficking (including enforcement, prosecution, prevention and victim support) on the many offences, that when taken together, could constitute situations of human trafficking for forced labour. There is no one piece of legislation that is robust enough to address human trafficking for forced labour, which creates significant issues in relation to enforcement, victim identification, and access to justice.

Although the Department of Justice included in the Prosecution Code 2013 a new paragraph on "human exploitation cases" which specifically states that prosecutors can make reference to applicable international standards and practices concerning human trafficking victims, without due

legislation, such efforts are half-hearted and do not give prosecutors sufficient guidance.⁴⁸ While it is a positive step, much more will be needed to give due effect to the Code; this stand-alone provision is not legally binding, and without any legislation identifying trafficking for forced labour as a crime, it is unlikely that any such crime would ever be brought to prosecution in the first place, hence dampening the effect of the Code.

By failing to address human trafficking holistically and instead diffusing the issue across immigration, crime, and labour legislation, this has the effect of putting the multifaceted causes and consequences of trafficking for forced labour into separate silos. This is detrimental to victims, particularly where there is inadequate inter-agency cooperation between the Labour Department, the Immigration Department and law enforcement bodies. Several other jurisdictions have enacted comprehensive anti-trafficking legislation that could provide guidance to the Hong Kong Government,⁴⁹ and there have been many efforts on behalf of legal experts to create model laws.⁵⁰

⁴⁵ Anderson, Bridget and Rogaly, Ben, "Forced Labour and Migration to the UK", Study prepared by COMPAS in collaboration with the Trades Union Congress, 2009, at p. 9, available at: http://ituc-csi.org/IMG/pdf/Forced_labour_in_UK_12-2009.pdf

⁴⁶ Skrivankova, Klara, "Between Decent Work and Forced Labour: Examining the continuum of exploitation", JRF Programme Paper: Forced Labour, 2010, available at: <http://www.jrf.org.uk/sites/files/jrf/forced-labour-exploitation-full.pdf>

⁴⁷ These standards include: (1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking. (2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault. (3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense. (4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons. See: Office to Monitor and Combat Trafficking in Persons, Trafficking Victims Protection Act: Minimum Standards for the Elimination of Trafficking in Persons, available at: <http://www.state.gov/j/tip/rls/tiprpt/2011/164236.htm>

⁴⁸ HKSAR, "LCQ8: Combating human trafficking" Press Release, 12 February 2014, available at: <http://www.info.gov.hk/gia/general/201402/12/P201402120349.htm> and HKSAR, Prosecution Code, para. 18.1-8.2, available at: <http://www.doj.gov.hk/eng/public/pubsoppapcon.html#18>

⁴⁹ Some examples include: Taiwan, Human Trafficking Prevention Act (2009); United States: The Victims of Trafficking and Violence Protection Act (2000); Canada has four offences in its Criminal Code that address human trafficking (section 279.01, section 279.011, section 279.02 and section 279.03); the UK Government announced in August 2013 that it would introduce a Modern Slavery Bill, to be published this year in draft form for pre-legislative scrutiny. It consolidates existing trafficking offences and increases maximum sentences for traffickers. It is also important to note that Macau (the Palermo Protocol does not apply to Hong Kong but applies to Macau) has an anti-trafficking law, Law Number 6/2008.

⁵⁰ In the United States, the Polaris Project has developed model provisions in order to assist state legislators and anti-trafficking activists in improving their state's strategy. These provisions comprehensively address the "three Ps" of combating human trafficking: prosecution, prevention and protection of victims. See: Polaris Project, "Model Provisions of Comprehensive State Legislation to Combat Human Trafficking", August 2010, available at: http://www.polarisproject.org/storage/documents/Final_Comprehensive_ModelLaw_8_2010.pdf UNODC and UN.GIFT developed a "Model Law against Trafficking in Persons" in 2009 to help states to become party to and implement the United Nations Convention against Transnational Organized Crime and its Protocols UNODC and UN.GIFT, "Model Law against Trafficking in Persons", 2009, available at: http://www.unodc.org/documents/legal-tools/Model_Law_TiP.pdf

Trafficking Victims Are Unable to Seek Redress

Ultimately, fully understanding what is happening on the ground is obstructed by the fact that trafficking for forced labour is not recognised as a crime under Hong Kong law and, as a result, there is no sense of the numbers of people who are likely affected by it. There is an utter lack of systematic data collection, monitoring and reporting on the situation. In the absence of law, 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. Thus, 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”.

Many foreign domestic workers in particular face steep barriers that prevent them from accessing justice in the first place. 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 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, they have no right 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. This often compels them to accept low settlements or to simply drop the case.⁵¹ The employer or agency has an inherent advantage in these situations. Many cases where identity documents or wages are unjustifiably withheld are rarely investigated and/or prosecuted.

The result of this limited anti-human trafficking legislation is that Hong Kong’s criminal justice system is excluding from its remit a large number of cases. 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.⁵² 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.⁵³ Clearly, victims are slipping through the net and perpetrators are able to operate unhindered.

⁵¹ The award from the Labour Tribunal is only the amount the employer should have paid in the first place and there is no penalty for late payment, nor does the foreign domestic worker get compensated for the expenses in bringing the claims forward or the cost of supporting herself while pursuing them. The worker’s airfare home also has to be claimed and the cost of multiple visa renewals may be considerably more than this amount.

⁵² Liberty Asia, “Chapter 2: Issues Surrounding Identification of Victims of Trafficking” *Victim Identification Toolkit*, February 2014, at p. 29 and Amnesty International, *Exploited for Profit, Failed by Governments*, at p. 97

⁵³ “Hong Kong Government has a duty to respect the rights of domestic helpers”, SCMP Editorial, 6 March 2014, available at: <http://www.scmp.com/comment/insight-opinion/article/1441346/hong-kong-government-has-duty-respect-rights-domestic>

V. RECOMMENDATIONS

In January 2014, Luis CdeBaca, Director of the US State Department’s office to combat human trafficking, asserted that Hong Kong was at a “turning point” in its efforts to combat human trafficking; the government has an important opportunity to enact reforms. While a comprehensive approach is needed to address the “3 P’s” of trafficking (protection, prosecution and prevention), relatively small, clear-cut policy interventions and legal reforms would be a positive start. Below is a four-point set of specific actions that the Hong Kong Government must take in order to close the legal gaps that currently prevent authorities from taking more concerted action to eradicate human trafficking for forced labour:

1. Expand the Definition of Trafficking to Include Forced Labour

The Hong Kong Government’s current definition of trafficking puts exclusive attention on trafficking for prostitution and therefore neglects the full gamut of activity surrounding forced labour. It also makes the erroneous assumption that trafficking involves transnational movement, rather than focusing on trafficking’s most important element – exploitation. As requested by many human rights experts, the HKSAR Government should extend to its territory the UN Trafficking Protocol (2000) or “Palermo Protocol”, to which it is not yet party, and use its definition of human trafficking that includes trafficking for labour exploitation, introducing it into Hong Kong legislation and paying due attention to the ILO forced labour indicators.

2. Create a National Plan of Action to Combat Human Trafficking

Several countries have developed national plans of actions in their respective jurisdictions as a clear commitment to making progress on combatting human trafficking. Some of these better practices can serve as guidance to the HKSAR Government,⁵⁴ and the UN Office on Drugs and Crime also provides models and toolkits on how to develop such plans.⁵⁵ A National Plan of Action would allow the opportunity to spell out a road map of holistic change from the prevention, prosecution and protection perspectives. It will also help to expand and improve enforcement of the existing legislation, as well as foster inter-agency cooperation.

3. Adopt a Comprehensive Anti-human Trafficking Law

Diffusing the legal provisions relevant to human trafficking for forced labour across different pieces of legislation is simply not working: victims have no way to hold traffickers accountable, and they go unpunished or receive more lenient penalties than what the gravity of their crimes merit; enforcement is half-hearted because responsibility is diffused to the point of piecemeal action and coordination; and, prevention is untenable when it is impossible to understand the situation on the ground due to a lack of data collection and management systems for adequate monitoring and evaluation. A cross-sector stakeholder task force should be created to draft a comprehensive piece of legislation to

⁵⁴ For example, see: Canada’s National Action Plan to Combat Human Trafficking, available at: <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/index-eng.aspx>; United Kingdom’s Human Trafficking Strategy, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97845/human-trafficking-strategy.pdf; Japan’s 2009 Action Plan to Combat Trafficking in Persons, available at: http://www.mofa.go.jp/j_info/visit/visa/topics/pdfs/actionplan0912.pdf; Finland’s Revised National Plan of Action against Trafficking in Human Beings, available at: http://www.ungift.org/doc/knowledgehub/resource-centre/Governments/Finland_Revised_National_Plan_of_Action_against_Trafficking_in_Human_Beings_en_2008.pdf; Norway Plan of Action against Human Trafficking (2011–2014), available at: http://www.regjeringen.no/upload/JD/Vedlegg/Handlingsplaner/Norwegian_Plan_against_Human_Trafficking.pdf

⁵⁵ UNODC, “Tool 2.7: National action plans and strategies of Chapter 2 on Problem assessment and strategy development”, *Toolkit to Combat Trafficking in Persons, Global Programme against Trafficking in Human Beings*, available at: http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_2-7.pdf

combat all forms of human trafficking. This would involve consultation with civil society, experts and other relevant stakeholders for a better-targeted response.

4. Offer More Robust Labour Protections against Forced Labour

In combatting human trafficking, merely addressing the ways in which people are brought into forced labour situations will not be enough to tackle the outcome of exploitation. Moreover, it will not address the situation of persons who are in situations of forced labour, but who were not necessarily trafficked into it. By legislating and enforcing more decent working conditions, the incentives and legal loopholes that perpetrators have at their disposal to take advantage of cheap labour are also taken away. Certain industries that have been demonstrated to be more susceptible to forced labour – such as domestic work – should be granted greater protection in particular. The Hong Kong Government should listen to repeated calls by human rights advocates and experts to abolish the two-week rule and live-in requirements, regulate placement agencies more rigorously, and establish maximum working hours, amongst other reforms. ILO Convention 189 can serve as a useful framework to achieve change in this area.⁵⁶

⁵⁶ See: Lam, Lana, “Hong Kong Urged to Sign UN Treaty on Protection of Domestic Helpers”, *South China Morning Post*, 16 February 2014 available at: <http://www.scmp.com/news/hong-kong/article/1428675/hong-kong-urged-sign-un-treaty-protection-domestic-helpers>

VI. CONCLUSION

One of the most important reasons why the HKSAR territory has lingered at Tier 2 status in the US State Department’s Trafficking in Persons Report is due to the government’s lack of progress in getting appropriate legislation and practical measures in place to comprehensively address human trafficking.

Taking action to better define human trafficking, to close legislative gaps, create a national plan of action and prevent forced labour abuse would be important first steps, signifying a clear recognition of the problem and a commitment to addressing it from a number of angles: victim protection and law enforcement included.⁵⁷ In the past year alone, calls for reform have escalated to unprecedented levels, showing that there is clearly a “wind of change”.⁵⁸

One cannot address a problem if it is not first identified, and it cannot be identified if it is not first defined. Despite various ordinances being in place to deal with the different aspects and elements of human trafficking, these do not add up to be the equivalent in scope and strength of a single and comprehensive trafficking law and strategy.

If it is claimed that Hong Kong does not have a human trafficking for forced labour “problem”, it is not because it does not exist, but rather because we simply have no means of evaluating the situation. If trafficking for forced labour is not defined as a crime carrying appropriately strict penalties, there will be no investigations or prosecutions in this area, and victims will remain invisible.

Such inaction comes at a very high cost to society. It puts vulnerable groups at risk of grave abuse. It allows organised crime to proliferate, as human trafficking is often accompanied by other crimes. When these cases of grave human rights violations come to light in the media, they tarnish Hong Kong’s reputation as a world-class city with the rule of law. The impact on source countries range from loss of remittances to grave violations of rights perpetrated on their citizens.

Hong Kong is looked up to as a model in the region on many fronts: economic, legal, political and societal. Let’s work together to make the territory’s efforts to combat modern forms of slavery another leading example in Asia. It is time to raise the benchmark to a higher standard.

⁵⁷ Cross, Grenville, “Hong Kong Needs a Dedicated Anti-trafficking Law”, *South China Morning Post*, 11 March 2014, available at: <http://www.scmp.com/comment/insight-opinion/article/1445245/hong-kong-needs-dedicated-anti-trafficking-law>

⁵⁸ There have been even pushes from within the government. See: Chong, Tanna, “Tougher Laws for Human Trafficking Proposal Unites Hong Kong’s NPC Deputies” *South China Morning Post*, 12 March 2014, available at: <http://www.scmp.com/news/china/article/1446669/hong-kong-deputies-npc-united-push-human-trafficking>

VII. ABOUT US

Justice Centre Hong Kong

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 works with schools, universities and the media to fight root causes and change systems and minds.

For more information, visit www.justicecentre.org.hk

About Liberty Asia

Liberty Asia is a project under Share (Asia Pacific) Limited, a HK-registered charity, that seeks innovative opportunities from expertise, technical skills and technology to constrain or affect the environment in which trafficking and slavery thrives and to provide these solutions to support and enhance frontline NGOs in the field.

For more information, visit www.libertyasia.org

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