

SUBMISSION TO THE SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF SLAVERY, INCLUDING ITS CAUSES AND CONSEQUENCES IN RESPONSE TO HER QUESTIONNAIRE ON THE GENDER DIMENSIONS OF CONTEMPORARY FORMS OF SLAVERY, ITS CAUSES AND CONSEQUENCES

June 2018

Justice Centre Hong Kong ("Justice Centre") makes the following submissions to the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, in response to her questionnaire on the gender dimensions of contemporary forms of slavery, its causes and consequences.

Question 1

- A. Are there any economic sectors in your country in which contemporary forms of slavery such as forced labour or bonded labour exist? If so, in which sectors (e.g. fisheries, construction, textile industry, hospitality, plantations etc.)?
 - B. What is the estimated representation of men/women in the sectors indicated?
 - C. Are the sectors indicated State controlled or private sector controlled?
 - D. Please provide any relevant data regarding the number of persons affected by contemporary forms of slavery in your country, if possible disaggregated by sex.
- A. The domestic work sector is a significant sector in the Hong Kong Special Administrative Region of China ("Hong Kong"). Hong Kong has one of the highest densities of migrant domestic workers in the world.¹ The functioning of Hong Kong's economy relies on the abundant availability of affordable domestic work for a substantial proportion of the care economy, particularly in the absence of sufficient government provision of care services for children and the elderly. Unfortunately, forced labour is a systemic issue in this sector.

¹ Kuo, Lily, "How Hong Kong's 'maid trade' is making life worse for domestic workers throughout Asia", *Quartz* 19 February 2014, available at: <http://qz.com/176354/how-hong-kong-maid-trade-is-making-life-worse-for-domestic-workers-throughout-asia/>, accessed on 1 June 2018.

- B. As of 2017, there were about 370,000 migrant domestic workers in Hong Kong,² constituting roughly 4.7% of the population of the city and 8.9% of total working population.³ Most were from the Philippines and Indonesia but approximately 3% were from Sri Lanka, Bangladesh, Nepal, India, Thailand and Myanmar.⁴ 98.8% of them were women as of 2016.⁵
- C. Hong Kong has a formal 'foreign domestic helper importation scheme' with a number of regulations controlling their employment conditions. While private individuals are employers, the Government limits the freedom of both employers and workers to set the terms of employment. There is a Standard Employment Contract, which must be submitted to the Immigration Department, standardizing terms including the contract length.⁶ Migrant domestic workers are required to live together with their employers.⁷ There is no room for an employer and employee to agree for the employee to live out. Migrant domestic workers are generally not allowed to change employers and must leave Hong Kong upon completion of their contracts or within two weeks of the termination of their contracts.⁸ The immigration status of migrant domestic workers is attached to the employer who has signed their contract.
- D. Based on Justice Centre's primary research *Coming Clean: the Prevalence of Forced Labour and Human Trafficking for the Purpose of Forced Labour amongst Migrant Domestic Workers in Hong Kong*, Justice Centre estimates that 17% of migrant domestic workers in Hong Kong are working in conditions of forced labour. Of these 14%, or about 8,000 individuals, have been trafficked into the situation.⁹ The majority of migrant domestic workers in forced labour were young women under 30 years old, who were on their first contract, having secured it outside of Hong Kong in their home country. Indonesian migrant domestic workers were 70.5% more likely to be in a

² Hong Kong Government, *Action Plan to Tackle Trafficking in Persons and Enhance Protection of Foreign Domestic Helpers*, March 2018, available at: <http://www.sb.gov.hk/eng/>, p. 2, accessed on 3 May 2018.

³ Census and Statistics Department, Hong Kong, *Hong Kong Annual Digest of Statistics* (2017 Edition), available at: <https://www.statistics.gov.hk/pub/B10100032017AN17B0100.pdf>, accessed on 3 May 2018.

⁴ *Ibid.*

⁵ Data from the Census and Statistics Department, Hong Kong, 2016 By-census, available at: https://www.bycensus2016.gov.hk/en/bc-own_tbl.html, accessed on 3 May 2018.

⁶ Immigration Department, available at: <https://www.immd.gov.hk/eng/forms/forms/fdhcontractterms.html>, accessed on 1 June 2018.

⁷ *Ibid.*

⁸ Immigration Department, Hong Kong, "Conditions of Employment for Foreign Domestic Helpers: A General Guide to the Helper", available at: <https://www.immd.gov.hk/pdfforms/ID911A.pdf>, p.1, accessed on 14 May 2018.

⁹ Justice Centre Hong Kong, *Coming Clean: the Prevalence of Forced Labour and Human Trafficking for the Purpose of Forced Labour amongst Migrant Domestic Workers in Hong Kong*, March 2013, p. 52-3, available at: www.justicecentre.org.hk/comingclean, accessed on 1 June 2018.

situation of forced labour than non-Indonesians. The most significant factor determining whether migrant domestic workers were likely to be in forced labour related to their debt burden. Migrant domestic workers with excessive debt (where debt level was equal to or more than 30% of annual income) were six times more likely to be in forced labour than those without high debt.¹⁰

Question 2

A. What are the main abuses suffered by men/women in the sectors identified?

Justice Centre's research *Coming Clean: the Prevalence of Forced Labour and Human Trafficking for the Purpose of Forced Labour amongst Migrant Domestic Workers in Hong Kong* showed that many of the provisions on paper aimed at protecting migrant domestic workers' rights are being violated in practice: 35.1% said they had to work on their mandated day off; for those who received a food allowance, 57.7% reported that they received less than the minimum allowable amount (resulting in the effective underpayment of minimum allowable wages); 35.2% had to share a room with a child or the elderly; and 2% were sleeping in a kitchen or shared living space. In addition, the research revealed that two-thirds of migrant domestic workers (63.8%) were working 12 or more hours a day. 12.9% work for 15 or more hours a day. Only 74 respondents (or 7.4%) reported working 8 hours or less per day.¹¹

7.7% of migrant domestic worker respondents in Justice Centre's research indicated that they had been threatened by their employers. Threats included wage deductions, the confiscation of mobile phones, cutting off access to the household phones and the internet, yelling, screaming, calling them with degrading language, withholding food, the confiscation of passports. Respondents also reported sexual abuse, restricted freedom of movement outside of the house, not getting enough to eat, not being allowed to take her shower inside the house, being told to wear a certain kind of clothes.¹² A worker client of Justice Centre reported that, when she was working as a migrant domestic worker in Hong Kong, she had to tell her employer when she was menstruating and was not allowed to prepare food for her employers during this time.

A survey conducted by non-governmental organisation Mission for Migrant Workers found that 43% of surveyed migrant domestic workers had no private room; 2% slept in a kitchen, toilet or warehouse.¹³

¹⁰ Justice Centre Hong Kong, *Coming Clean*, p. 55.

¹¹ Justice Centre Hong Kong, *Coming Clean*, p. 64.

¹² Justice Centre Hong Kong, *Coming Clean*, p. 45- 47.

¹³ Mission for Migrant Workers, "[Press Statement] New Study Shows MDWs Woes On Unsuitable Accommodation, Lack Of Privacy And Insufficient Amenities", 10 May 2017, available at: <http://www.migrants.net/press-statement-new-study-shows-mdws-woes-on-unsuitable-accommodation-lack-of-privacy-and-insufficient-amenities/>, accessed on 14 May 2018, accessed on 14 May 2018.

Migrant domestic workers have also been charged excessive fees by employment agencies. Research conducted by trade unions the Hong Kong Federation of Asian Domestic Workers and the Progressive Labor Union of Domestic Workers in Hong Kong showed that, on average, Filipino migrant domestic workers in Hong Kong were charged fees more than 25 times the legally permitted maximum charge by their employment agencies in Hong Kong.¹⁴ The fee was normally taken through salary deductions, which on average lasted 56 months.¹⁵ Workers have been asked by employment agencies to pay the fees in the form of loans.¹⁶ As mentioned above, having excessive debts is the most important vulnerability factor to forced labour as found in Justice Centre's research *Coming Clean*.¹⁷

Question 3

- A. Please specify whether reporting mechanisms or institutions are available for victims/survivors of slavery.
- B. If applicable, please indicate to what extent the existing avenues are used by women/men.

Legal and policy frameworks relevant to contemporary forms of slavery in Hong Kong are highly restrictive. The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ("Palermo Protocol") does not apply to Hong Kong. Although China is a signatory, Hong Kong has not requested that coverage of the Protocol be extended to cover the territory.¹⁸ It is therefore under no obligation under international law to have any laws relating to human trafficking or align its definition of human trafficking with the international standards outlined in the Palermo Protocol. Current Hong Kong legislation defines human trafficking only in terms of transnational sex work and does not require any element of force, fraud, or coercion.¹⁹ In addition, although the 1930 Forced Labour Convention applies to Hong Kong²⁰ and the Hong Kong Bill of Rights Ordinance Article 4 states that "no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited," that "no one shall be held in servitude," and that "no one

¹⁴ Hong Kong Federation of Asian Domestic Workers and Progressive Labour Union of Domestic Workers in Hong Kong, *Between a rock and a hard place: The charging of illegal agency fees to Filipino domestic workers in the Philippines and Hong Kong*, October 2016, available at: <https://view.publitas.com/rights-exposure/betweena-rock-and-a-hard-place-en/page/1>, accessed on 1 June 2018.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Note 10 above.

¹⁸ United Nations Treaty Collection, available at: https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280051ba9&clang=_en, accessed on 14 May 2018.

¹⁹ Section 129, Crimes Ordinance, Cap 200, available at: <https://www.elegislation.gov.hk/hk/cap200>, accessed on 14 May 2018.

²⁰ Department of Justice, Hong Kong Government, "List of Treaties in Force and Applicable to the Hong Kong Special Administrative Region (as at 25.04.2018)", available at: <https://www.doj.gov.hk/eng/laws/interlaw.html#Sign>, accessed on 14 May 2018.

shall be required to perform forced or compulsory labour,”²¹ there are no criminal sanctions against forced or compulsory labour, servitude or human trafficking.²² There are no victim protection provisions in legislation either.

The Government has recently introduced the Action Plan to Tackle Trafficking in Persons and Enhance Protection of Foreign Domestic Helpers.²³ However, the Action Plan does not include plans to introduce a definition of “exploitation” or “forced labour” or legislation against forced labour. In the absence of such definitions, law enforcement agencies and government departments are restricted to enforcing laws against the constituent elements of human trafficking rather than the overarching result. For example, the confiscation of passports can be prosecuted as the “unlawful custody of personal valuables” but the exploitation of a worker, which results from the confiscation of the passport, cannot be prosecuted. Reported cases of migrant domestic workers potentially being trafficked into illegal work in other jurisdictions such as Mainland China were handled as potential commission of offences such as conspiracy to defraud.²⁴ It is unclear what threshold will be employed by the Government in determining if and when exploitation or forced labour and therefore trafficking occurs. In addition, the Action Plan does not entail any legal obligations or accountability on behalf of the Government. Finally, it is unclear how the Government will consider when to “grant immunity from prosecution to victims.” A recent case highlighted in the media involved the prosecution and conviction of a migrant domestic worker who reported to the Immigration Department that her employer was asking her to clean her employer’s office (illegal deployment) for conspiring to contravene the conditions of stay.²⁵ The risk of prosecution for offences committed as a result of being exploited and/or a victim of trafficking is likely to deter migrant domestic

²¹ Article 4, Hong Kong Bill of Rights Ordinance, Cap 383, available at: <https://www.elegislation.gov.hk/hk/cap383>, accessed on 14 May 2018.

²² ZN v. Secretary for Justice and Others [2015] HKCFI 2252; HCAL 15/2015 (11 December 2015), available at: [http://www.hklii.hk/cgi-bin/sinodisp/eng/hk/cases/hkcfi/2015/2252.html?stem=&synonyms=&query=\(ZN\)%20OR%20ncotherjcitationitles\(ZN\)](http://www.hklii.hk/cgi-bin/sinodisp/eng/hk/cases/hkcfi/2015/2252.html?stem=&synonyms=&query=(ZN)%20OR%20ncotherjcitationitles(ZN)), accessed on 14 May 2018.

²³ Hong Kong Government, *Action Plan to Tackle Trafficking in Persons and Enhance Protection of Foreign Domestic Helpers*, March 2018, available at: <http://www.sb.gov.hk/eng/special/pdfs/Action%20Plan%20to%20Tackle%20TIP%20and%20to%20Protection%20FDHs.pdf>, accessed on 1 June 2018.

²⁴ Apple Daily, “【內地黑傭潮】每周返大陸一次日做20小時 菲傭passport蓋滿印”, 30 September 2017, available at: <https://hk.news.appledaily.com/breaking/realtime/article/20170930/57272727>, accessed on 14 May 2018.

²⁵ I-Cable, “等候發落的外傭”, 19 March 2018, available at: <http://cablenews.i-cable.com/ci/videopage/program/122506638/%E6%96%B0%E8%81%9E%E5%88%BA%E9%87%9D/%E7%AD%89%E5%80%99%E7%99%BC%E8%90%BD%E7%9A%84%E5%A4%96%E5%82%AD/>, accessed on 14 May 2018.

workers and other victims of trafficking from reporting offences, negating the efforts outlined in the Action Plan.

Question 4

Please indicate if in your country there is legislation on labour standards available and if so, please reference the specific provisions.

Hong Kong has a formal labour migration scheme for domestic workers with a number of regulations controlling their employment conditions. There is a minimum monthly wage (which is less than that enjoyed by other workers),²⁶ a mandated weekly rest day and free public health care.²⁷ Employment agencies must be registered and the fees they can charge are capped at 10% of the first month's wages.²⁸ By law, migrant domestic workers must also be given a copy of their Standard Employment Contract.²⁹ There is paid annual leave, paid statutory public holidays, paid return trips to their home country, and parental leave and protection.³⁰ As with other employees in Hong Kong, they are not entitled to maximum or standard working hours. Unlike other employees, migrant domestic workers are not afforded retirement protection.³¹

Moreover, migrant domestic workers are not considered ordinarily resident in Hong Kong and never have access to the right of abode.³²

²⁶ Section 7(3), Minimum Wage Ordinance, Cap 608, available at: <https://www.elegislation.gov.hk/hk/cap608>, accessed on 3 May 2018 and Hong Kong Government, "Hiring Domestic Helpers", available at: <https://www.gov.hk/en/residents/employment/recruitment/foreigndomestichelper.htm>, accessed on 14 May 2018.

²⁷ Immigration Department, Hong Kong Government, "Employment Contract for a Domestic Helper Recruited from Outside Hong Kong - English Version", available at: <https://www.immd.gov.hk/eng/forms/forms/id407.html>, section 17, Employment Ordinance, Cap 57, available at: <https://www.elegislation.gov.hk/hk/cap57>, and accessed on 14 May 2018.

²⁸ Sections 50(3) and 57, Employment Ordinance, Cap 57.

²⁹ Section 44(3), Employment Ordinance, Cap 57.

³⁰ Immigration Department, Hong Kong, "Employment Contract for a Domestic Helper Recruited from Outside Hong Kong - English Version" and section 12, Employment Ordinance, Cap 57.

³¹ Mandatory Provident Fund Schemes Authority, Hong Kong, 'MPF Employer', available at: http://www.mpfa.org.hk/engm/information_centre/faq/employer/mpf_employer/index.jsp, accessed on 2 March 2018.

³² Article 24, Basic Law, available at: http://www.basiclaw.gov.hk/en/basiclawtext/chapter_3.html and section 2(4), Immigration Ordinance, Cap 115, 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), both accessed on 1 June 2018.

Please also see the response to question 1C.

Please contact Annie Li, Research and Policy Officer (+852 5661 6944; 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.

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