

## **SUBMISSION TO THE PANEL ON SECURITY OF THE LEGISLATIVE COUNCIL**

On the Administration's Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong and the Proposed Members' Bill Entitled 'Modern Slavery Bill' to Criminalize All Forms of Human Trafficking in Hong Kong

June 2018

Justice Centre Hong Kong ('Justice Centre') makes the following submissions to the Panel on Security of the Legislative Council of the Hong Kong Special Administrative Region ('Hong Kong') for the agenda items 'Action plan to tackle trafficking in persons and to enhance protection of foreign domestic helpers in Hong Kong' and "Proposed Members' Bill entitled 'Modern Slavery Bill' to criminalize all forms of human trafficking in Hong Kong", ahead of its meeting on 5 June 2018.

Justice Centre welcomes the Government's introduction of the Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong ('Action Plan') in March 2018 as the first step towards combatting human trafficking. The pledge to work closely with civil society in the Action Plan is particularly welcome. However, Justice Centre has concerns that the Action Plan's effectiveness is limited by:

- the absence of a definition or offence of human trafficking or forced labour;
- inadequate prosecution;
- inadequate victim identification and protection;
- the absence of time frames for new actions;
- the absence of human trafficking screening at the Labour Tribunal; and
- the limited publication of data.

These concerns are elaborated below.

Moreover, the Administration, in adopting the Action Plan, made no reference to the Government's commitments under international human rights treaties or even mentioned the words 'human rights' once. Given that respect for human rights is reportedly a core value of the Administration,<sup>1</sup> it is a notable omission in a document that is designed to deal with violations of human rights and acts which are prohibited under international human rights law. It is particularly noteworthy that there are no references to recommendations made for Hong Kong from the:

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<sup>1</sup> Mrs Carrie Lam, Chief Executive, 'Speech by the Chief Executive in delivering "The Chief Executive's 2017 Policy Address" to the Legislative Council', 11 October 2017, available at: <https://www.policyaddress.gov.hk/2017/eng/speech.html>, accessed on 30 May 2018.

## **PROTECTING FORCED MIGRANTS' RIGHTS**

- United Nations Human Rights Committee;
- United Nations Committee on the Elimination of All Forms of Discrimination against Women; and
- United Nations Committee against Torture.<sup>2</sup>

This approach is of concern in light of the upcoming Universal Periodic Review (UPR) session on China, including Hong Kong, in November this year. The Hong Kong UPR Coalition, a coalition of civil society organisations that Justice Centre facilitates together with other non-governmental organisation members of a Steering Committee, has lodged a joint civil society Universal Periodic Review (UPR) submission with the United Nations High Commissioner for Human Rights covering the issue of human trafficking in Hong Kong.<sup>3</sup> The Hong Kong UPR Coalition has met with many foreign governments regarding the UPR as it relates to Hong Kong. Several have shown interest in the issue of human trafficking in Hong Kong. It is likely that there will be UPR recommendations specifically relating to Hong Kong's laws and policies to combat human trafficking. As recommended in the Hong Kong UPR Coalition's submission, Hong Kong should establish a database of treaty body and UPR recommendations and a transparent central monitoring and evaluation for their implementation, following meaningful consultation with civil society, within one year. Civil society will monitor the implementation of any UPR recommendations, including those relating to human trafficking, made for Hong Kong.

Additionally, Hong Kong has been placed on Tier Two Watch List since 2016 in the United States Trafficking in Persons Report.<sup>4</sup> If Hong Kong is ranked Tier Two Watch List for three consecutive years, it may be downgraded to Tier Three,<sup>5</sup> impacting adversely on Hong Kong's international reputation.

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<sup>2</sup> Human Rights Committee, 'Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107<sup>th</sup> session (11 – 28 March 2013)', CCPR/C/CHN-HKG/CO/3, 29 April 2013, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsr2bAznTlrkyo4FUNHETCQ0Y7P%2fow040gd8LZ9d1NQukCEhx4dNtgXsWJSk7fStBMEzKOWsqHv9SIKqzioKxDQTLMy%2fCcDkaXOwTD%2feb8avpf8ty9DnWVTylSVEmRoVg%3d%3d>, Committee against Torture, 'Concluding observations on the fifth periodic report of China with respect to Hong Kong, China', CAT/C/CHN-HKG/CO/5, 3 February 2016, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/017/38/PDF/G1601738.pdf?OpenElement>, and Committee on the Elimination of All Forms of Discrimination against Women, 'Concluding observations on the combined seventh and eighth periodic reports of China', CEDAW/C/CHN/CO/7-8, 14 November 2014, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CHN/CO/7-8&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CHN/CO/7-8&Lang=En), all accessed on 30 May 2018.

<sup>3</sup> Hong Kong UPR Coalition, 'Joint Civil Society Submission from the Hong Kong UPR Coalition', March 2018, available at: <http://www.justicecentre.org.hk/policy-advocacy/universal-periodic-review/>, accessed on 16 May 2018.

<sup>4</sup> Department of State, United States, *2017 Trafficking in Persons Report*, June 2017, available at: <https://www.state.gov/documents/organization/271339.pdf>, and Department of State, United States, *2016 Trafficking in Persons Report*, June 2016, available at: <https://www.state.gov/documents/organization/258876.pdf>, both accessed on 30 May 2018.

<sup>5</sup> Department of State, United States, *2017 Trafficking in Persons Report*.

Actions by the Legislative Council and the Administration to improve laws and policies to ensure consistency with international human rights obligations relating to human trafficking are long overdue.

Prevalence of human trafficking and exploitation in Hong Kong

Based on our 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.<sup>6</sup> *Coming Clean* also showed that migrant domestic workers with excessive debt were six times more likely than those with lower debt levels to be in forced labour; migrant domestic workers from Indonesia were 70.5% more likely to be in a situation of forced labour; migrant domestic workers on their first contract were 2.7 times more likely to be in a situation of forced labour than those who had had working experience in Hong Kong; and migrant domestic workers aged below 24 were the most likely to be in a situation of forced labour.<sup>7</sup> *Coming Clean* was cited in the United States Trafficking in Persons Report 2016, the year Hong Kong was downgraded to Tier Two Watch List.<sup>8</sup>

Although the domestic work sector is significant in Hong Kong, it is not the only sector in which trafficking is occurring. Civil society has reported cases of human trafficking or potential human trafficking for forced labour among sex workers in Hong Kong and for forced marriage.<sup>9</sup>

Former Director of Public Prosecutions, Mr I Grenville Cross, SC argued in 2008 that Hong Kong was a transit and destination point for illegal immigrants, some of whom were subject to debt bondage, sexual exploitation and forced labour on arrival in a destination country.<sup>10</sup> Although he made this statement ten years ago, there has been no substantive improvement in the Administration's anti-human trafficking or anti-exploitation policies, raising concern that the situation that Mr Cross, SC described remains the same today.

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<sup>6</sup> 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 2016, available at: [www.justicecentre.org.hk/comingclean](http://www.justicecentre.org.hk/comingclean) and Hong Kong UPR Coalition, "Joint Civil Society Submission from the Hong Kong UPR Coalition", accessed on 30 May 2018.

<sup>7</sup> *Ibid.*

<sup>8</sup> Department of State, United States, *2016 Trafficking in Persons Report*.

<sup>9</sup> See, for example, *100 Stories Hong Kong*, <http://100storieshk.org/?lang=en>, accessed on 28 May 2018.

<sup>10</sup> Speech by Director of Public Prosecutions at Trafficking in Persons Research and Data Forum, 3 November 2008, Available at: <https://www.doj.gov.hk/eng/public/pdf/2008/dpp20081103e.pdf>, accessed on 28 May 2018.

The absence of a definition of and an offence against human trafficking

Comprehensive legislation on prosecution, protection and prevention with a clear definition of 'human trafficking', 'forced labour', 'exploitation' and other relevant concepts should be introduced. Without legislation for prosecution, victim identification or protection, Hong Kong remains an outlier among common law jurisdictions, such as Australia, Singapore, the United Kingdom and the United States.<sup>11</sup>

Currently, there is no comprehensive definition of 'human trafficking' in domestic legislation although this has been recommended by the Committee against Torture in its concluding observations on Hong Kong in February 2016, by Justice Centre in *Coming Clean* and by the Hong Kong UPR Coalition.<sup>12</sup> 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') introduces a widely agreed upon definition of human trafficking in international law. Although China is a signatory to the Protocol and it is applicable to Macau, it is not applicable to Hong Kong.<sup>13</sup> The Human Rights Committee and the Committee on the Elimination of All Forms of Discrimination against Women have recommended Hong Kong consider taking steps that could lead to its extension to Hong Kong.<sup>14</sup>

Also, although the Forced Labour Convention, 1930 applies to Hong Kong,<sup>15</sup> there is no definition of 'forced labour' in domestic legislation. There is no offence against human trafficking or forced labour either. The Court of First Instance of the High Court has held that the reliance on other provisions of the criminal law does not adequately, if at all, address the need for the criminalisation of forced or compulsory labour and, in the absence of an offence against forced or compulsory labour, the Hong Kong Government has not fulfilled its obligation under Article 4 of the Hong Kong Bill of Rights Ordinance.<sup>16</sup>

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<sup>11</sup> These pieces of legislation include the Commonwealth Criminal Code Act 1995 of Australia, the Prevention of Human Trafficking Act 2015 of Singapore, the Human Trafficking and Exploitation (Scotland) Act 2015, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, the Modern Slavery Act of England and Wales and Victims of Trafficking and Violence Protection Act of 2000 of the United States.

<sup>12</sup> Committee against Torture, 'Concluding observations on the fifth periodic report of China with respect to Hong Kong, China' and Justice Centre Hong Kong, *Coming Clean*.

<sup>13</sup> Declaration of China, United Nations Treaty Series, vol. 2652, annex A, p.51, available at:

[https://treaties.un.org/Pages/showActionDetails.aspx?objid=080000028027643a&clang=\\_en](https://treaties.un.org/Pages/showActionDetails.aspx?objid=080000028027643a&clang=_en), accessed on 30 May 2018.

<sup>14</sup> Human Rights Committee, 'Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107<sup>th</sup> session (11 – 28 March 2013)' and Committee on the Elimination of All Forms of Discrimination against Women, 'Concluding observations on the combined seventh and eighth periodic reports of China'.

<sup>15</sup> Department of Justice, Hong Kong, 'List of Treaties in Force and Applicable to the Hong Kong Special Administrative Region (as at 14.05.2018)', available at: <https://www.doj.gov.hk/eng/laws/interlaw.html>, accessed on 30 May 2018.

<sup>16</sup> *ZN v Secretary for Justice* HCAL 15/2015, available at: [http://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=107415&QS=%24%28ZN%29&TP=JU](http://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=107415&QS=%24%28ZN%29&TP=JU), accessed on 30 May 2018.

In the absence of such definitions and offences, it is unclear on what basis prosecution as set out in the Action Plan will be carried out. It is noted in the Action Plan that “[a]lthough the Palermo Protocol has not been applied to Hong Kong, reference is drawn to Article 3 of the Protocol on the meaning of TIP in this Action Plan”. However, there is no information on whether the Administration will adapt the definition of human trafficking in the Palermo Protocol in its operation or whether the same definition will be used across all activities listed in the Action Plan.

Moreover, law enforcement will remain restricted to enforcing laws against the constituent elements of human trafficking rather than the overarching result. For example, according to media reports, a case of potential human trafficking of a migrant domestic worker to mainland China was handled by the Police as potential commission of the offence of conspiracy of defraud.<sup>17</sup>

The number of prosecutions for human trafficking cases appears to be small, which may be a consequence of the absence of an offence against human trafficking or forced labour and also raises concern over the adequacy of the investigations carried out by law enforcement authorities. For example, the International Organisation for Migration identified three out of the about 100 Madagascan women as being victims of human trafficking.<sup>18</sup> According to the Hong Kong Police, six cases in which women reported that their passports were withheld and forged documents were used to apply for loans under their names were investigated, but all were dropped due to a lack of evidence.<sup>19</sup>

The issue of migrant domestic workers travelling to Mainland China to work via Hong Kong has drawn the attention of the Indonesian Consulate General in Hong Kong, which decided to investigate suspected cases of migrant domestic workers being brought by their employers to work in Mainland China. The Consulate General analysed travel records of workers who applied for the renewal of passports and found 47 workers travelled to Mainland China at least once a month.<sup>20</sup> From 1 January to 27 November 2017, the Police has received 42 potential cases of the trafficking of migrant domestic workers, but only four were confirmed to be related to criminal offences as of 27 November 2017.<sup>21</sup>

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<sup>17</sup> Apple Daily, ‘《蘋果》深圳直擊 港外傭被迫淪黑工 有人跳樓 有人橫死’, available at: <https://hk.news.appledaily.com/local/daily/article/20171001/20169567>, accessed on 20 December 2017.

<sup>18</sup> Raquel Carvalho, “How Hong Kong Failed Madagascar’s Domestic Helpers”, South China Morning Post, 17 December 2017, available at: <http://www.scmp.com/week-asia/society/article/2124556/how-hong-kong-failed-madagascars-domestic-helpers>, accessed on 20 December 2017.

<sup>19</sup> *Ibid.*

<sup>20</sup> Cable TV, “出國打工，再「被出境」打工”， 27 November 2017, available at: [https://www.facebook.com/news.lancet/videos/841552966017746/?hc\\_ref=ARTfLbdud-6NachUSaA0caMC1yifliVEuc3nhIE53F8Zz0qUbdsvjFuKAnWWBN73Vk](https://www.facebook.com/news.lancet/videos/841552966017746/?hc_ref=ARTfLbdud-6NachUSaA0caMC1yifliVEuc3nhIE53F8Zz0qUbdsvjFuKAnWWBN73Vk), accessed on 22 December 2017.

<sup>21</sup> *Ibid.*

### Inadequate victim identification and protection

The lack of definitions of human trafficking, exploitation, and forced labour also raises questions about the basis victim identification on which is carried out. There is a lack of transparency about the Government's screening procedures. Neither the Guideline on Inter-departmental Cooperation for the Handling of Suspected Cases of Trafficking in Persons, which was issued to provide guidance for the Inter-departmental Trafficking in Persons Working Group departments/bureaux, nor the screening form used by the Administration, both referenced in the Action Plan, is publicly available, despite requests made by civil society. Similar screening forms are published in many comparable jurisdictions such as the United Kingdom and the United States.<sup>22</sup>

The lack of information about the introduction of immunity for human trafficking victims in the Action Plan is particularly concerning. When civil society enquired about this in a recent meeting with the Government on 28 May 2018, none of the attending officials from the Security Bureau, the Police Force, the Immigration Department or the Labour Department could give further information about the granting of immunity. 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.<sup>23</sup> There has also been concern that children may have been arrested for making false representations about their identities or using forged passports while they were in fact trafficked to Hong Kong as migrant domestic workers by agents.<sup>24</sup> Although there is provision in the Prosecution Code that, if a credible claim that a defendant or intended defendant is a victim of human trafficking is found, a prosecutor should appropriately deal with the case with that in mind, making reference to international standards and practices,<sup>25</sup> the Government has failed to provide data about the number of established credible claims that a defendant or intended defendant is a victim of human trafficking on the basis that such data is not maintained.<sup>26</sup>

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<sup>22</sup> United Kingdom Government, 'Modern slavery victims: referral and assessment forms', <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms> and, for example, Human Trafficking Task Force, Ohio, United States, *Human Trafficking Screening Tool*, January 2013, available at <http://humantrafficking.ohio.gov/links/Screening-Tool.pdf>, both accessed on 30 May 2018.

<sup>23</sup> Cable TV, '等候發落的外傭', 18 March 2018, available at [https://www.facebook.com/news.lancet/videos/841552966017746/?hc\\_ref=ARTflbdud-6NachUSaA0caMC1yifliVEuc3nhIE53F8Zz0qUbdsvjFuKAnWWBN73Vk](https://www.facebook.com/news.lancet/videos/841552966017746/?hc_ref=ARTflbdud-6NachUSaA0caMC1yifliVEuc3nhIE53F8Zz0qUbdsvjFuKAnWWBN73Vk), accessed on 30 May 2018.

<sup>24</sup> Sylvia Yu, "Fake passports fuel child trafficking to Hong Kong, Singapore", Thomson Reuters Foundation, 20 April 2017, available at: <https://www.reuters.com/article/us-hongkong-trafficking-children/fake-passports-fuel-child-trafficking-to-hong-kong-singapore-idUSKBN17M047>, accessed on 30 May 2018.

<sup>25</sup> Department of Justice, Hong Kong, *Prosecution Code*, 2013, p. 35-36, available at <https://www.doj.gov.hk/eng/public/pdf/2014/pdcode1314e.pdf>, accessed on 30 May 2018.

<sup>26</sup> Director of Administration and Development, Department of Justice, Hong Kong, reply to initial written questions raised by Finance Committee Member Dennis Kwok in examining the Estimates of Expenditure 2018-19, reply serial no. SJ033, available at: [https://www.legco.gov.hk/yr17-18/english/fc/fc/w\\_q/sj-e.pdf](https://www.legco.gov.hk/yr17-18/english/fc/fc/w_q/sj-e.pdf), accessed on 30 May 2018.

The risk of prosecution for offences committed as a result of being exploited and/or trafficked is likely to deter victims and potential victims of trafficking from reporting offences, negating the efforts outlined in the Action Plan. This is exacerbated by the fact that the Action Plan entails no legal accountability on the part of the Administration, as it relates to victim protection or other matters.

#### Absence of a time frame for human trafficking screening

The Action Plan does not include time frames for the various activities listed therein. When civil society organisations asked for further information about the time frames in the above-mentioned meeting with the Government on 28 May 2018, the only new activity for which there was a set time frame was the extension of human trafficking screening to all police districts. The screening to be conducted by the Labour Department will follow that in the 'foreseeable future'.

#### Absence of screening at the Labour Tribunal

The Action Plan does not apply to the Labour Tribunal as far as human trafficking screening is concerned.<sup>27</sup> This is problematic because, in many instances, victims of human trafficking do not identify themselves as victims and therefore may not come forward as victims of trafficking. Instead, they may seek assistance for matters related to their trafficking experiences.<sup>28</sup> It is likely, therefore, that victims of human trafficking in Hong Kong will seek redress through the Labour Tribunal since the Labour Department promotes the Labour Tribunal as one of the principal mechanisms for redress. One of Justice Centre's clients, who was probably trafficked to Hong Kong to work as a migrant domestic worker, brought a claim at the Labour Tribunal, but was not asked any questions about human trafficking, exploitation or forced labour there. She did not tell the Labour Tribunal officer about how her informal broker may have abused her position of vulnerability when she recruited her to Hong Kong (the act and means elements of human trafficking) because she had never learnt about the concept of human trafficking and did not think it was relevant to the underpayment of wages or the excessive working hours she had in Hong Kong. She was awarded a very small proportion of what she was owed by the employer at the Labour Tribunal. She then overstayed and was detained. Had there been human trafficking screening, she would have likely been identified as a victim of human trafficking and offered relevant protection.

#### Inadequate data

The Hong Kong Government does not regularly publish data about victim identification and protection or trainings officials receive. This makes it difficult for civil society to accurately assess the impact of the Hong Kong

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<sup>27</sup> Statement made by Ms Queenie Wong, Assistant Commissioner for Labour (Policy Support), in a meeting with civil society organisations on 28 May 2018

<sup>28</sup> Brunovski and Surtees, *Vulnerability and exploitation along the Balkan route: identifying victims of human trafficking in Serbia*, Fafo, 2017. p. 21.

Government's efforts to combat human trafficking. A disconnect remains between the public proclamations of the Hong Kong Government and the information obtained by civil society organisations on the ground.

For example, it is unclear whether the Hong Kong Government conducts human trafficking screening on all vulnerable persons in Hong Kong. There is no publicly available information on whether individuals arrested for drug trafficking at the Hong Kong Airport or cultivating cannabis in local plants are considered to be 'vulnerable persons', on whom human trafficking screening is conducted.<sup>29</sup>

Another area where a data gap exists is with respect to suspicious matter transaction reports. Suspicious transaction report forms in Hong Kong are unique, in that they include a category for bank, insurance company, money service operator or other sectors, to report a suspected crime of 'trafficking in human beings and migrant smuggling'.<sup>30</sup> A request for data held by the Hong Kong Police Force Joint Financial Intelligence Unit for suspicious transaction report human trafficking data by Justice Centre Hong Kong was refused on the grounds that the information was confidential.<sup>31</sup> However, when a member of the public pursued the same data, it was instead refused on the grounds that it fell under a category where the disclosure 'could be misleading or deprive the department or any other person of priority of publication or commercial value'.<sup>32</sup> Why two separate reasons were given by the Hong Kong Police Force has not been provided, much to the concern of civil society. The Hong Kong Police Force Joint Financial Intelligence Unit still refuses to release this information. This is one example of the challenges civil society faces when accessing information. As noted in the Hong Kong UPR Coalition's submission, responses for information take extensive time. The Code on Access to Information has been in place since 1995, but entails no legal requirement and limited coverage.<sup>33</sup> As recommended by the Hong Kong UPR Coalition, Hong

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<sup>29</sup> Danny Mok, 'Woman from Peru arrested at Hong Kong airport carrying 2.5kg of cocaine in her body', South China Morning Post, 20 November 2017, available at: <http://www.scmp.com/news/hong-kong/law-crime/article/2120630/woman-peru-arrested-hong-kong-airport-carrying-hk23-million>, accessed on 20 December 2017 and Clifford Lo, 'Hong Kong police make biggest seizure of cannabis plants since at least 1990', South China Morning Post, 17 May 2017, available at: <http://www.scmp.com/news/hong-kong/law-crime/article/2094662/hong-kong-police-make-biggest-seizure-cannabis-plants-1997>, accessed on 20 December 2017.

<sup>30</sup> The pro forma for reporting suspicious transaction reports can be accessed at: <https://www.jfiu.gov.hk/en/str.html#download>.

<sup>31</sup> The Joint Financial Intelligence Unit manages the suspicious transaction reports regime and financial intelligence in relation to money laundering and terrorist financing. They are responsible for receiving, analysing and disseminating suspicious transaction reports submitted pursuant to section 25A(1) of Organized and Serious Crimes Ordinance, Cap. 455 and Drug Trafficking (Recovery of Proceeds) Ordinance, Cap. 405 as well as section 12(1) of the United Nations (Anti-terrorism Measures) Ordinance Cap. 575.

<sup>32</sup> Hong Kong Police Force Crime Wing, response to information request 'Suspicious transaction report human trafficking data' made by Scott Edmunds, 26 October 2017, available at: [https://accessinfo.hk/en/request/suspicious\\_transaction\\_report\\_hu](https://accessinfo.hk/en/request/suspicious_transaction_report_hu), accessed on 20 December 2017.

<sup>33</sup> Hong Kong UPR Coalition, 'Joint Civil Society Submission from the Hong Kong UPR Coalition'.



Kong should adopt a Freedom of Information Ordinance that establishes maximum disclosure and minimal exemption requirements, within one year.<sup>34</sup>

Other measures to combat the trafficking of migrant domestic workers, asylum seekers and refugees

While comprehensive legislation against human trafficking is essential, various existing policy measures or practices that may heighten the risk of human trafficking should also be repealed or changed. These include the live-in requirement, the 'two-week rule', forbidding the change of employers, the lack of inspection for the enforcement of the Standard Employment Contract for migrant domestic workers and the denial of the right to work to asylum seekers and refugees.<sup>35</sup>

As recommended by the Hong Kong UPR Coalition, Hong Kong should (i) repeal the 'two-week rule' and the live-in requirement, (ii) adopt a comprehensive law ensuring migrant domestic workers enjoy the same conditions as other workers regarding remuneration, protection against unfair dismissal, rest and leisure, limitation of working hours, social security and maternity leave protection, (iii) increase resources for the Labour Department to establish an inspection mechanism for monitoring the implementation of the Standard Employment Contract and ensure, inter alia, a decent standard of living for migrant domestic workers and (iv) strengthen protection from abuse by recruitment agencies immediately, consistent with concluding observations of the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of All Forms of Discrimination against Women and the Committee against Torture. Hong Kong should also grant asylum seekers and refugees the right to work immediately.<sup>36</sup>

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<sup>34</sup> *Ibid.*

<sup>35</sup> For more information about policies and practices relating to migrant domestic workers, see, for example, Hong Kong UPR Coalition, 'Joint Civil Society Submission from the Hong Kong UPR Coalition', paragraphs 90 to 93 and 101 to 105, Justice Centre Hong Kong, *Coming Clean*, 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/>, Mission for Migrant Workers, Mission for Migrant Workers, Live-In Policy increases female FDWs' vulnerability to various types of abuse, May 2013, available at: <http://www.migrants.net/live-in-policy-primer-is-online-now/> and 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>, all accessed on 1 June 2018.

<sup>36</sup> Hong Kong UPR Coalition, 'Joint Civil Society Submission from the Hong Kong UPR Coalition'.

## Recommendations

Justice Centre recommends that the Panel request the Administration to:

- Accept and implement the recommendations of the United Nations Human Rights Committee, the Committee on the Elimination of All Forms of Discrimination against Women and the Committee against Torture relating to human trafficking;
- Request the extension of the Palermo Protocol to Hong Kong within a year;
- Introduce a comprehensive bill to combat human trafficking and forced labour that covers prosecution, protection and prevention and includes clear definitions of human trafficking, exploitation, forced labour and relevant concepts within a year;
- Introduce time frames for all activities listed in the Action Plan;
- Publish the human trafficking screening tool used by the Administration;
- Extend human trafficking screening to the Labour Tribunal;
- Publish a clear policy for granting immunity from prosecution to human trafficking victims;
- Strengthen investigations and prosecutions for human trafficking cases;
- Regularly publish data about the implementation of the Action Plan, including the number of human trafficking victims identified, the protection offered, the training Government officials receive and the number of suspicious transaction reports received;
- Provide more details about its screening policy, including in which situations screening is conducted on arrested persons;
- Repeal or change policies and practices that may increase individuals' vulnerability to human trafficking, including those relating to migrant domestic workers, asylum seekers and refugees;
- Repeal the 'two-week rule' and the live-in requirement for migrant domestic workers, adopt a comprehensive law ensuring migrant domestic workers enjoy the same conditions as other workers regarding remuneration, protection against unfair dismissal, rest and leisure, limitation of working hours, social security and maternity leave protection, increase resources for the Labour Department to establish an inspection mechanism for monitoring the implementation of the Standard Employment Contract and ensure, inter alia, a decent standard of living for migrant domestic workers and strengthen protection from abuse by recruitment agencies immediately;
- Establish a database of treaty body and UPR recommendations and a transparent central monitoring and evaluation for their implementation, following meaningful consultation with civil society, within one year; and
- Propose a freedom of information bill that establishes maximum disclosure and minimal exemption requirements, within one year.

### **Questions for the Administration**

- How many suspicious transaction reports with the tick box 'human trafficking' ticked did the Hong Kong Police Force Joint Financial Intelligence Unit receive in 2017 and 2018? In how many of these cases have the Police initiated investigations based on these reports? What were the outcomes of the investigations?
- What is the Administration's position on the extension of the Palermo Protocol to the territory? Has a target date been set for its extension to Hong Kong?
- What are the time frames for the new activities introduced with the Action Plan?
- Will the Administration extend human trafficking screening to the Labour Tribunal? If not, what are the reasons?

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

Please contact Annie Li, Research and Policy Officer (+852 5661 6944; [annie@justicecentre.org.hk](mailto:annie@justicecentre.org.hk)), for any enquiries.

### **About Justice Centre Hong Kong**

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

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