



NOT STOPPING HERE

HONG KONG AS A TRANSIT SITE FOR
HUMAN TRAFFICKING

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Introduction

There is a growing evidence base of how Hong Kong, China is a destination for human trafficking, particularly as it relates to people entering to work as migrant domestic workers. But to date there has been little exploration of how individuals may be transiting through Hong Kong as part of their experience of human trafficking. This research offers a “first step” towards that examination. The study set out to explore how and why Hong Kong may be a transit site for human trafficking using a series of case studies identified as potential cases of human trafficking “in transit” through Hong Kong. Combined with an introductory literature review and interviews with organisations working with victims of human trafficking in Hong Kong, these case studies form the basis of a preliminary, and necessarily tentative, analysis of what transit might look like in the city.

The report is divided into four sections: (i) methodology; (ii) understanding transit during human trafficking; (iii) Hong Kong as a transit site; and (iv) conclusions and recommendations. By its nature, the report poses more questions than it answers and highlights a series of areas where further research is essential. The scope for additional research is significant. The case studies presented here highlight some significant gaps in our understanding of the vulnerabilities to human trafficking and particularly in our processes of victim identification as they currently operate in Hong Kong.

Justice Centre Hong Kong hopes that these early findings will provide the impetus for additional research and are the start of more conversations about how and why people are being moved through the city. At the very least, these early findings provide yet more evidence of the need for a comprehensive analysis of how Hong Kong is a destination, transit and source site for human trafficking.

Methodology

This study was designed to be exploratory and qualitative. Justice Centre Hong Kong sought to begin addressing gaps in our understanding of how Hong Kong may be used as a transit site for human trafficking. A literature review examining research on how sites are used as transit points for human trafficking was supplemented with semi-structured interviews with staff from non-government organisations (NGOs), international organisations, and academics. All interviews focused on exploring how people are moving through Hong Kong to other destinations (even where time in Hong Kong may be considerable). Interviews were semi-structured. There is currently little research on how Hong Kong might be a transit site for human trafficking or how individuals transit through Hong Kong on journeys that may or may not involve exploitation or human trafficking. In this context, open-ended questions were essential to give respondents space to discuss a broad range of issues which they encountered in their work without knowing in advance what “transit” looked like in Hong Kong.

In total 10 interviews were conducted with partner organisations. Interviews ranged from between 1 to 2 hours in length. Verbal informed consent was sought from all participants. Where organisations and individual staff are mentioned by name in the report, additional consent was sought. Questions during semi-structured interviews included:

1. Do you encounter people/workers who moved to Hong Kong, and then from Hong Kong to another place?
2. If yes, what are their experiences like? What is their time like in Hong Kong (working and outside of work)?
3. What is their time like after they leave Hong Kong?
4. In your experience, how do they find the experience of crossing the border? What is it like on the Hong Kong side? What about the other side?
5. How do people arrange their travel?
6. If there are brokers or other third parties involved, does this change the experience for people? If yes, in what ways?

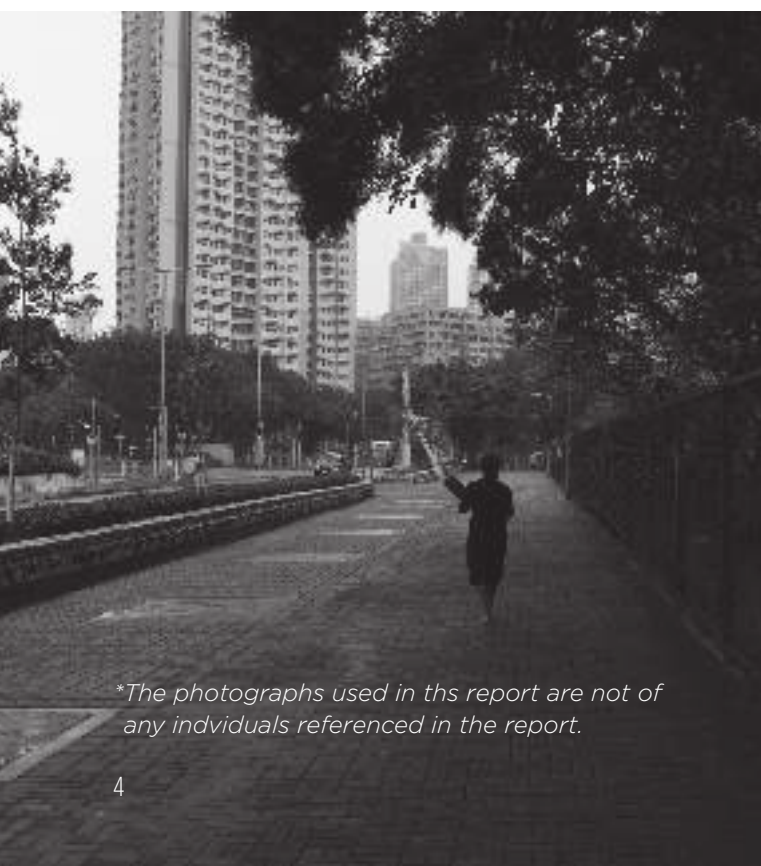
Interviews were also used to identify potential case studies for inclusion in this report. Given the complexity of identifying cases of human trafficking in transit (and therefore potentially before any exploitation has occurred) the parameters for case study inclusion were drawn widely; partner organisations were requested to identify potential victims of trafficking, migrants in vulnerable situations, or people who had experienced onward travel out of Hong Kong. Since this research was qualitative and exploratory, no attempts were made to conclusively determine the victim status of individuals whose experiences were included as case studies. The objective of the research was to examine if and how Hong Kong might be a transit site for human trafficking rather than whether these particular case studies constituted human trafficking.

Where partner organisations were able to identify potential cases, Justice Centre Hong Kong requested permission to interview the individuals directly for the purposes of better

understanding their experiences and journeys. In two cases where this was not possible, partner organisation notes were used (with permission) to compile the case studies (case studies 1 and 2). Only one interview specifically for the purpose of this research was possible. Data from this interview is recorded in case study 3. This interview was conducted over the phone and verbal informed consent was provided, supplemented with a written consent form sent electronically. Each of the three case studies reflects the experiences of an individual person.

There are a number of limitations to this research. In particular, the project was constrained by a short time frame (August – November 2018). With more time, more extensive field research would have been possible and it is likely that more case studies could have been identified. Given the time frame, it was also not possible to conduct interviews with any Hong Kong Government officials. This points to an important next step for understanding the issue and identifying potential points of engagement. For this reason, it is highly recommended that further research specifically targets those government officials who are likely to interact with people as they move through Hong Kong: immigration and border officials, police officers, and staff at immigration detention facilities. Organisations working outside of Hong Kong, in sites where people have moved through Hong Kong prior to arriving at the destination (for example, mainland China) should also be included in further research, as well as employment agencies and brokers facilitating such movement and, ideally, employers seeking to employ such workers.

This study was exploratory only, however. The project parameters and time frame were sufficient to identify the broad parameters of some of the ways in which Hong Kong may be a transit site for human trafficking and to identify issues which would benefit from further research.



**The photographs used in this report are not of any individuals referenced in the report.*

Understanding Transit during Human Trafficking

Transit during Human Trafficking in Theory

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (Trafficking Protocol) defines human trafficking as:

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”¹

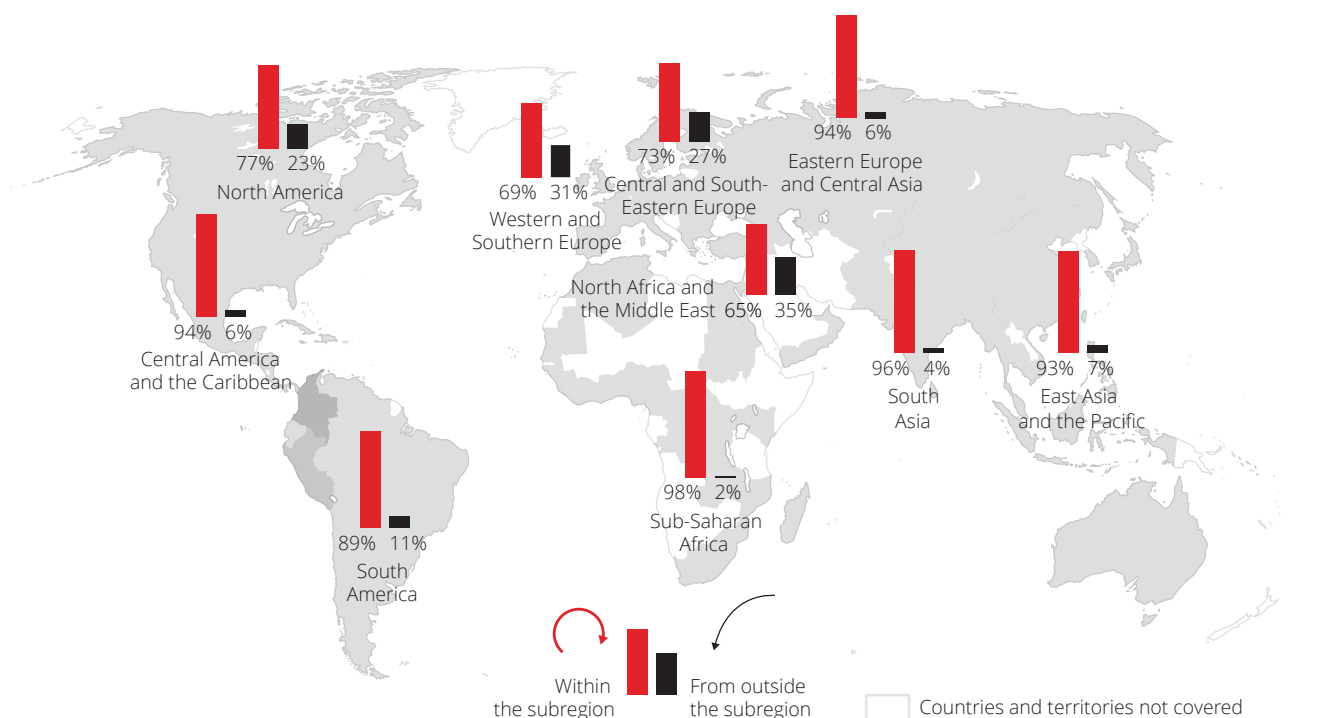
As such, three related elements constitute human trafficking: an act (for example the recruitment of a person), using the means (for example deception or coercion), for a purpose (exploitation). It should be noted that a situation can be trafficking even if the purpose has not yet been achieved; “it is sufficient that such exploitation was the intention of the conduct.”² Thus exploitation need not have happened; only the intent to exploit is required to establish the “purpose” element of human trafficking.

ACT	MEANS	PURPOSE
<ul style="list-style-type: none"> • Recruitment • Transportation • Harbouring • Transfer • Receipt 	<ul style="list-style-type: none"> • The threat or use of force or other forms of coercion • Abduction • Fraud • Deception • Abuse of power or of a position of vulnerability • The giving or receiving of payments or benefits 	Exploitation, including: <ul style="list-style-type: none"> • Forced labour or services • Sexual exploitation • Slavery or practices similar to slavery • Servitude • The removal of organs
IN THE CASE OF CHILDREN, AN ACT AND A PURPOSE IS ENOUGH. NO MEANS IS REQUIRED.		

While the process does not necessarily require movement whether across or within international territorial borders, it often involves such movement. As a consequence, countries and regions are often categorised as origin or destination sites (or both) for trafficking. It can also involve additional places through which people are moved in order to get them to the destination where exploitation will occur. These places are consequently understood as sites of “transit”.

“Transit” as a concept is not present in the Trafficking Protocol.³ The United Nations Office on Drugs and Crime (UNODC) defines “transit countries” as states or territories

Shares of detected victims by subregional and transregional trafficking, 2014 (or most recent)



Source: UNODC elaboration of national data.

Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

UNODC, *Global Report on Trafficking in Persons 2016*, P.43

“that make up the transnational route by which a victim is transported from their country of origin to a destination country determined by the traffickers.”⁴ There may be one or more transit sites involved in a given trafficking route. Its 2006 report, entitled *Trafficking in Persons: Global Patterns*, identifies a total of 98 transit countries most of which are situated in Central and South-eastern Europe as well as Western Europe. UNODC further notes that there can be “more than one transit country along a route, and alternative routes between a particular origin country and a determined destination may vary significantly” according to the needs of those facilitating movement as well as to state interventions to control or curtail movement.⁵ According to UNODC, the period of time taken for the full trafficking process can vary considerably. They maintain that the process “goes beyond the boundaries of the victims’ passage through transit countries and concerns the entire process by which victims are moved between their countries of origin and their final destinations.”⁶ Consequently, the process and any periods of transit within the process can be relatively brief or can be protracted, involving prolonged periods of time in one or more transit territories. Various forms of exploitation can also occur at many points along this journey, notwithstanding the final experience of exploitation.

There is no definition of “human trafficking” or “exploitation” in domestic legislation in Hong Kong.⁷ For the purposes of this report, the Trafficking Protocol definition of “human trafficking” is used and Hong Kong as a transit site during trafficking is understood to refer to the role that Hong Kong plays as a territory of transit for trafficking movements that begin and end in other territories.

Transit during Human Trafficking in Practice

UNODC’s 2016 Global Report on Trafficking in Persons analysed data from 34,000 victims of trafficking identified between 2012 and 2014 to assess what they describe as trafficking flows – the journeys victims of trafficking take to the final site of exploitation.⁸ UNODC concluded that trafficking flows show “a high level of complexity” but that, overall, trafficking movement is “not of a global dimension, and trafficking in persons remains largely a regional and

local phenomenon.”⁹ That is, where trafficking was across international borders, it was most often across borders within regions.

However, UNODC noted that far “fewer data exists on regions or countries of transit than for origin or destination points.”¹⁰ One of the few studies conducted on the issue examined the movement of victims of trafficking from South Korea, through Canada to the United States (US). The 2010 study identified a number of characteristics which defined the role of transit sites: “(1) geographic proximity by land, sea, or air to attractive destination countries; (2) insufficient legislation and weak enforcement to deal with trafficking in persons and migrant smuggling; (3) liberal immigration policies; and (4) an operational criminal infrastructure to facilitate illegal entry to, and exit from, a country.”¹¹ According to this research, any one or combination of these factors means that a relative advantage is gained by traffickers moving people through transit sites rather than directly from origin to destination.

The study found that victims of trafficking did not always enter transit or destination territories illegally and that regular (legal) migration channels were harnessed to move people.¹² Thus, Canada’s visa waiver programme for South Koreans was used to facilitate legal entrance into Canada from where victims could be moved into the US. A 2005 study of Belgium as a transit country for unaccompanied minors being smuggled or trafficked into the UK identified that another factor determining the role of transit territories in the human trafficking process was not simply proximity to destination territories but also infrastructural connections. The study found that the transport routes that connected Belgium and the UK were a critical element of the trafficking and smuggling process.¹³

A 2009 study conducted on human trafficking from Thailand to Japan also identified that traffickers chose transit territories not just because of the ease of entry or the infrastructural connections, but because the transit countries were productive for the process of trafficking itself.¹⁴ The transit territories were productive for two reasons. Firstly, in breaking up the journey, transit countries provided a buffer between known “trafficking hotspots” and the destination country. The report cites the example of a female trafficking victim who was transited from Thailand to Japan through Malaysia specifically because a woman landing on a plane from Malaysia would be a less suspicious passenger than one entering Japan directly from Thailand, a country more widely regarded as an origin territory for human trafficking. The researchers noted that the “trafficker thought women disembarking from Malaysia would attract less attention from authorities than they would if they had arrived from Thailand.”¹⁵ In other words, passage through transit territories allowed traffickers to evade detection.

Secondly, the study identified that time in transit could be productive for the trafficking process by allowing traffickers to create “instruments of control”¹⁶ which were essential for

facilitating exploitation at the destination. In the examples cited, debt was accrued in transit as daily living expenses were added to transportation costs.¹⁷ This debt was a particularly important coercive instrument in the examples offered, where individuals had agreed to work in the sex industry. Debt prevented these women from leaving even when they realised that the conditions under which they would be working were significantly worse than what they had agreed to.¹⁸ The researchers concluded that “the debt was only a fraction of the traffickers’ costs, but the inflated debt and cycle of debt bondage are necessary to give the trafficked the notion that they are trapped.”¹⁹

In practice, the transit phase of human trafficking may be simply the time and process required to move a person from origin into the exploitation phase at the destination. Or, transit may play an integral part of the process of trafficking, allowing for example, traffickers to plug into infrastructural connections, evade detection or build up control mechanisms which will facilitate exploitation at the destination. Also, as UNODC notes, “categorizing certain countries as either origin or destination countries [...] implies that these are two discrete categories, while in reality, this is not so. Many countries are both origins and destinations.”²⁰ As the research highlighted above suggests, this may be equally true for the categorisation of territories as transit sites. Territories may have multiple phases of trafficking occurring within them at any given moment.



Hong Kong as a Transit Site

There is no comprehensive study on the prevalence of human trafficking in Hong Kong. A number of civil society reports have examined the issue as it relates to the experiences of migrant domestic workers in the city. For example, Justice Centre Hong Kong conducted research estimating the prevalence of forced labour and trafficking for the purpose of forced labour amongst migrant domestic workers²¹ as well as preliminary research on the refugee-human trafficking nexus in the city.²² Human trafficking has also been briefly examined as it relates to migrant sex workers in the city.²³ Additionally, the overall situation in Hong Kong is considered through the US State Department's annual Trafficking in Persons Report. Hong Kong has been placed on the Tier Two Watch List since 2016 with the US State Department asserting that "the Government of Hong Kong does not fully meet the minimum standards for the elimination of trafficking."²⁴

Despite this assessment, the Hong Kong Government continues to assert that "there is no sign Hong Kong is being actively used by transnational syndicates as a destination or transit point for TIP [trafficking in persons], or that TIP is a widespread or prevalent problem in Hong Kong."²⁵ While there is some evidence of how Hong Kong is a destination territory for human trafficking, there has been little examination of how the territory might be functioning

as a transit site for human trafficking. In August 2018 Liberty Shared published a "victim journey map" displaying some 330 routes victims have taken around the world, as reported by 40 anti-trafficking organisations. According to Freedom Collaborative, Liberty Shared's online platform which hosts the journey map, six reported routes involve Hong Kong as a transit point.²⁶

The following case studies highlight vulnerabilities and explore the potential mechanisms by which Hong Kong may be used as a transit site in human trafficking. The first two cases were shared by the Hong Kong Sub-Office of the International Organization for Migration (with permission) and are accurate to the best of their knowledge. The third was based on an interview conducted by Justice Centre Hong Kong for this research project. Each case study contains data about one individual only. No attempts were made to definitively determine whether the experiences reflected should be classified as human trafficking. Instead, case studies were included to highlight vulnerabilities and examine the potential ways in which Hong Kong may be used as a transit site in human trafficking.



CASE STUDY 1:

Migrant Domestic Workers and Deployment outside Hong Kong (shared by the Hong Kong Sub-Office of the International Organization for Migration)

Anne (not her real name) is a young woman from a rural area in the Philippines. In late 2017 she began actively looking for employment in Hong Kong in the domestic work sector. Her sister had already worked overseas as a domestic worker and Anne was looking for a similar job to help support her own family. Her sister talked to her about her experiences of working overseas and together they began looking for work in Hong Kong.

Using Facebook, Anne found an employment agency recruiting domestic workers for Hong Kong. Through the agency's Facebook page, Anne communicated with agency staff about employment in Hong Kong. Anne also used Facebook Messenger to submit initial documentation to the agency. When agency staff informed Anne that they had found a suitable employer, she travelled to Manila, the Philippines, to begin collecting and processing the necessary documents. While in Manila she also participated in training courses and underwent the required health checks. Anne then returned home to her province to wait.

Two months later, Anne was asked to return to Manila for the final preparations before departure. She was given a copy of her employment contract for Hong Kong, her passport, a number of other documents and instructions for what to do when she arrived in Hong Kong. On arrival in Hong Kong, Anne was met by a staff member of the Hong Kong agency who escorted her from the airport to a health clinic for a medical check-up and then to the Immigration Department to apply for a Hong Kong Identification Card (HKID). After this she was taken to the agency office and then on to the agency's boarding house where she was to stay for the next four days.

The day after her arrival in Hong Kong, Anne was taken to another office and asked to sign a number of forms which had been pre-filled. Anne came to understand that the forms were to apply for a visa for mainland China. Three days later, Anne's visa was approved. She was given a double-entry visa (valid for a period of six months), allowing her to stay in mainland China for 15 days at a time. Anne was instructed to head to a particular train station where she was introduced to someone she believed was her employer's friend. This woman handed Anne a bag containing her passport and all her other documents including her HKID. She then accompanied Anne by bus to the immigration control point for leaving Hong Kong. As she waited in the immigration queue to exit Hong Kong, Anne looked through her documents and realised that the name of her employer on her employment contract was the same name as the employer's friend escorting Anne into mainland China.

Once in mainland China, Anne was taken by bus to an apartment building where she was introduced to her actual employer. Her employer took Anne inside, introduced her to the household and explained her duties. Anne was to care for two children and undertake domestic duties for a household of five people. She worked 17 hours a day. She had her own bed to sleep in and was provided with food and drinks. She was also given access to the household WIFI but was told not to use her phone while she was working. She was given Sundays off.

Anne was nervous about the employer's name on her employment contract being different from the name of her actual employer and she raised these issues with her employer. Together with her employer, she travelled back to Hong Kong to discuss her concerns with the employment agency. Staff at the employment agency explained that there was nothing wrong and that Anne should focus on earning money. Anne continued to work but later joined an online chat group for domestic workers and was informed by other members of the group that her work in mainland China was unlawful. Anne sought assistance from an NGO in Hong Kong who told her that they thought her employment was unlawful. Worried about losing her income, Anne decided not to take any action.

Some months into her work in mainland China, Anne's employer learned that Anne had joined the online chat group. Her employer told Anne that she would not terminate her contract but would report her to the police if she tried to leave mainland China without her permission. Her employer said she had many contacts in the police and could get Anne into trouble if she wanted. On her next rest day, her employer told Anne she could travel to Hong Kong for her day off but only gave Anne some of her salary and explained that she would only pay the rest after Anne had returned to mainland China. Frightened by these threats, Anne again sought advice from an NGO in Hong Kong. Following this advice, Anne decided it was safer to terminate her employment contract and stay in Hong Kong.

CASE STUDY 2:

Trafficking for the Purpose of Forced Labour in Sex Work (shared by the Hong Kong Sub-Office of the International Organization for Migration)



Jane (not her real name) is a young woman from South America. In 2016 her parents fell ill, so she quit her university course and began looking for work to support them. An acquaintance learned of her search for employment and approached her about working overseas. When she said yes, the acquaintance arranged a meeting for Jane with an employment broker who claimed they were looking to fill jobs in the fashion industry in China. Jane accepted the job and the broker connected her with an employer in China. She was advised to get a passport. After getting a passport, Jane's employer secured a business visa to enter China and reimbursed her for the costs of securing the passport.

Jane arrived in China in early 2017. Her employer met her at the airport and took her to a hotel. At the hotel, Jane's employer took her passport and mobile phone. She returned the mobile phone to Jane after putting in a new sim card. She then told Jane to shower and dress before meeting with a client. When the client arrived and paid her employer, Jane realised that she was expected to provide sexual services.

She was expected to work every day from 4pm until 5am at a club near the hotel. She was always escorted and her employer threatened that she would find Jane and kill her if she ever tried to escape. Her employer regularly checked her phone. She was never paid a salary and her ongoing accommodation and food expenses were added to her original transportation debts.

Jane's business visa to China was valid for two entries of 30 days only. After 30 days, Jane was escorted by two men to Hong Kong by train and then returned to mainland China to activate her second 30-day stay. After this, Jane's employer applied to renew her business visa. Jane was granted an extension but for two weeks only. Her employer then decided to send Jane to South-east Asia to secure a new business visa. She sent her by train to Hong Kong and then bought flights for her out of Hong Kong. Despite being escorted, Jane managed to escape while in transit in Hong Kong and seek help.

CASE STUDY 3:

Trafficking for the Purpose of Exploitation in the Drug Trade

Fei (not her real name) lives in Guangzhou, China. In 2015, Fei began a relationship with a man called YN (not his real name) from Nigeria. Fei met YN through a former boyfriend who was a business partner. Two years after her relationship with her former boyfriend had ended, she met YN again in Guangzhou. YN asked Fei to go on a date and then began to pursue her to be in a relationship with him. Fei thought YN was a “normal” businessman with a trading business.

In 2015, YN asked Fei to travel to Kuala Lumpur in Malaysia to deliver some clothing items. Fei believed the clothing items were samples. She had travelled to Malaysia four times before upon the request her previous boyfriend (YN’s business partner). On two of these trips to Malaysia, her former boyfriend had asked her to carry goods with her to deliver in Kuala Lumpur. Her luggage had been checked on one of these trips by Malaysian law enforcement officials and nothing had been found so Fei did not suspect anything when YN asked her to do the same thing.

One week before the trip to Kuala Lumpur, YN asked Fei to carry some handbag samples in her suitcase. On the day of the trip however, YN asked her to deliver a box of new clothing instead. Fei was in a rush. YN had only just arranged all of the tickets for Fei’s trip. Instead of flying directly to Kuala Lumpur, Fei’s boyfriend asked her to travel via Hong Kong. YN had booked a flight from Hong Kong to Kuala Lumpur. This did not surprise Fei either. On all her previous trips to Malaysia, she had travelled by bus to Hong Kong and then by flight to Kuala Lumpur. For every trip, Fei had asked why she could not take the direct route, which would be less troublesome. Her former boyfriend’s response had been that it was cheaper to fly from Hong Kong. YN told her the same. Fei believed them.

Fei agreed to take the box and departed immediately, taking the bus from Guangzhou directly to the Hong Kong International Airport. YN had given her 300USD for the cost of the bus and any other expenses along the way. When she checked in at the Hong Kong International Airport, Fei was arrested by the Customs and Excise Department, who found drugs in her luggage. She told the Customs and Excise officers that she did not know there were drugs inside. The officers replied that there would be a cautioned interview and she could express her views there. She was then interviewed by Customs and Excise officers for 12 hours. Afterwards, she was detained at a police station for two days, appeared in court and then detained in the Tai Lam Centre for Women.

After her arrest, Fei wrote to the Liaison Office of the Central People’s Government in the Hong Kong Special Administrative Region and police stations in mainland China to seek assistance, but never received a reply. Fei went through two trials in Hong Kong because the jury could not reach a majority verdict as required by legislation. She was acquitted after the second



trial, three years after her arrest. Fei felt much more confident during examinations in the second trial and felt that this was important to her success. She thought that in cases like hers, the outcome depended on how individual jury members felt about the defendant. The concept of human trafficking was not raised in the trials.

While in the Tai Lam Centre for Women, Fei met about 20 other women who were caught trafficking drugs from Guangzhou to Kuala Lumpur. She also met other women from mainland China, Hong Kong, the Philippines, Indonesia, India and countries in Africa who were caught trafficking drugs to other places. Some of these women had known a man named YN, but it seemed to be a different person from the “YN” that Fei knew. Fei thought that the name “YN” was a name used by a group and was probably fake. She observed that there were many “small fish” arrested in Hong Kong but, to her knowledge, no “big fish” had ever been arrested. Everyone told Fei that she was lucky to have been arrested in Hong Kong and not mainland China or Malaysia. She knew there were 20 Chinese women waiting to be executed in Malaysia for drug trafficking.²⁷

Discussion

The case studies identified in this research reveal at least some of the ways in which Hong Kong may be functioning as a transit zone for human trafficking. These experiences are not necessarily constitutive of human trafficking. However, the arrangements by which these individuals are moved through Hong Kong suggest the methods by which individuals can be moved through Hong Kong for human trafficking. The discussion which follows attempts to contextualise these case studies and begin the much-needed examination of *why* Hong Kong may function as a transit site.

Migrant Domestic Workers and Deployment outside Hong Kong

Concerns about migrant domestic workers in Hong Kong being taken out of Hong Kong to work by their employers have been raised for some time now and a number of cases have received media attention. In 2016, it was reported that a migrant domestic worker from the Philippines who was employed in Hong Kong was compelled to work illegally in mainland China by her employer. Believing that she was only accompanying her employer, the worker was instead threatened with early return to the Philippines if she did not work for another individual while in mainland China. On returning to Hong Kong, she was able to pass a note to a Hong Kong official at the immigration checkpoint through her passport saying, “I have a problem, please help me call my agency in Hong Kong.” The official ignored her note and simply returned her passport.²⁸

In July 2017, it was reported that a migrant domestic worker from the Philippines who was employed in Hong Kong fell to her death from the seventh floor of an apartment building in Shenzhen, China. The victim’s family believed that she had been taken from Hong Kong into mainland China to work by her employers at least four times since October 2016. In this case, the Hong Kong Immigration Department noted that the incident was a suspected case of human trafficking and referred it to the Hong Kong Police for further investigation.²⁹ Indonesian Consul-General to Hong Kong Tri Tharyat reported that the Indonesia Consulate to Hong Kong had detected on average two to three cases a month of migrant domestic workers frequently taken into mainland China to work: “some helpers’ passports ran out of pages in less than two years.”³⁰

Nor are cases restricted to work in mainland China. In 2013 it was reported that a migrant domestic worker had been taken by her employers from Hong Kong to Canada. Before leaving for Canada, the employers had promised to assist the worker to acquire permanent residency status in Canada within two years. Instead she worked for two years for 16 hours a day, seven days a week. It was also reported that after they arrived in Canada, with the migrant domestic worker travelling on a tourist visa, the employers had confiscated her passport and denied her access to the phone except for one phone call a month. One of the employers was found guilty of human trafficking in 2013. He successfully appealed the verdict in 2015 and won a new trial in which he was only found guilty of a lesser charge.³¹

Organisations in Hong Kong have made anecdotal reports of migrant domestic workers in Hong Kong being recruited for work in Taiwan, Canada, Italy, the United Arab Emirates and Russia.³²

UK NGO Kalayaan reported that they had supported a number of cases of migrant domestic workers who were originally employed in Hong Kong and subsequently taken into the UK to work. They commented that in some cases, workers did not want to accompany their employers. The organisation was aware that there were cases where the acquiescence of the worker was achieved by threatening to return them home or refuse to provide a reference, which was crucial to finding another employer. Kalayaan noted that migrant domestic workers in Hong Kong risk incurring more agency fees and additional expenses if their contract is terminated and they are required to return home to secure new contracts in Hong Kong. They argued that agency fees, expenses and the requirement to leave Hong Kong “operate as a form of psychological coercive control for many workers because they simply cannot afford it,” forcing migrant domestic workers to agree to accompany their Hong Kong employers overseas for work.³³

“ Agency fees, expenses and the requirement to leave Hong Kong operate as a form of psychological coercive control for many workers because they simply cannot afford it. ”

Interviews with NGOs in Hong Kong revealed that many organisations are encountering migrant domestic workers being taken outside Hong Kong to work where work outside Hong Kong forms the majority if not the only component of their job. In all reported cases, people entered Hong Kong on a Foreign Domestic Helper (FDH) visa having signed the Standard Employment Contract. Caritas Asian Migrant Workers Social Service Project (CAMWSSP) described how, when asked, some migrant domestic workers explained that their employers were spending long periods of time in mainland China to receive Chinese medicine treatments. Some employers were based in mainland China but had children attending school in Hong Kong. And other employers were based solely in mainland China but had employed their migrant domestic worker through an employment agency in Hong Kong. In the



experience of CAMWSSP staff, most migrant domestic workers working outside of Hong Kong were employed for domestic household and child care duties, but they noted that in one case they had encountered, the individual's employer owned a furniture factory and the bulk of the work expected of the individual was within the factory.³⁴

CAMWSSP reported that they did not keep statistics on such cases but estimated that they were encountering at least three to four cases per year. They noted, however, that they did not actively screen for such cases and nor did clients necessarily self-report when their work was outside of Hong Kong. They explained that in most cases, work outside Hong Kong (even where such work was “the only job”) was only ever raised incidentally. CAMWSSP staff described how sometimes it came up only at the end of the session when staff were trying to book the next service appointment for clients who would then mention that they did not know when they would next be in Hong Kong. CAMWSSP staff assessed that many of the migrant domestic workers they encountered were not concerned that their work was in mainland China rather than Hong Kong since many were not aware that the work was unlawful and because “at least they have a job”. As a result, when they became aware that a client was working outside Hong Kong, CAMWSSP staff tried to explain to them that there might be fewer protections if they worked on a tourist visa: “All the protection is in Hong Kong. Once you leave Hong Kong, [...] you are tourist, no protection anymore.”³⁵ Whether any protections are available irrespective of labour law or migration status depends on the country.

In cases where migrant domestic workers expressed concern about working outside of Hong Kong to their employers, CAMWSSP reported that employers were often unconcerned about the consequences. CAMWSSP noted that one employer told the migrant domestic worker they were employing: “It’s normal, you still work for me! Under my sponsorship! No matter Hong Kong or China, you still work for my family.” CAMWSSP staff also reported that this lack of concern was reflected in the

“ It’s normal, you still work for me! Under my sponsorship! No matter Hong Kong or China, you still work for my family. ”

experiences of migrant domestic workers crossing to mainland China. When staff encountered migrant domestic workers crossing into mainland China on a weekly basis, they asked workers whether immigration officials ever flagged potential issues: “Every week, you go in. The immigration did not check you, and ask you? Because you go quite often! Very frequent! Every week, you’re in and out. They never ask?” They explained that even though it was clear from their passports that they were rarely in Hong Kong, workers did not indicate that they were ever questioned by immigration officials on either side. On the one or two occasions when questioning did occur, migrant domestic workers explained to CAMWSSP staff that they told immigration officials that they were travelling to mainland China with their employers and no further questions were asked.³⁶

Mission for Migrant Workers (MFMW), a Hong Kong NGO working predominantly with migrant domestic workers, also reported similar experiences amongst the migrant domestic workers who accessed their services. The organisation noted that they regularly saw migrant domestic workers who had been taken into mainland China to work but like CAMWSSP, they did not keep statistics on the number of cases. They estimated that they saw at least five to six cases in 2017. MFMW reported that, amongst the individuals who accessed their services, most did not know that their employment would be partly or solely in mainland China when they signed their contracts. They noted that they

had seen cases where employers had used fake addresses on the Standard Employment Contract and in the visa application forms. In another case, the migrant domestic worker had never been to the address listed in her contract. MFMW staff commented that there was often no sense of concern about being stopped and questioned once in mainland China. They described how people working in mainland China often approached MFMW only after joining online chat groups and discovering that their work was currently unlawful.³⁷

“People working in mainland China often approached NGOs only after joining online chat groups and discovering that their work was currently unlawful.”

They also commented that people would sometimes approach MFMW with questions about the status of their employment if they had been stopped and questioned trying to leave or re-enter Hong Kong. MFMW staff reported that the experience of being questioned by immigration officials engendered a sense of unease and insecurity for some migrant domestic workers which prompted them to seek advice. However, in their experience, workers were rarely stopped. The different experiences of migrant domestic workers moving to and from mainland China suggests that the capacity and/or interest of officials on both sides may vary considerably. This is may be a potential site for additional research.

Although Hong Kong has been commonly identified as a destination for human trafficking with regards to migrant domestic workers in research or policy discussions, in the examples noted above, Hong Kong is only one of the destinations or not an actual destination at all. Since there is transit through Hong Kong, however, it is important to consider whether and how this transit may be part of a trafficking experience. But whether taking migrant domestic workers employed in Hong Kong to work outside Hong Kong constitutes transit for the purpose of human trafficking depends on whether exploitation is occurring or is intended.

The legality or illegality of Hong Kong employers taking their migrant domestic workers outside of Hong Kong to work is not established by legislation in Hong Kong. In the absence of legislation, policies, or operational guidance, there is a potential

avenue for the labour undertaken by people on the FDH visa to be unlawful. Furthermore, there is potential for the situation of these workers to become exploitative when their work is undertaken outside of the framework of protection that exists within Hong Kong.

Neither the Immigration Ordinance, Cap. 115 nor the Employment Ordinance, Cap. 57 addresses the issue of migrant domestic workers leaving Hong Kong with their employers to work. Employers and workers are required through the Standard Employment Contract by the Immigration Department to state the employer's address in Hong Kong. Migrant domestic workers who work at a location in Hong Kong other than the employer's primary residence contravene the Standard Employment Contract and therefore their conditions of stay. The migrant domestic worker and anyone who aids them in this endeavour are liable to criminal prosecution.³⁸

When it comes to working outside Hong Kong, the regulation is dealt with informally by the operational policy of the Immigration Department of Hong Kong. This informal approach is found on the Immigration Department's website, which has a section dedicated to information regarding employment visas, including the FDH visa. Under the "Frequently Asked Questions" (FAQ) tab on the Department's website, there is a section titled "General Remarks". According to paragraph 5 of these General Remarks:

"The conditions of stay in respect of an FDH apply only whilst the FDH is in Hong Kong. If the FDH follows the employer to go abroad on a mutual consent basis, the parties to the Contract are reminded to observe the relevant visa requirements, laws and regulations of the destination country/territory. Particular attention should be drawn to the insurance arrangements. If the FDH gets injured at work in the destination country/territory, he/she may claim compensation in accordance with the employees' compensation law of that country/territory."³⁹

The other instance in which the issue of Hong Kong employers taking their migrant domestic workers outside of Hong Kong is addressed by the Immigration Department is found under the FAQ, Q22, which asks:

"Can I apply to change my FDH's contractual address to that of my parents since my family (wife and children) will be moving abroad due to my posting overseas for a term of three years? What about a temporary arrangement, say, for 3 months?"

Regarding a "temporary arrangement concerning the FDH for when the employer will be overseas," the Immigration Department states that,

"... it is important that you reach a mutual agreement

with your FDH as to whether he/she would agree to accompany you to go abroad or remain in your contractual address to take care of your residence/household whilst you are not in Hong Kong.”⁴⁰

These statements highlight an inherent ambiguity in Immigration Department policy with regards to the employment of migrant domestic workers outside Hong Kong. It does not explicitly allow or prohibit employers from taking migrant domestic workers outside of Hong Kong. Rather, the Immigration Department appears to take a non-interference stance, leaving the decision whether to travel together between an employer and their migrant domestic worker. Indeed, such travel are generally considered “common practice”, with conversations on online forums such as the Facebook Group “Hong Kong Mums” consistently indicating that employers take their migrant domestic workers with them outside of Hong Kong.⁴¹ In one such case of death of a migrant domestic worker employed in Hong Kong in mainland China, it was reported that the employer was arrested for conspiracy to defraud⁴² but whether this was because the worker contravened the conditions of stay by working outside Hong Kong is unclear.

The China Travel Services (Hong Kong) Limited (CTS(HK)), an agency handling the issuance of Chinese visas in Hong Kong, has a webpage on domestic workers applying for an “L” tourist visa. The visa can be for a single entry, double entry or multiple entries within a period of six months. The single-entry and double-entry visas allow a stay from one to 30 days while the multiple-entry visa allows a stay from one to 15 days. Proof of residence and letters of guarantee (content of which is not specified on the CTS(HK) website) signed by both the employer and the worker are needed to apply for the visa. It is stated on the CTS(HK) website that both the employer and the worker have to apply for the visa in person. There is no requirement stated on the CTS(HK)’s website of insurance.⁴³ As early as 2014, there were discussions on Hong Kong online forums about taking migrant domestic workers to mainland China.⁴⁴ There were 17 responses in a thread on this topic within three months, with many employers giving advice on how to apply for the visa to other employers.

Exploitation in the Human Trafficking Framework

Case study 1 illustrates that migrant domestic workers may be deceived or coerced into accompanying their employers outside of Hong Kong and once outside Hong Kong, their working and living conditions may be poor or may become exploitative. But at what point would this maltreatment amount to exploitation as part of a human trafficking experience? The Trafficking Protocol defines human trafficking as being for the purpose of exploitation but does not include a definition of exploitation. Instead, it outlines a non-exhaustive list of forms of exploitation, including: the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, and servitude or the removal of organs.⁴⁵

Some included forms of exploitation are defined in separate

international conventions. For example, both forced labour and slavery are defined under international law.⁴⁶ But in the absence of a definition of exploitation beyond the included examples, UNODC notes that questions remain about which behaviours and experiences can be categorised as exploitation within a human trafficking framework.⁴⁷ UNODC comments that the list of examples of exploitation included in the Trafficking Protocol can be expanded as States see fit. But they argue that “in terms of expansion there are some limits, which may potentially include a threshold of seriousness that operates to prevent the expansion of the concept of trafficking to less serious forms of exploitation such as labour law infractions.”⁴⁸ The point at which rights violations meet the threshold of exploitation for human trafficking is therefore a matter for further discussion.

“Forced labour” is defined in Article 2(1) of the 1930 Forced Labour Convention as “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 voluntarily.” CAMWSSP staff noted that in all cases they knew of where the migrant domestic workers were working outside of Hong Kong, the employer kept the worker’s passport, restricting the ability of the worker to leave or seek help. This is an indicator that the work might be involuntary and amount to forced labour. Where migrant domestic workers consensually accompany their employers outside of Hong Kong and work for them there, their labour (now being performed outside Hong Kong) may still amount to exploitation, depending on how “exploitation” is defined, as discussed above. And, as both CAMWSSP and MFMW staff noted, it is far from clear whether any of the regulations protecting migrant domestic workers in Hong Kong (employment or otherwise) would protect them for work outside of Hong Kong. MFMW reported that they had supported migrant domestic workers to make complaints to the Hong Kong Police about treatment by their employers while working outside Hong Kong. They reported that the response of the Police officers was that “it didn’t happen [in Hong Kong] so we can’t do anything.”⁵⁰ This context suggests that these could be examples of human trafficking through Hong Kong as a transit site, which are facilitated by the lack of clear legislation or government policies monitoring such travel and its potential consequences.

Case study 3 suggests that exploitation for human trafficking may also be occurring within the drug trade although it would appear that this concept was not considered in the trial of the case. John Wotherspoon, a priest assisting people who have been tricked into trafficking drugs, revealed that he had assisted a number of people who had been deceived or coerced into carrying drugs through Hong Kong on the way from South America or Africa to mainland China. During transit through Hong Kong, these people had been arrested and sentenced to jail time in Hong Kong. He explained, however, that Hong Kong was the destination (rather than transit site) for the majority of people he encountered. As noted, the list of examples of “exploitation” included in the Trafficking Protocol is non-exhaustive and a separate definition of “exploitation” is not included. As a consequence, different States have developed

different lists of exploitative behaviour. For example, the European Union Trafficking Directive 2011 includes “exploitation of criminal activities” within its list of exploitative purposes. The accompanying note states that this expression “should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain.”⁵¹ According to this explanation, exploiting a person to traffic drugs would amount to human trafficking.⁵²

Case study 3 may not be an isolated event. A news report in 2018 supports the observation of Fei that hers was not a single case. It was reported by the Malaysian Chinese Association that, from 2013 to 2015, more than 20 Chinese women were arrested in Malaysia for carrying drugs into Malaysia. In at least one other case, the woman was asked by a friend to carry clothing samples from Guangzhou to Malaysia, also via Hong Kong. According to the news report, an officer (or former officer) who had worked in enforcement against drug crimes in Guangzhou for many years commented that drug trafficking through Hong Kong was less likely to be detected. This is because there were many more people passing from Guangzhou and Shenzhen to Hong Kong than from Guangzhou to Malaysia. It was assessed that Hong Kong law enforcement also had relatively limited capacity to intercept luggage on transit.⁵³

Where case study 1 highlights vulnerability to exploitation following transit through Hong Kong and case study 2 depicts transit through Hong Kong to facilitate continued potential exploitation, in case study 3 the potential exploitation began when Fei took the baggage with the drugs in Guangzhou and was in progress at the moment of transit through Hong Kong.

Conception of Transit

Case study 2 highlights how traffickers can use Hong Kong as a form of temporary holding zone for individuals trafficked into forced labour in sex work in other territories in the region. But Hong Kong has its own sexual services industries and individuals working in Hong Kong may also move through Hong Kong on their way to sex work in other places. Some of this work may be exploitative. NGOs in Hong Kong reported that access to people working in the sex industry (either consensually or forced) continued to be challenging, particularly as a result of the transitory nature of their time in Hong Kong. Staff at Sons & Daughters, a faith-based NGO working with migrants engaged in sex work in the city, commented that most of the people they engaged with through outreach were highly transient, only spending one or two weeks at a time in Hong Kong, and that it was difficult to spend significant amounts of time with any individuals during outreach sessions. They noted that many of the people identified through outreach travelled through mainland China, Hong Kong, Singapore, Malaysia and even as far as Dubai, using the time allocated to them on tourist visas at each destination to engage in sex work. Eden Ministry, another faith-based NGO working in Hong Kong with sex workers, noted that the majority of

women that they encountered through outreach services considered Hong Kong as the ultimate destination. Some women, after having been in Hong Kong for many years, came across opportunities to move and then moved to other destinations like Australia. Again, time and work in Hong Kong enabled onward movement through income generation and facilitating access to other destinations. Territories like Hong Kong can thus be both destinations where labour is undertaken and transit sites in the sense that time in one place facilitated onward movement to the next destination.

“ Territories like Hong Kong can be both destinations where labour is undertaken and transit sites in the sense that time in one place facilitated onward movement to the next destination. ”

Onward movement out of Hong Kong for migrants engaged in sex work is also affected by whether they are contracted to work in a bar or “freelancing”. Sons & Daughters explained that many women who are “freelancing” are self-organised. They have usually worked in Hong Kong before and have established networks of friends and contacts. In this way, they are able to arrange their own travel (typically on tourist visas) and their work independently. In this case, Sons & Daughters understood that onward travel out of Hong Kong is also generally self-organised. Where women are not “freelancing” in Hong Kong, Sons & Daughters were able to ascertain that a number of women are employed on a contract basis with a specific establishment in Hong Kong through a general employment visa. While the contract with the establishment is for six months, the visa is usually valid only for three months and the women are required to renew this visa. These arrangements are made through a named agency. The agency is then often involved in arranging onward travel out of Hong Kong for work in other destinations once the contract is finished.⁵⁴

Action for Reach Out (AFRO) is a Hong Kong NGO providing services and support to women working in the sex industry in Hong Kong. The women they work with are generally from

Hong Kong, mainland China, Thailand, and the Philippines but they have also encountered women from further afield. AFRO's Executive Director Kendy Yim reported that they had encountered migrants from mainland China who had obtained permanent residence in Hong Kong and then subsequently migrated to Australia to work.⁵⁵ She did not know the situation of these women in Australia. The Australian Institute of Criminology reported that between July 2007 and December 2008, two Hong Kong permanent residents were identified as victims of human trafficking in Australia.⁵⁶ The Hong Kong Special Administrative Region was not listed as one of the places of origin in the same source though, while there were six victims from China, one of the countries listed as countries of origin. Further research is needed to understand the experiences of these Hong Kong permanent residents, including their migration paths, industries they worked in and their working conditions in Australia. Where these experiences could be construed as human trafficking, then the time in Hong Kong, while protracted, was nonetheless part of the journey.

Whether the work in any one destination is exploitative or not varies considerably. For example, Sons & Daughters noted that from discussions with women working in Hong Kong, conditions in Malaysia could be the hardest but that this was not necessarily the case. Nor were difficult conditions necessarily exploitative.⁵⁷ But whether the onward travel is facilitated by a third party and whether it is the intent of the third party to exploit the individual after they have exited Hong Kong is pivotal to any assessments of what constitutes transit through Hong Kong for the purpose of human trafficking. In the research highlighted in the literature review, transit was often only identified as transit retrospectively after exploitation had occurred at the destination point. While in case study 2, Hong Kong is identified as a transit site on the way to possible further exploitation that does not eventuate, in the examples cited by NGOs, exploitation may have happened at a destination after Hong Kong, but it was by no means certain that this would be the case.

McAdam notes that NGOs and government officials "may be able to identify signs that a person has already been exploited, but where victims or potential victims of trafficking are intercepted [...] before any exploitation takes place, their identification is extremely difficult".⁵⁸ It is noted that many of the most obvious indicators of human trafficking are derived from the exploitation phase of trafficking and therefore not relevant where exploitation has not yet taken place,⁵⁹ particularly if the victim is not yet aware that exploitation will occur or that they have been deceived. An NGO in Hong Kong noted that this can often be the case when victim of trafficking identification is focused on identifying exploitation that has already taken place and then working backwards.⁶⁰ In such a process, any experiences of transit are likely to be identified only retrospectively.

The Hong Kong Court of Appeal stated in its judgment of *ZN v Secretary for Justice and others*⁶¹ that, for workers imported into Hong Kong and for those in transit in Hong Kong, the Court's impression is in a majority of cases, not even

“... many of the most obvious indicators of human trafficking are derived from the exploitation phase of trafficking and therefore not relevant where exploitation has not yet taken place ...”

the workers themselves were aware that they were victims of human trafficking for forced labour until they had actually been required to perform forced labour. Just as victims of human trafficking may be unable to self-identify as victims of trafficking, it may be difficult for government officials to detect human trafficking of an unknowing victim. Based on this assessment, the Court held that there is not a particularly convincing argument for interpreting Article 4 of the Hong Kong Bill of Rights expansively to apply to human trafficking in addition to forced labour.⁶²

However, as demonstrated by case study 2, it may indeed be possible for a person to assess whether an employer intends to exploit himself/herself, based on how the same employer has treated him/her in another place previously. There have been convictions in countries such as Israel, the Philippines and Serbia of human trafficking where the intended exploitation never transpired.⁶³ This suggests that evidence-wise, it is possible to prove the intention of exploitation and this could be evidence in support of an expansive interpretation of Article 4. Moreover, when considering the situation of victims in transit, the Court of Appeal observed that the likelihood of detection by the Hong Kong Government would be slim, "bearing in mind that travellers in transit are not required to go through immigration." It seems that the Court considers "transit" to mean only passing through the Hong Kong airport in between connecting flights without clearing immigration. But such a narrow interpretation is not based on any legal definition of "transit." The term is not defined in the Trafficking Protocol. Given the different modes of movement through Hong Kong identified in the case studies above, such a narrow interpretation of "transit" is not conducive to either the prevention or the identification of human trafficking.



“ A narrow interpretation of “transit” is not conducive to either the prevention or the identification of human trafficking. ”

Conclusions

In the case studies identified above, and in the discussions with NGOs and international organisations, it is clear that Hong Kong is not only a destination for people trafficked into the city. Individuals are being moved through the city in ways in which they are vulnerable to trafficking. As the literature review makes clear, while transit might be commonly perceived as fleeting and simply part of the journey, in reality, time in transit sites may be protracted and productive for the exploitation phase.

“... while transit might be commonly perceived as fleeting and simply part of the journey, in reality, time in transit sites may be protracted and productive for the exploitation phase.”

Adjusting our understanding of transit accordingly (expanding our lens) allows us to consider that time in Hong Kong to renew visas (case study 2), time in Hong Kong complete the final steps to secure a FDH visa before being taken outside of Hong Kong to work (case study 1), or attempting to pass through Hong Kong while unknowingly transporting illegal drugs (case study 3) may be the “transit” phase of a human trafficking experience. In one case, exploitation has already occurred, in another, exploitation has not yet happened but may do, and in the final case, exploitation is in progress. But in all three cases, Hong Kong is ultimately not the intended destination.

It is worth reiterating that this research is exploratory only and is limited in terms of the number and scope of sources interviewed as well as the number and type of case studies identified for inclusion. With further in-depth research, it may be possible to uncover other forms of transit through Hong Kong and stronger evidence of exploitation occurring outside of Hong Kong. Indeed, it may be possible to find examples where forms of exploitation happen both within and beyond Hong Kong. With additional research, it may also

be possible to consider the connections between Hong Kong and other places in the region and beyond, and to explore the implications of this study and further research for these regions as well as for Hong Kong.

The included case studies demand particular attention when beginning to consider not just *how* Hong Kong might be a transit site but also *why* it might be functioning as such. Case study 1 suggests that some employment agencies in Hong Kong may be playing a role in facilitating the employment of migrants in mainland China, by using Hong Kong’s FDH visa programme. In a number of interviews, it was noted that some parts of the migrant domestic worker employment industry in Hong Kong played a role in organising employment outside Hong Kong.⁶⁴ The presence of an established employment agency industry in Hong Kong may form an infrastructure which can be utilised for the purpose of exploitation within Hong Kong but also outside Hong Kong. As Perrin noted, one of the defining characteristics of transit territories is the presence of infrastructure within the territory to facilitate transit through the territory.⁶⁵ Case study 1 suggests that further research is necessary to explore how and to what extent the migrant domestic worker employment agency infrastructure is being harnessed. Further research could also consider if and how other forms of infrastructure may be harnessed as for the purpose of human trafficking.

As Goh, Wee and Yeoh note, key to the mobilities of the large numbers of women who migrate for employment as domestic workers “is the migration industry, a range of brokers from licensed recruitment agencies to informal recruiters, who move, match, and place domestic workers with employers.”⁶⁶ They also argue that it is vital that we recognise how migration industries “play crucial roles in governing workers in working to both control and facilitate migration flows.”⁶⁷ The experiences outlined in case study 1 suggest a number of questions for further research: at what point does the employment of migrant domestic workers become unlawful? What are implications for workers and employers? What protections exist for those working on tourist visas? To what extent are employment agencies in Hong Kong facilitating migrant domestic work in mainland China? Are there any relationships between agencies in Hong Kong and brokers in mainland China? What are the operational practices for immigration and other border officials with regards to migrant domestic workers’ travel? What are the perspectives and capabilities of officials stationed at borders? As the demand for workers in the domestic and elderly care sector grows, these are vitally important questions to consider.



Further Considerations and Research

This study has raised more questions than it has answered and there are a number of issues which are important to consider in the light of the identified case studies and accompanying discussions. Perhaps most fundamentally, it will be essential to consider how victim of trafficking identification may be expanded and strengthened to address situations in which exploitation has not yet happened. If human trafficking victim identification mechanisms are focused primarily on identifying situations in which exploitation has already occurred, then victims for whom exploitation has not yet occurred but where there is the intent to exploit will likely remain undetected. As a consequence, where victim identification mechanisms only identify victims who have already been exploited, the principle of prevention will be unaddressed. Key to considering how to identify victims of trafficking in transit, moreover, is recognising the potential role of transit within the human trafficking process and therefore conceiving of transit more broadly than transit passage at the airport.

Further research will be vital for any efforts to expand and strengthen victim of trafficking identification mechanisms in Hong Kong. For this reason, while this research has explored a number of scenarios in which Hong Kong may be a transit site for human trafficking, further research is recommended on the following topics:

- The experiences and perspectives of officials in identifying people in vulnerable situations at entry and exit points throughout Hong Kong.
- The experiences and perspectives of officials working in correctional services and detention facilities in Hong Kong in engaging with imprisoned and detained migrants and non-residents, particularly with regards to any assessments of migrant and non-residents' vulnerability.
- The experiences and perspectives of imprisoned and detained migrants and non-residents, particularly with regards to their interactions with Hong Kong institutions and mechanisms.
- The experiences and perspectives of various Hong Kong agencies in monitoring and disrupting illegal trafficking of

drugs or other prohibited items.

- The legality under the laws of Hong Kong and other destinations for a migrant domestic worker employed in Hong Kong to work outside Hong Kong and the legality of employers or agencies in aiding this act at the point at which it is unlawful.
- The role of brokers and employment agencies inside and outside of Hong Kong in using the FDH visa scheme to bring migrant domestic workers through Hong Kong for work in other destinations.
- The experiences and access to redress of migrant domestic workers in Hong Kong seeking help for violation of rights that happen outside of Hong Kong through, for example, the Employment Agencies Administration and the Labour Tribunal.
- The views and practices of employers of migrant domestic workers with regards to work undertaken outside of Hong Kong.
- The situation and experiences of migrant domestic workers in Macau or other places with regards to re-application processes for Hong Kong visas because they are not allowed by the Hong Kong Immigration Department to stay continuously.
- The situation of workers entering Hong Kong through the Supplementary Labour Scheme en route to Hong Kong, in Hong Kong and after their stay in Hong Kong.
- The experiences of migrants from mainland China and Hong Kong to Australia.
- Experiences and perspectives of access to justice, especially for migrants or non-residents – case study 3 suggests that familiarity with the trial process and confidence in trials may play a key role in access to justice.
- The responsibilities of States while a person is moving through, or being moved through, their territory.

This list is not exhaustive by any means. It is the hope of Justice Centre Hong Kong that the early findings contained in this report initiate discussion amongst multiple stakeholders within the city and beyond to explore who and how people are being moved through Hong Kong, the vulnerabilities of these individuals to human trafficking and other human rights abuses, and how collectively we may begin to reduce these vulnerabilities where possible and provide redress and rehabilitation for those whose human rights have been abused.

Endnotes

- 1 Article 3(a), United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (commonly called the Palermo Protocol or Trafficking Protocol).
- 2 Gallagher, A. (2010) *The International Law of Human Trafficking*. Cambridge UP, Cambridge, p. 34.
- 3 The term “transit” appears in the Preamble of the Trafficking Protocol, in the declaration that effective action to prevent and combat trafficking in persons requires a comprehensive international approach in the countries of origin, transit and destination, but not in any article of the Trafficking Protocol.
- 4 United Nations Office of Drugs and Crime (UNODC). (2006). *Trafficking in persons: Global patterns*, p.60. Retrieved from: https://www.unodc.org/pdf/traffickinginpersons_report_2006ver2.pdf.
- 5 *Ibid*, p. 60.
- 6 *Ibid*, p. 60.
- 7 Section 129 of the Crimes Ordinance, Cap. 200, although titled “*Trafficking in persons to or from Hong Kong*”, provides for an offence of taking part in bringing a person into or taking a person out of Hong Kong for prostitution, which is not consistent with the Trafficking Protocol definition of “human trafficking”.
- 8 UNODC. (2016). *Global Report on Trafficking in Persons*. Retrieved from https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf
- 9 *Ibid*, p.39.
- 10 *Ibid*, p. 60.
- 11 Perrin, B. (2010). *Trafficking in persons & transit countries: A Canada-U.S. case study in global perspective*. Metropolis British Columbia. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1611278, p. 15.
- 12 *Ibid*, p. 15. See also Perrin, B. (2010). Just Passing Through? International Legal Obligations and Policies of Transit Countries in Combatting Trafficking in Persons. *European Journal of Criminology*, 7(1), 11-27.
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- 16 *Ibid*, p. 207.
- 17 *Ibid*, p. 207.
- 18 *Ibid*, p. 207.
- 19 *Ibid*, p. 209.
- 20 UNODC (2016), p. 40.
- 21 Justice Centre Hong Kong. (2016). *Coming Clean: The prevalence of forced labour and trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong*. Retrieved from: <http://www.justicecentre.org.hk/framework/uploads/2016/02/Coming-Clean-2016-Justice-Centre-Hong-Kong.pdf>.
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- 23 Cheung, P., et. al. (2014). *A Survey of Mainland Migrant Sex Workers in Four Major Chinese Cities*. Zi Teng. Hong Kong.
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Notes

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PROTECTING FORCED MIGRANTS' RIGHTS

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 migrants: refugees, other people seeking protection, and survivors of torture, human trafficking and forced labour.

Launched in 2014, Justice Centre was formerly Hong Kong Refugee Advice Centre (HKRAC), which over seven years helped more than 2,000 refugee men, women and children on the road to a new life. At our centre, people seeking protection in Hong Kong receive free and independent legal information and specialised legal and psychosocial assistance.

Justice Centre advocates with and for migrants, bringing their voices into the public debate. We advocate for legislative and policy change, conduct research and work with the media and civil society to fight root causes and change systems and minds.

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