

SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

On a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration
February 2019

Justice Centre Hong Kong (Justice Centre) makes the following submissions to United Nations the Committee on the Elimination of Discrimination Against Women (the Committee) for its half-day general discussion on trafficking in women and girls in the context of global migration in Geneva, Switzerland on 22 February 2019. The purpose of the general discussion is to prepare the elaboration by the Committee of a General Recommendation on trafficking in women and girls in the context of global migration.

Root causes of women's and girls' increased risk to trafficking

The objective of this General Recommendation is to uncover the root causes of women's and girls' increased risk to trafficking and remaining as trafficking victims, in order that these be identified, recognised and addressed by State Parties. Justice Centre's qualitative *Refugee-Human Trafficking Nexus Research* has found that some women and girls who were potential victims of human trafficking migrated to Hong Kong, China to flee violence, including sexual and gender based violence in their home countries.¹

In one case study, Bibi (not her real name) faced death threats from a politically influential member of the community and suffered severe sexual abuse by public officials after reporting the murder of a family member to the police. She sought help from a family friend who suggested that she travel to Hong Kong to work as a migrant domestic worker. Bibi's conditions of recruitment and employment could be described as human trafficking. In Hong Kong, she worked for 21 hours a day for a salary of less than USD 50 a month. The broker who arranged her travel and employment took most of her salary and controlled her ability to terminate her employment contract.

In another case study, Rose (not her real name) came from a poor rural area in Asia. She was forced by her father to marry his creditor when he could not repay his debts. At the time of her forced marriage, Rose was under 18 years of age. This situation could be described as human trafficking. Rose's husband frequently raped her and threatened to kill her. She was given little food and had to work on the farm of her husband's family for up to 16 hours a day. One of Rose's neighbours had worked in Hong Kong as a migrant domestic worker and introduced a broker to Rose.

¹ Justice Centre Hong Kong. (December 2017). *Refugee-Human Trafficking Nexus Research*. Retrieve from: http://www.justicecentre.org.hk/framework/uploads/2014/03/Report_compressed.pdf.

PROTECTING FORCED MIGRANTS' RIGHTS

Rose then worked in Hong Kong as a migrant domestic worker for more than seven years. She was paid less than the statutory minimum allowable wage in her first contract in Hong Kong.²

These case studies suggest that women in difficult family situations undertake labour migration as a flight option. Given their existing vulnerabilities, women in these situations are vulnerable to human trafficking.

Quantitatively, Justice Centre estimates that 17% of the 370,000 migrant domestic workers (99% of whom were women as of 2016)³ are in forced labour and of those, 14% are trafficked for the purpose of forced labour.⁴ Migrant domestic workers in these situations or with these characteristics were found to be more likely to be working in conditions of forced labour:

- Workers with recruitment debt equal to or exceeding 30% of their reported annual income were six times more likely to be in forced labour;
- Workers from Indonesia were 70.5% more likely than non-Indonesians to be in forced labour;⁵
- Workers who secured their contract outside Hong Kong were 15.4% more likely to be in forced labour;
- Workers on their first contract were 2.7 times more likely to be in forced labour; and
- Workers younger than 30 were 52.8% more likely to be in forced labour and those younger than 24 were 15 times more likely.⁶

There are also women who were deceived into drug trafficking by intimate partners. In one case study in our research report *Not Stopping Here: Hong Kong as a Transit Site for Human Trafficking*, a woman was asked by her boyfriend to take what she was told were clothing items (which were in fact drugs) from Guangzhou, China to Kuala Lumpur, Malaysia via Hong Kong. She met about 20 other women who claimed to be in a similar situation while in detention in Hong Kong.⁷ Similar cases have also been reported in the media.⁸ This form of recruitment seems to be gender-

² The case studies have been published in J Anderson and A Li, 'Refugees or Victims of Human Trafficking? The case of migrant domestic workers in Hong Kong', *Anti-Trafficking Review*, issue 11, 2018, pp. 52–68, www.antitraffickingreview.org.

³ Data from the 2016 Population By-census conducted by the Census and Statistics Department, Hong Kong, retrieved from: https://www.bycensus2016.gov.hk/en/bc-own_tbl.html.

⁴ Justice Centre Hong Kong. (March 2016). *Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong*. Retrieve from: <http://www.justicecentre.org.hk/comingclean>.

⁵ Other countries of origin compared in the research were: Bangladesh, India, Myanmar, Nepal, the Philippines, Thailand, and Sri Lanka.

⁶ Justice Centre Hong Kong. *Coming Clean*.

⁷ Justice Centre Hong Kong. (January 2019). *Not Stopping Here: Hong Kong as a Transit Site for Human Trafficking*. Retrieve from: http://www.justicecentre.org.hk/framework/uploads/2019/01/JC_eA4_28pp_OP9-2.pdf.

⁸ Gao, M. and Nan, Z. [transliteration]. (25 April 2018). "Many Chinese girls are suspected of committing drug crimes in Malaysia and may be sentenced to death" [article in Chinese]. *The Beijing News*. Retrieved from <https://sina.com.hk/news/article/20180425/0/1/2/%E5%A4%9A%E5%90%8D%E4%B8%AD%E5%9C%8B%E5%A5%B3%E5%A>

specific; men are usually recruited through friendship, rather than by intimate partners.⁹ More research is needed to understand whether there are factors that make women more vulnerable to this form of deceptive recruitment.

Reasons for women remaining as trafficking victims

In the above-mentioned case of Bibi, she was afraid of leaving the exploitative employment because she felt unsafe to return to her home countries and because her employers were rich people.¹⁰ Also, the Hong Kong Government generally prohibits migrant domestic worker from changing employers.¹¹ When she eventually left the employment because she could not stand it anymore, she sought the help of an NGO, which assisted her with making a claim for the unpaid salary at the Labour Tribunal. However, she did not tell the Labour Tribunal about the risk of violence in her home country that prohibited her return because she thought that was irrelevant to the claim. Bibi had not heard about the concept of human trafficking.¹²

Eventually, she overstayed and made a non-refoulement claim. In Hong Kong, all non-refoulement claimants are permanently considered by the Government as "illegal immigrants" even if their claims are substantiated.¹³ There is no possibility of getting refugee status in Hong Kong. As pointed out by the Committee in paragraph 31 of the concept note issued by the Committee for this general discussion (Concept Note), migrants, refugees and asylum seekers are at a higher risk of being trafficked. However, the Hong Kong Government not only fails to address the increased vulnerability of people in this situation, it adds to their vulnerability by categorising them as "illegal immigrants". Bibi's experience also shows that the siloing of the mechanisms for handling employment disputes, protecting human trafficking victims and determining non-refoulement claims undermined the protection of her rights.

The Committee is invited to make clear the need for State Parties to implement its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (the Convention) holistically in all its laws and policies, including those relating to employment and non-refoulement. The Committee is also recommended to affirm State Parties' obligation to address vulnerability to being trafficked.

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⁹ Interview with John Wotherspoon, a priest assisting people deceived or coerced into drug trafficking, on 12 September 2018.

¹⁰ Justice Centre Hong Kong. *Refugee-Human Trafficking Nexus Research*.

¹¹ Immigration Department, Hong Kong. "Foreign Domestic Helpers: Change of Employer". Retrieved from https://www.immd.gov.hk/eng/services/visas/foreign_domestic_helpers.html#c on 31st January 2019.

¹² Justice Centre Hong Kong. *Refugee-Human Trafficking Nexus Research*.

¹³ Director of Immigration, Hong Kong. (24 August 2015). *Panel on Security: Follow-up to meeting on 7 July 2015*. Legislative Council Paper No. CB(2)2048/14-15(01). Retrieved from: <https://www.legco.gov.hk/yr14-15/chinese/panels/se/papers/se20150707cb2-2048-1-c.pdf>.

Emerging forms of exploitation

We note that in the Concept Note, there is no mention of exploitation to commit crimes as a form of exploitation in the human trafficking context. "Exploitation" is not defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. 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."¹⁴ We invite the Committee to include exploitation of a person to commit criminal activities as a form of exploitation in the human trafficking context in this General Recommendation.

Substantive equality

We invite the Committee to reiterate in this General Recommendation that States Parties have the legal obligation to respect, protect, promote and fulfil the right to non-discrimination for women and to improve their position to one of *de jure* as well as *de facto* equality with men, as stated in its General Recommendation No. 25.¹⁵ In Hong Kong, as of 2016, 99% of migrant domestic workers in Hong Kong were women.¹⁶ As mentioned above, it is estimated that 2.4% of migrant domestic workers in Hong Kong have been trafficked for the purpose of forced labour.¹⁷ Although the regulations governing migrant domestic workers (for example, the requirement to live with their employers, the low threshold for what constitutes "suitable accommodation",¹⁸ the prohibition from changing employers) that may increase the risk of exploitation apply to workers regardless of gender, the effect is that women are disproportionately affected.

¹⁴ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101/1, 15 Apr. 2011 (EU Trafficking Directive 2011/36/EU), cited in UNODC. (2015). *Issue Paper: The Concept of 'Exploitation' in the Trafficking in Persons Protocol*. Vienna, UNODC.

¹⁵ UN Committee on the Elimination of Discrimination Against Women. (2004). *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, at para. 4. Retrieved from: <https://www.refworld.org/docid/453882a7e0.html>.

¹⁶ Data from the 2016 Population By-census conducted by the Census and Statistics Department, Hong Kong.

¹⁷ Justice Centre Hong Kong. *Coming Clean*.

¹⁸ The Standard Employment Contract prescribed by the Hong Kong Government listed only two forms of unsuitable accommodation, namely "made-do beds in the corridor with little privacy and sharing a room with an adult/teenager of the opposite sex." Sharing a room with children or a separate partitioned area is considered to be suitable under the Standard Employment Contract. Mission for Migrant Workers. (May 2017). *Pictures from the Inside: Investigating Living Accommodation of Women Migrant Domestic Workers towards Advocacy and Action*. Retrieved from: http://www.migrants.net/wp-content/uploads/Pictures-from-the-Inside-with-edits_no_bleed_V4.pdf.

Responsibilities of States of transit

We invite the Committee to clarify that the obligations of State Parties, where relevant, apply to States of transit too. This is particularly important as the time victims of human trafficking spend in States of transit can be protracted and can facilitate the exploitation which is the end goal of human trafficking.

As shown in our above-mentioned research *Not Stopping Here*, one type of this use of time in States of transit is the deployment of migrant domestic workers outside Hong Kong.¹⁹ Although they sign the employment contract in Hong Kong, the employment agency and/or employer may arrange for the employee to work outside Hong Kong, for example in mainland China, full time, coming to Hong Kong once a week. Some may be asked by their employers to accompany and work for them on vacations abroad. Some of these workers work in poor conditions outside Hong Kong. The workers are often not aware that their work in other States or territories may be considered illegal. There has been a case of death in mainland China of a migrant domestic worker employed in Hong Kong. This suggests that the visa regime and the employment agency industry in Hong Kong may be being used for potential human trafficking.²⁰

In one other case studies in *Not Stopping Here*, Hong Kong was used by the employer for the purpose of a visa run for the woman being forced into sex work in mainland China. In another case study, a woman was arranged by her boyfriend to traffic drugs (without knowing what she carried was drugs) through Hong Kong possibly to evade detection.²¹

Based on these cases, we invite the Committee to clarify that time spent in transit is not necessarily fleeting and can be protracted. A narrow interpretation of "transit" has impacted on the protection of the rights of victims in Hong Kong. In the only judicial review case on human trafficking in Hong Kong to date, the Court of Appeal observed that, for victims in transit, the likelihood of detection of human trafficking by the Government would be slim, "bearing in mind that travellers in transit are not required to go through immigration."²² In the end, the Court refused to expansively interpret the domestic legislative provision incorporating Article 8 of the International Covenant on Civil and Political Rights to the effect that it applies to human trafficking too.

¹⁹ Justice Centre Hong Kong. *Not Stopping Here*.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *ZN v. Secretary for Justice and Others* [2018] HKCA 473, at para. 129.

The obligations of States of transit have been affirmed in other human rights instruments. For example, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families apply to all stages of migration, including the transit stage.²³

Detaching victim protection from victim cooperation

In Hong Kong, certain assistance, such as visa fee waivers, is only available to victims of human trafficking who are certified by the Department of Justice to be a prosecution witness.²⁴ This may leave some victims without adequate protection. We invite the Committee to state in the General Recommendation that protection be provided on a needs basis unrelated to whether a victim collaborates with investigators, as the Committee has recommended States such as the Netherlands to do in its Concluding Observations.²⁵

Recommendations

The Committee is invited to:

- Make clear the need for State Parties to implement its obligations under the Convention holistically in all its laws and policies, including those relating to employment and non-refoulement;
- Affirm State Parties' obligation to address vulnerability to being trafficked;
- Include exploitation of a person to commit criminal activities as a form of exploitation in the human trafficking context in this General Recommendation;
- Reiterate in this General Recommendation that States Parties have the legal obligation to respect, protect, promote and fulfil the right to non-discrimination for women and to improve their position to one of de jure as well as de facto equality with men, as stated in its General Recommendation No. 25;
- Clarify that the obligations of State Parties, where relevant, apply to States of transit as well;
- Clarify that time spent in transit is not necessarily fleeting and can be protracted; and
- State in this General Recommendation that protection be provided on a needs basis unrelated to whether a victim collaborates with investigators.

For further information, please contact Annie Li, Research and Policy Officer (+852 5661 6944; annie@justicecentre.org.hk).

²³ Article 1(2) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

²⁴ Security Bureau, Hong Kong. "Trafficking in Persons". Retrieved from <https://www.sb.gov.hk/eng/special/bound/iimm.htm> on 31 January 2019.

²⁵ The Committee on the Elimination of Discrimination against Women. (2 February 2007). *Concluding Observation: The Netherlands*. CEDAW/C/NLD/CO/4, at para. 24, cited in Anne Gallagher. (2012). *The International Law of Human Trafficking*. New York: Cambridge University Press, at page 300.

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.

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