

# JUSTICE | HONG CENTRE | KONG

PROTECTING FORCED MIGRANTS' RIGHTS



## CORPORATE CHANGE MAKERS

### Activating the UN Guiding Principles on Business and Human Rights

A Guide for Hong Kong Business to tackle Forced Labour, Modern Slavery and Human Trafficking through Policy

March 2019

The Corporate Change Makers Guidelines on Tackling Forced Labour and Human Trafficking in Hong Kong through Policy seeks to provide businesses with a comprehensive framework for understanding and implementing the UN Guiding Principles on Business and Human Rights into their core strategies for policy work. By doing so, Justice Centre Hong Kong hopes that corporates will expand their policy work on forced labour and human trafficking.

The UN Guiding Principles on Business and Human Rights are a set of global standards for preventing and addressing the risk of adverse human insights impact linked to business activity. Together with the Protect, Respect and Remedy Framework for Business and Human Rights they

provide an authoritative statement on the relationship between business and human rights, recognising that while governments have a primary duty to protect and promote human rights, businesses have a distinct responsibility to respect human rights.



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The views and opinions expressed in this document are of Justice Centre Hong Kong and do not necessarily reflect the views or the endorsement of participating companies, peer reviewers or their organisations. Justice Centre is responsible for the accuracy of the facts and figures presented in this report.

“ Business must significantly increase and expand their efforts to combat trafficking and commit to leading the fight if we are going to begin to reduce the global market for slave labour ”

**Amy Sobel, Vice President,  
Anti-Human Trafficking Campaign**

## Introduction

Hong Kong's status as a global financial hub and economic success story does not exclude it from the global forced labour and human trafficking crisis. The city's position as a key transit point within the Asia-Pacific region, the area in which forced labour is most prevalent, as well as the lack of effective government remedy or action ensure the presence of both forced labour and human trafficking in Hong Kong.

This was made evident in the findings in *Coming Clean*, a landmark research report published by Justice Centre in 2016, focusing specifically on the prevalence of forced labour in Hong Kong's substantial migrant domestic worker community.<sup>1</sup> The research was the first study of its kind in Hong Kong to estimate the prevalence of forced labour and human trafficking for the purposes of forced labour amongst migrant domestic workers. Justice Centre concluded that 17 percent of migrant workers in the city are working in conditions of forced labour and that 14 percent of these individuals have been trafficked. The report represents a major step in the Hong Kong anti-trafficking movement.

We call on businesses to make the next step.

The Corporate Change Makers initiative seeks to partner with businesses in Hong Kong to strengthen the capacity of corporate leaders to advocate publicly or privately for systemic law and policy change in relation to forced labour and human trafficking in the city.

Justice Centre's years of policy and advocacy experience have identified that in order for Hong Kong to have a fair and effective policy-making process, active participation from all societal actors is needed including business. This conviction is supported by a number of global initiatives and instruments. These include the UN Global Compact,<sup>2</sup> the International Organization for Migration (IOM) Corporate Responsibility in Eliminating Slavery and Trafficking (CREST) programme<sup>3</sup> and, importantly, the UN Guiding Principles on Business and Human Rights,<sup>4</sup> a set of standards which have become central to the operations of socially-conscious corporates around the world.

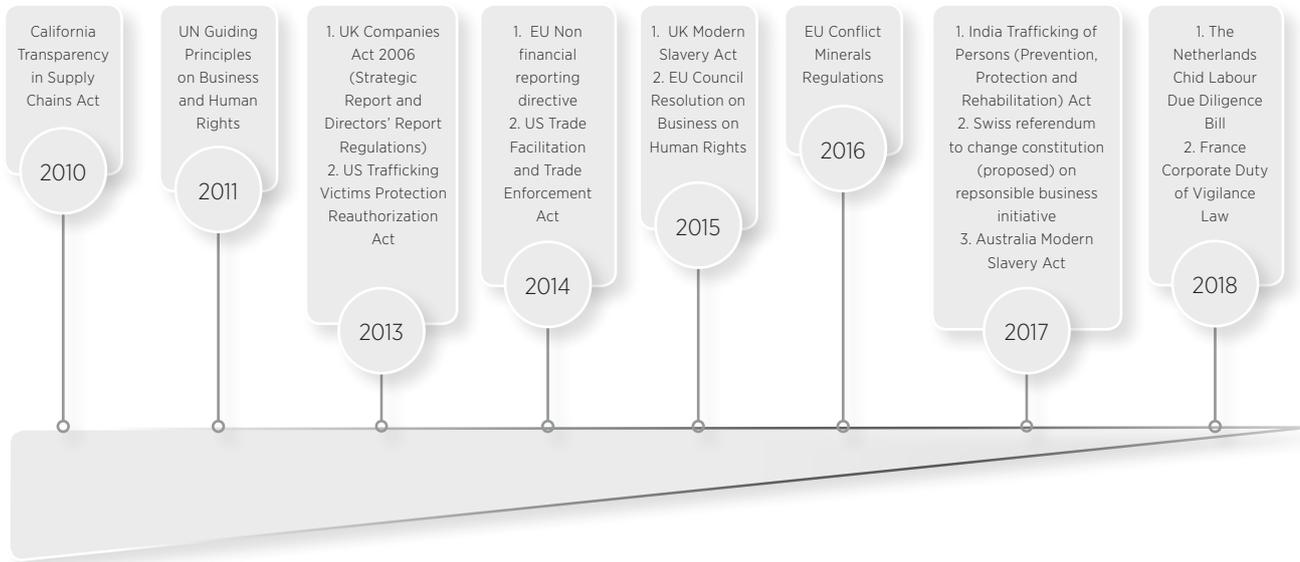
Through activating the UN Guiding Principles on Business and Human Rights, Justice Centre's Guidelines will provide businesses with a framework on how to best coordinate their policy work in order to combat the issue of forced labour, modern slavery and human trafficking in Hong Kong and abroad. Incorporation of our step-by-step guide will not only represent a dedication to the Guiding Principles as well as the UN Sustainable Development Goals (SDGs),<sup>5</sup> but also enhance the participating organisation's reputation and attractiveness to potential employees and customers.

These Guidelines are a call to the businesses of Hong Kong to work together and, as Corporate Change Makers, help protect the rights of those who need it most.



# The Tide Is Turning

## Business and human rights regulation over time



## What is Business and Human Rights?

The discussion surrounding the human rights responsibilities of business is relatively new. It became prominent in the 1990s when public interest grew about the poor working conditions in the supply chains of the global textile industry and the expansion of oil, gas and mining companies into increasingly contentious areas. The ensuing steps by the UN Commission on Human Rights and eventual creation of the position of Special Representative of the UN Secretary-General on business and human rights, a position filled by Professor John Ruggie, was a turning point for the fledgling business and human rights movement.<sup>6</sup>

When the United Nations Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights ("The Guiding Principles") in June 2011, it marked a further breakthrough.<sup>7</sup> Acting as a reference for businesses wishing to implement Ruggie's Protect, Respect and Remedy Framework for Business and Human Rights ("The Framework"),<sup>8</sup> the Guiding Principles have brought business and human rights to the fore. The Guiding Principles have subsequently been used as the basis of the environmental, social and governance ("ESG") and corporate social responsibility ("CSR") strategies of companies around the world.

While the Guiding Principles do not impose binding obligations on states and the businesses operating within their jurisdictions, there have been calls by both the international community and NGOs for the creation of a binding instrument.<sup>9</sup> No such mechanism has been enacted as of yet, although a number of well-established global efforts have come into being including the UN Global Compact and the United Kingdom's National Action Plan.<sup>10</sup> With the additional importance being attached to the relationship of business with human rights it would not be surprising to see a binding instrument in the near future.



## Sustainable Development Goals<sup>14</sup>

Adopted by the United Nations General Assembly on 25 September 2015, the Sustainable Development Goals (SDGs) are a set of mutually reinforcing and universally applicable goals intended to frame a global vision for development and social change by 2030. While several SDGs are applicable to these Guidelines, it is *Goal 8* and *Goal 17* that are most relevant.



*Goal 8* calls for the promotion of “sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.”

Target 8.7 under this goal requires states to “take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking.”



*Goal 17* seeks to strengthen global partnerships by bringing together governments, civil society, the international community and other actors to achieve the targets of the 2030 Agenda.

## HUMAN TRAFFICKING

### Definition:

Human trafficking involves the three aspects of: (1) an action (such as recruitment or transferring of people) via (2) a means (such as deception or coercion, and for (3) the purpose of exploitation (which includes forced labour).

### International Standards:

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (Palermo Protocol or UN Trafficking Protocol)

## FORCED LABOUR

### Definition:

Forced labour is defined as all work or service which is exacted from any person under the menace of any penalty and for which said person has not offered him/herself voluntarily.

### International standards:

Forced Labour Convention, 1930 (No.29); Abolition of Forced Labour Convention, 1957 (No.105); Protocol of 2014 to the Forced Labour Convention, 1930

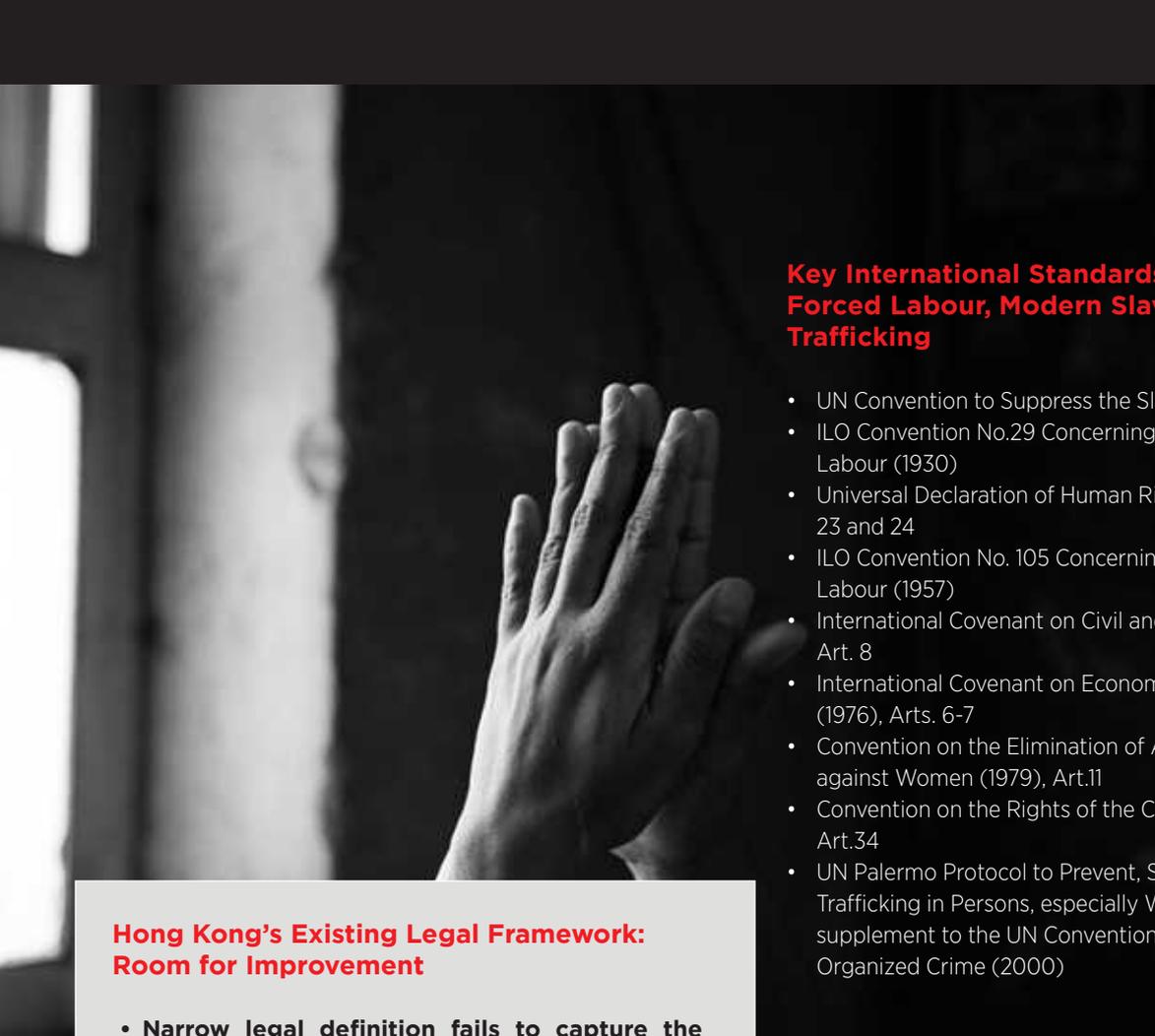
## MODERN SLAVERY

### Definition:

Modern slavery is an umbrella term that can refer to several concepts, such as debt bondage, sale of children, forced marriage, human trafficking and descent-based slavery, amongst other practices.

### International Standards:

Although there are legal definitions of “slavery” under international law, such as the 1926 Slavery Convention and the 1956 Supplementary Convention, there is no international legal standard for “modern slavery.”



## Key International Standards relating to Forced Labour, Modern Slavery and Human Trafficking

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

### Hong Kong's Existing Legal Framework: Room for Improvement

- **Narrow legal definition fails to capture the scope of exploitation:** Human trafficking, as defined under Section 129 of the Hong Kong Crimes Ordinance (Cap.200), solely focuses on cross-border movement for the purpose of prostitution. Forced labour by itself is not even considered a criminal offence.

Furthermore, an emphasis is placed unfairly on movement and the crossing of borders ignoring that exploitation, a key facet of trafficking, often takes place within borders. This approach serves to frame human trafficking as an immigration crime rather than as a pure human rights violation. Taking this approach, victims can be often classed as criminals themselves. This needs to change.<sup>16</sup>

- **More can be done to develop an overall plan of action and direction:** While the Hong Kong government recently published an Anti-Trafficking Plan of Action, it explicitly refuses to admit that human trafficking is prevalent in Hong Kong.<sup>17</sup> In addition, the absence of a formalised and transparent referral mechanism, transparent data collection or provision of sufficient training to relevant stakeholders is inhibiting the effectiveness of any programme the government may have in place to combat forced labour, modern slavery and trafficking.<sup>18</sup>
- **Victims of trafficking lack protected status:** Victims of forced labour, modern slavery and trafficking are likely to work under fear of violence or other forms of coercion and are often forced into committing illegal acts themselves. The lack of protection offered to victims

and the threat of criminal charges restricts their access to justice and inhibits Hong Kong's rule of law.<sup>19</sup>

- **Absence of effective recourse available to victims:** The remedies offered to victims of forced labour, modern slavery and trafficking in Hong Kong are minimal. For example, while remedies may be available at the Small Claims Tribunal, victims are barred from legal representation at this stage.<sup>20</sup> This presents a very difficult issue for lawyers and CSOs working with victims.
- **Trafficking is not included as a criminal activity within Hong Kong's anti-money laundering regime:** As a financial hub, Hong Kong takes money laundering seriously and is a member of the Financial Action Task Force, an inter-governmental body designed to promote policies and standards to fight financial crime. However, human trafficking is not recognised as a form of organised crime within the relevant legislation.<sup>21</sup> If all forms of human trafficking were criminalised it would ensure existing money-laundering legislation could both deter and restrict traffickers.
- **Data privacy is now a complicated issue for victims and for CSOs:** The Personal Data (Privacy) Ordinance (Cap. 486) sets out that the protection afforded by data-handlers must match the sensitivity of said data.<sup>22</sup> As a result, front-line responders and other service providers have the added pressure of using and storing sensitive data in a responsible manner. Data relating to the identity and location of victims or potential victims is of particular value to traffickers and must be protected to ensure the well-being and safety of victims.

## Corporate Change Makers: Activating the UN Guiding Principles on Business and Human Rights

The Corporate Change Makers Guidelines set out business actions to respect and support the rights of victims of forced labour, modern slavery and human trafficking. These rights are set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime [Trafficking Protocol], the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the United Nations Convention against Transnational Organized Crime, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and many more international treaties and non-treaty instruments.

These Guidelines seek to assist businesses to implement the framework of the Guiding Principles on Business and Human Rights (“The Guiding Principles”) and the accompanying Protect, Respect and Remedy Framework for Business and Human Rights (“The Framework”). The Framework comprises of three pillars:

### **PILLAR 1:**

#### **THE STATE DUTY TO PROTECT HUMAN RIGHTS**

against abuses committed by third parties, including businesses, through appropriate policies, regulation and adjudication;

### **PILLAR 2:**

#### **THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS**

by avoiding infringement of the rights of others and addressing adverse human rights impacts with which they are involved; and

### **PILLAR 3:**

**ACCESS TO REMEDY** for victims of human rights infringement be it judicial or non-judicial

The role of business within contemporary society as a conscious and proactive societal actor is more important than ever before. There is an expectation from shareholders, governments, civil society and the public that corporate actors are not only aware of the links between business and human rights but increasingly act as change makers and catalysts to improve conditions within their respective industries. By working in parallel with governments and connecting with civil society, corporates can bring about change ensuring the rights of people across the globe are protected.

It is fitting then that explicit attention is now being paid by business to the increasingly prevalent issues of forced labour, modern slavery and human trafficking. It is estimated that over 40 million people are victims of modern slavery worldwide.<sup>11</sup> Of these, nearly 25 million people are subjected to forced labour. Victims of human trafficking and forced labour make up some of the most vulnerable members of society who, owing to methods of coercion and exploitation, do not possess a public voice. Methods of coercion vary but often include the withholding of wages by employers, threats of violence, acts of physical violence and threats against family members. Victims of forced labour are found in a variety of sectors, from farming, fishing and manufacturing to domestic work, construction and the sex industry.<sup>12</sup> This range of affected industries ensures that most businesses will have knowingly or unknowingly benefitted from the work of a forced labourer.

Businesses without a suitable strategy in place to combat forced labour and human trafficking are at risk for a number of reasons. Any human rights violation whether directly or indirectly caused by an organisation will result in the immediate loss of reputation and with it the associated loss of business opportunities, public confidence and possible financial cost and penalty.<sup>13</sup> Furthermore, insufficient diligence over supply chains and the policies existent in the countries in which they operate can present severe risk which any major company would do best to avoid.



# Becoming a Corporate Change Maker

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## Show your support

- Join the Corporate Change Maker community with other likeminded corporates focused on the elimination of forced labour, modern slavery and human trafficking in Hong Kong.
- Make a statement of support and share with your partners and through your online presence.



## Conduct a self-assessment

- Employ a human rights due diligence approach to uncover gaps in your operations and sphere of influence.
- Work with Justice Centre and other organisations either through training or round tables to find out about forced labour, modern slavery and human trafficking in Hong Kong today.



## Set targets

- Using these Guidelines, ascertain what can your company do to better apply the Guiding Principles in the fight against forced labour, modern slavery and human trafficking.
- Identify partners and initiatives in the private and public sectors.
- Meet with other Corporate Change Makers or influencers in your industry and participate in alliances and task forces.
- Set objectives for both the long and short term.
- Ensure you have responsible officers in place to help achieve your goal.



## Produce case studies

- Showcase your successful initiatives by publishing or sharing your work. Not only will this enhance your operations and reputation, but it will inspire others to follow suit and help eliminate forced labour.



## Don't stop there

- Policy change requires continued effort and concentration. Ensure that you stick to long-term targets, monitor your results and remain active in your respective alliances and task forces.
- Continue to produce case studies and show off your human rights champion status.

## All Corporate Change Makers should aim to . . .



**Reinforce** community and government efforts to **protect** and **fulfil** the rights of victims of forced labour, human trafficking or modern slavery

Business and the private sector has never before played such an important role in the protection and fulfilment of human rights. By working side-by-side with civil society groups (non-governmental organisations, non-profit organisations and more) and government, corporate actors can ensure efforts at constructing and maintaining effective rights-protecting policy initiatives are successful. Corporate Change Makers can work alongside other societal stakeholders on existing programmes designed to help victims of forced labour, human trafficking and modern slavery to ensure their rights are fully protected. Hong Kong's unique make-up as a financial hub means that corporates have an opportunity to play a bigger role than perhaps anywhere else in the world.

### What business can do:

Make submissions to the Hong Kong government or international bodies on issues related to forced labour, human trafficking and modern slavery and by doing so, contribute to a better policy-making process. Corporates have the opportunity to make submissions through various opportunities for public consultations on issues related to trafficking as well as part of the government's Chief Executive's annual Policy Address consultation.<sup>23</sup> The public support of a submission made by a civil society partner would also satisfy this action.

Partner with and commit to existing anti-trafficking initiatives on a local, national or international level. Effective partnership and cooperation is a cornerstone of good policy work and will not only improve efforts in fighting for the rights of victims of trafficking but will ensure your business adheres to the Guiding Principles and shows dedication to the SDGs serving to promote its image and reputation.

Make a public statement outlining your commitment to eliminating forced labour, human trafficking and modern slavery.<sup>24</sup> An indication of support from your organisation can serve to both strengthen existing initiatives by garnering additional support and promote your company's image. This can be done with a declaration by a company director, a statement published online, or during a public event.<sup>25</sup>

Call on the Hong Kong government to enact an Action Plan on Business and Human Rights. This would satisfy recommendations by the UN Working Group on Business and Human Rights that government bodies put in place measures to help fulfil their responsibility to disseminate and implement the Guiding Principles on Business and Human Rights.<sup>26</sup>



### Existing community and government efforts in Hong Kong include:

- Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong<sup>27</sup>
- International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability<sup>28</sup>
- International Organisation for Migration (IOM) Corporate Responsibility in Eliminating Slavery and Trafficking (CREST) Programme<sup>29</sup>
- The Mekong Club Pledge<sup>30</sup>
- The UN Global Compact<sup>31</sup>

### Good Practice: The Ethical Trading Initiative Engaging with Government for Improvement to the UK Modern Slavery Bill

In 2014, the Ethical Trading Initiative (ETI) in coordination with the British Retail Consortium submitted a signed letter to then Prime Minister David Cameron seeking improvements to the UK Modern Slavery Bill. The key recommendations were: increased transparency in supply chains, improvements and extension to the model used to manage and mitigate risks of slavery in the fisheries, apparel, construction, cleaning, care and hospitality sectors, and, the creation of an independent Anti-Slavery Commissioner whose role would be to monitor legislation, ensure compliance and take action when necessary.

This represents a clear example of positive engagement carried out by an alliance that draws from both the private and public sectors. Importantly, the letter highlights the responsibility of corporates in the face of modern slavery in their respective supply chains noting the public expectation that companies take action.

Finally, the promotion of effective partnership between government, the private and public sectors and trade unions makes the letter an ideal example to follow for Hong Kong-based corporates seeking to incorporate more positive engagement as part of their practices.<sup>32</sup>



**Ensure** your business **adheres** to government and international policy and regulation designed to **protect** and **fulfil** the rights of victims of forced labour, human trafficking or modern slavery

The Framework sets out a clear duty for states to protect human rights against any abuses including those committed by businesses. States themselves are also expected to follow international standards related to the respect and protection of human rights. It is therefore intended that corporate actors follow the examples set by local and state government or, if those bodies fail to fulfil their own commitments, the policy and standards set out in international regulation.

It is a responsible company's duty to hold itself accountable to the highest possible standards regardless of the jurisdiction in which it is located. This is especially important for international corporates who operate over a number of jurisdictions, or businesses with ambitions of expanding overseas.

#### **What business can do:**

Employ human rights due diligence practices. By doing so you will be able to protect the rights of victims of forced labour, human trafficking and modern slavery, and help prevent any future rights violations. Proper human rights due diligence can be achieved by:

- Identifying and assessing, with respect to international and national standards, any business practices that may lead to a violation of human rights.
- Integrating your findings into new business practices and monitoring the results. Your company's leverage should mitigate any further potential violations if implemented properly.
- Sharing the results of your internal assessments to remain transparent, and inspire other parties to follow similar due diligence practices.

“ The majority of enterprises – both large and small – still need to embrace their human rights responsibilities through an effective, efficient and inclusive due diligence process <sup>33</sup> ”

**Mr Guy Ryder –  
Director-General of the ILO**



#### **Useful resources for conducting human rights due diligence:**

- Doing Business with respect for human rights, Global Compact Network Netherlands<sup>34</sup>
- ETI Human Rights Due Diligence Framework, Ethical Trading Initiative<sup>35</sup>
- UN Guiding Principles Report Framework, Shift & Mazars<sup>36</sup>
- Human rights impact assessment guidance and toolbox and Human Rights Compliance Assessment, Danish Institute for Human Rights<sup>37</sup>
- A Guide for Business – How to Develop a Human Rights Policy, United Nations Global Compact<sup>38</sup>

#### **Good Practice: The Bangladesh Safety Accord**

In the wake of the devastating collapse of the Rana Plaza building in Bangladesh in 2013, an incident causing the death of 1,134 workers and highlighting to the world the extreme negligence and unsafe conditions prevalent in the Bangladeshi garment industry, the Bangladesh Safety Accord was launched.<sup>39</sup> Legally binding, the Accord advocates for safer working conditions in the Bangladesh Ready Made Garment (RMG) industry, increased transparency, an independent inspection program funded by the signatories, training to promote worker empowerment and the creation of health and safety committees.

Drawn up and sponsored by the InstriALL Global Union and the UNI Global Union as well as a number of leading industry NGOs with the International Labour Organisation as a neutral chair, the agreement spanned over 1,000 Bangladeshi factories.

On 1st June 2018 the Transition Accord commenced acting as a follow-up to the previous agreement.<sup>40</sup> Recognising that while progress has been made in improving the Bangladesh RMG industry, the leading organisations behind the Accord admit much still remains to be done.

Among the 200 brands, retailers and importers that have signed both Accords are major companies such as Adidas, H&M, Puma SE and Primark. However, equally large firms such as Nike, Abercrombie & Fitch and Levis have neglected to sign.

Nevertheless, these Accords represent a clear example of major corporate entities working with civil society in providing joint engagement in areas where inherent rights are not being respected.



**Be a champion** in the fight against forced labour, human trafficking and modern slavery

Hong Kong's status as a gateway into Asia is important to international companies and conglomerates. The number of overseas businesses choosing to base their regional headquarters in the city has increased 10 percent from 2014-18.<sup>41</sup> For each of these enterprises their sphere of influence can affect multiple other stakeholders and the rights of thousands of individuals. A key element of good policy work is to influence and gain the support of other industry players, government and the public. By becoming a champion in the fight against forced labour, human trafficking and modern slavery through the use of your business' connections and support for these Guidelines, the chances of preventing further human rights violations are increased.

**What business can do:**

Promote the rights of all those affected by forced labour, human trafficking and modern slavery. In Hong Kong the rights of migrant workers in particular must be championed. Corporate Change Makers should aim to take a lead role in the Hong Kong anti-trafficking movement. Promote these Guidelines, the Guiding Principles and any related best business practices and any civil society partner initiatives throughout your business network.

Create and grow an online presence for your company's anti-trafficking efforts publicising your commitment to these Guidelines, and updating your network on new initiatives and related information.

Organise and attend events and fundraisers focused on your Guiding Principles responsibilities. Events could include fundraisers for chosen charities and civil society partners, roundtables or panels providing space for human rights-based discussion or conferences bringing together stakeholders from the private and public sectors.

Train your workforce on issues related to forced labour, human trafficking and modern slavery. Build the capacity of key personnel who may be able to identify, prevent and apply corrective action. Training should also be extended to suppliers to ensure consistency and compliance with codes of conduct and other supplier obligations. Hong Kong possesses a number of organisations offering training and/or consultancy services with a focus on human rights and the SDGs. These include: Encompass HK, Rights Exposure, Justice Centre Hong Kong and Community Business.



Large and small businesses, operating globally and locally, can make a real difference by advocating for improved laws and policies that enable decent work to thrive <sup>42</sup>



**Business: It's Time to Act - UN Global Compact**



**Hong Kong organisations offering Human Rights training and/or consultancy:**

- Community Business<sup>43</sup>
- Encompass HK<sup>44</sup>
- Justice Centre Hong Kong<sup>45</sup>
- Rights Exposure<sup>46</sup>

**RECENT INITIATIVES IN PRACTICE:  
The International Organization for Migrants  
(IOM) Corporate Responsibility  
in Eliminating Slavery and Trafficking  
(CREST) programme<sup>47</sup>**

IOM CREST is a regional partnership initiative that aims to draw on the potential of private sector actors to enact positive change for the protection of migrant workers in Asia. Partnerships with the initiative are designed to ensure corporates receive policy-level advice and practical solutions related to business needs.

IOM CREST's strategy is focused on enhancing industry-wide collaboration and engagement, better understanding of human right issues, improved remedial mechanisms and progress monitoring for each of its business partners.

The programme builds on a number of existing frameworks and methodologies including the Dhaka Principles for Migration and Dignity,<sup>48</sup> the UN Guiding Principles on Business and Human Rights, the International Recruitment Integrity System standard for ethical recruitment<sup>49</sup> and the UN Global Compact for Migration.<sup>50</sup>

**Good Practice – Standard Chartered  
and the Fraud and Money Laundering  
Intelligence Taskforce (FMLIT)**

In May 2017, Standard Chartered, along with nine other of Hong Kong's major retail banks collaborated with the Hong Kong Monetary Authority, law enforcement and government to form the Fraud and Money Laundering Intelligence Taskforce (FMLIT). Part of the taskforce's mandate is to combat serious financial crime and money laundering threats in Hong Kong.

The use of money-laundering is often connected with instances of human trafficking and forced labour. Due to the absence of human trafficking within existing anti-money laundering legislation, however, this overlap is often easily missed.

Standard Chartered has prioritised tackling modern slavery and human trafficking previously through its membership of the UK-based Joint Money Laundering Intelligence Taskforce (JMLIT) and its position as chair of the Expert Working Group on human trafficking and organised immigration crime. It is hoped that the FMLIT mechanism can be used for a greater number of human trafficking case investigations, providing other corporates with an ideal example of a cross-sector partnership in action.<sup>51</sup>



“ In our ever-connected and co-dependent world, collaboration between the private and public sectors is relevant today more than ever<sup>54</sup> ”

**Matthew Swift & Nicholas Logothetis,  
Concordia Founders**



**Contribute** towards the **elimination** of forced labour, human trafficking and modern slavery in your sphere of influence

**What business can do:**

Work in partnership with other companies, sectoral associations and employers’ organisations to develop an industry-wide approach to address forced labour, human trafficking and modern slavery, and build bridges with trade unions, law enforcement authorities, labour inspectorates and others.

Establish or participate in task forces or committees on forced labour, human trafficking and modern slavery in representative employers’ organisations at the local, state or national level. In addition, develop internal working groups within your company for interested individuals seeking opportunities to work on human rights-based issues.

Seek to concentrate production in the formal economy and avoid informal working arrangements that may contribute to forced labour, human trafficking and modern slavery.

Establish a code of conduct or another form of labour rights policy to be applied to your enterprise. Ensure your workers are aware of their rights and obligations under the code.<sup>52</sup>

Develop a framework for reviewing and identifying key risks, vulnerable workers and/or at-risk regions so your company is not directly or indirectly facilitating human trafficking and forced labour. Develop a third-party risk framework to scrutinise and monitor the operational, financial and reputational risk associated with all business relationships (not just suppliers). Carry out thorough and appropriate client due diligence including appropriate anti-money laundering checks.

Establish contractual terms and conditions setting out supplier obligations in respect of forced labour, modern slavery and human trafficking. Compliance with such obligations can be a condition of contracts, permitting a business to terminate



**Existing task forces and alliances:**

- Anti-Money Laundering Intelligence Task Force<sup>55</sup>
- Asia Pacific Banking Alliance<sup>56</sup>
- Business Facilitation Advisory Committee<sup>57</sup>
- Civil Society Anti-Human Trafficking Task Force<sup>58</sup>
- Corporate Human Rights Benchmark<sup>59</sup>
- Global Business Coalition Against Human Trafficking (GBCAT)<sup>60</sup>
- Investor Alliance for Human Rights<sup>61</sup>
- UN Working Group on Business and Human Rights<sup>62</sup>

a contract in the event a supplier fails to meet its obligations. Establish a procurement policy that ensures transparency and eliminates the risk of human rights violations in your supply chain.<sup>53</sup>

**Good Practice: Clifford Chance's Supplier Code**

Codes of conduct are formal statements of principle that influence the conduct of suppliers and sub-contractors. Codes also allow corporates to assess whether their suppliers adhere to the same principles and standards as the corporate themselves, demonstrating to stakeholders a business’ wider commitment to its core principles.

Clifford Chance is one such business to have published its Supplier Code. By publishing its Supplier Code the company demonstrates its commitment to their values and to transparency and accountability to all relevant stakeholders. The Supplier Code is supported by supplier questionnaires; these give Clifford Chance the opportunity to assess the risk of modern slavery, human trafficking and forced labour in its supply chain and whether suppliers are adhering to the Supplier Code.

Clifford Chance is also introducing new contractual provisions that provide a ‘stick’ for suppliers to comply with the Supplier Code, in addition to the ‘carrot’ of continued and repeat business. The Supplier Code is also a good springboard for raising awareness with suppliers on the issues of modern slavery, forced labour and human trafficking.<sup>63</sup>

**Purchasing Practices**

The majority of Hong Kong companies are part of a wider global supply chain (GSC). Left unchecked, the complex networks that make up GSCs can lead to worker exploitation and environments conducive to modern slavery. To combat this companies can introduce a procurement policy that ensures that services and goods are acquired in a transparent and human rights-focused way.

Enacting a procurement policy can combat rights violations within a company’s GSC whether they occur in Hong Kong or abroad. These may include discriminatory practices, barriers to vulnerable groups such as those with disabilities, and poor working conditions. Effective policy related to purchasing practices in your GSC can lead to increased awareness and responsibility towards human rights and promote your company as a change maker across your business sphere and in the public eye.<sup>64</sup>



**Provide** that victims within your sphere of influence have **access to remedies** and **cooperate** in the remediation process

On the occasion that your corporate discovers through its human rights due diligence procedure that it has caused or contributed to an adverse human rights impact, it has a responsibility to enable remediation. By having the relevant remedial systems, your company is demonstrating a recognition that impacts can occur, despite your best efforts to prevent them. The best practice is to ensure that respect and support for human rights is quickly restored through efficient access to remedy.

#### **What business can do:**

Map your internal ecosystem for remediation. This will not only enable your company to identify existing gaps in your remediation mechanisms, but can ensure that impacts and grievances are channeled to the right people and that the business is fully aware of its human rights impacts.<sup>65</sup>

Establish an operational-level grievance mechanism.<sup>66</sup> This could include whistle-blowing, complaints, anti-bribery, equal employment and/or employee-screening policies that guarantee that employees, stakeholders or third parties (including suppliers) are not penalised for raising concerns and complaints, are not met with any prejudice, and that such complaints or concerns are kept confidential and anonymous where appropriate.<sup>67</sup>

Ensure that you cooperate with legitimate processes to remedy adverse human rights impacts that you have caused or contributed to. Company-union dialogue created by the 2017 edition of the International Labour Organization Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy is a recent addition to the existing options available.

Using your leverage to encourage business partners and other players in your sphere of influence to provide effective means of enabling remediation for abuses of human rights.

Participate in the remedial process and comply with any remedial decisions. There are some operating environments such as Hong Kong where this process may conflict with internationally recognised human rights standards. In this case, companies are advised to remain compliant with national laws.



#### **Resources:**

Existing Hong Kong labour relations services<sup>69</sup>:

- Labour Relations Division
- Workplace Consultation Promotion Division
- Minor Employment Claims Adjudication Board

“ Rights holders should be central to the entire remedy process. Such centrality would mean that remedial mechanisms are responsive to the diverse experiences and expectations of rights holders; that remedies are accessible, affordable, adequate and timely from the perspective of those seeking them <sup>68</sup> ”

**Paragraph 81, Human rights and transnational corporations and other business enterprises – 72nd session of the UN General Assembly, 18 July 2017**

#### **Good Practice: Australia’s Community Legal Centres<sup>70</sup>**

Justice Centre Hong Kong, through practical experience relating to migrant issues in Hong Kong, has engaged the Hong Kong government on issues relating to insufficient clarification on the issue of pro-bono work, and the lack of direct representation and inadequate redress avenues afforded to vulnerable persons.<sup>71</sup>

Currently it is not possible due to Law Society of Hong Kong rules to operate a community law centre or law clinic where members of the public can access free legal advice and representation from a lawyer who is not working at a private law firm.

Justice Centre has identified Australia’s network of Community Legal Centres (CLCs), in which marginalised members of society are provided with free legal services, including advice and casework, as an example of effective remedies afforded to vulnerable people. Justice Centre together with several members of the international law firm community in Hong Kong are pushing the Law Society to amend its rules so community legal centres can be established.



Help **victims of forced labour, modern slavery and human trafficking in** accessing support services **and new, safe opportunities for employment within your jurisdiction**

Under the Framework, it is a State's duty to ensure, through judicial, administrative, legislative or other appropriate means, that when business-related abuses occur, any affected workers have access to effective remedy. Hong Kong does not have a system in place that fulfills this duty. Corporate Change Makers, alongside civil society and other stakeholders, should push for policy change to ensure victims of forced labour, modern slavery and human trafficking have the best possible access to redress.

**What business can do:**

Engage with government in cases in which the State's obligation to provide access to remedy is not fulfilled. For example, in Hong Kong, victims of labour trafficking have limited recourse available to them. Many are forced to pursue claims at the Small Claims Tribunal where no legal representation is permitted, severely limiting their access to justice. Furthermore, government regulation such as the "two-week rule" and "live-in requirement" not only increase the possibility of exploitation of the worker, but reduce the chances of redress.<sup>72</sup>

Promote and campaign for schemes that deliver better access to justice. Restrictions in place currently bar NGOs in Hong Kong from providing direct legal advice or representation to clients. In addition, lawyers not employed by law firms are restricted from providing third party legal advice or pro-bono services involving direct representation which further restricts access to justice.

Support changes in existing legislation weakening the position of victims in the scope of Hong Kong law. Victims of forced labour in particular have limited avenues of recourse due to the act's lack of criminal definition. Furthermore, trafficked persons often fall foul of the strict immigration law regime which does not offer leave to remain to pursue criminal or civil remedies.

**Good Practice:  
Corporate Engagement with the  
Australian Modern Slavery Act (MSA)**

On 1st January 2019 the Australian Modern Slavery Act came into effect. Drawing on the UK's 2015 equivalent (itself based in part on the California Transparency in Supply Chains Act 2010), the Act will require businesses and other institutions operating with a consolidated revenue of approximately A\$100 million to make annual reports into the risks of modern slavery in their sphere of influence, the actions they have taken to address these risks, and whether their responses have been effective. These reports will be required to be signed by a director to ensure high-level engagement.

In 2017 public stakeholders, including corporates, were invited to make submissions as part of an inquiry into the MSA's establishment.<sup>74</sup> 21 companies including National Australia Bank (NAB) and The Australia and New Zealand Banking Group (ANZ) made submissions to the Inquiry Committee. 90% of these corporate submissions explicitly supported the bill's passing into law drawing on experiences with existing modern slavery policies.

The initiative for engagement in the policy-making process shown by these corporate organisations and the openness and transparency represented by Australian lawmakers is an example of effective cross-sector partnership in which the experience and resources of various societal actors have been utilised to enact change-making policy.

“ Victims [of human trafficking in Hong Kong] still have no special protected status<sup>73</sup> ”



## Key Questions for Interested Businesses and Organisations

All people, regardless of race, colour, sex, language, religious belief, political opinion or origin, have rights,<sup>15</sup> and it is through acts of human trafficking, modern slavery and forced labour that a number of these equally important and interrelated rights are directly violated. The Corporate Change Makers Guidelines call on businesses both in Hong Kong and abroad to respect and support the rights of those affected by these acts through positive initiatives in their activities and business relationships, in the workplace, the community and beyond. The Guidelines present a set of actions that all businesses should take to prevent and address any possible human rights violations suffered by the victims of forced labour, human trafficking and modern slavery. It is hoped that the Guidelines will both inspire and serve as a reference point for initiatives related to the application of human rights in the corporate sector both today and in the future.

### Who can use the Guidelines?

They are available for use and application by any corporate entity, no matter the size, sector or structure. In addition, they are designed to give insight to civil society and government actors into how best to engage and work with businesses on issues related to human rights in Hong Kong.

Your real life application of these Guidelines will provide similar-minded businesses with case studies and examples of how to effectively conduct policy work in Hong Kong. Not only will your case studies serve to encourage other corporates, they will also help to promote your image and policy work in Hong Kong and beyond.

### How will the Guidelines fit in with our business' existing initiatives?

The case studies introduced as part of the Guidelines show that there already exists a number of positive initiatives and pledges incorporating the business sector. It is also expected that the majority of well-known and successful corporates, as well as lesser-known SMEs, already devote substantial amounts of resources to human-rights based initiatives through their CSR or ESG programmes.

These Guidelines have not been designed to supersede or replace any existing in-house initiative, set of standards or value scheme nor will they be expected to supplant any pledges your organisation may be party to. Instead, endorsement of the Guidelines can be representative of the human-rights based sentiment of the corporates of Hong Kong and reflect your devotion to the fight against trafficking, forced labour and modern slavery.

### How are the Guidelines different from other existing initiatives?

These guidelines have evolved from a distinctive understanding of the exceptional importance and value placed on corporates in Hong Kong, an awareness of the private sector's potential for enacting change through policy work, and the knowledge and experience that Justice Centre (and other civil society organisations) have garnered through years of anti-trafficking, forced labour and modern slavery policy and advocacy work. As a result, the Guidelines are unique in not only helping businesses adopt the best strategies to adhere to existing human rights and business standards, but also, through the promotion of policy work, giving them the best opportunity to make real change in Hong Kong.



### **What are the Guidelines seeking to achieve?**

The ultimate aim of the Guidelines is to help businesses transform from corporates to Corporate Change Makers by taking a leading role in human right's based policy work in Hong Kong. By applying the Protect, Respect and Remedy approach set out in the Guidelines, corporates will have the foundations in place to enact real change in the fight against forced labour, modern slavery and human trafficking. Case studies that emerge from successful use of the Guidelines can then be used to inspire the next set of Corporate Change Makers.

### **How many resources are businesses expected to apply to their policy work?**

In order to adhere to the Guidelines and become a Corporate Change Maker there is no threshold or limit to the resources, either time or capital, related to your policy work. Within Hong

Kong there already exists a number of civil society organisation (CSO)-run initiatives and schemes that could benefit with your help. By making a public statement of commitment, lending office space for an event or promoting a pledge through your social media you are representing yourself as a Corporate Change Maker and fulfilling part of the Guidelines.



**To learn more about the Corporate Change Makers Guidelines and how your business can get involved, please contact Justice Centre Hong Kong at [info@justicecentre.org.hk](mailto:info@justicecentre.org.hk)**



## Glossary

### Business – a for-profit enterprise

- **Business relationship** – the relationships a business has with corporate partners, entities in its value chain, and any other State or non-state (government or non-governmental) entity directly linked to its business operations, products or services. This includes indirect business relationships in an enterprise's value chain, beyond the first tier, as well as majority and minority shareholding positions in joint ventures.
- **Code of conduct** – an agreement to a set of rules that defines labour standards for an organisation or group with the aim of achieving decent and humane working conditions
- **Human rights due diligence** (also referred to as due diligence) – this is a business' ongoing process for assessing its actual or potential human rights impact, integrating and acting upon its findings, tracking its responses and communicating how its impact is addressed. This includes both the business' own activities and also those activities, operations, products or services related to its business relationships.
- **Leverage** – the ability of a business to effect change in the wrongful practices of the party that is causing or contributing to an adverse impact on human rights through its relationships and resources.
- **Procurement Policy** – is a set of rules and procedures developed in order to establish how procurement should be conducted within an organisation.
- **Social reporting** – is the practice of measuring, disclosing and being accountable to internal and external stakeholders for organisational performance towards stated social goals.
- **Sphere of Influence** – A companies' sphere of influence includes all the stakeholders in its value chain. This includes employees, suppliers, the marketplace, the community, and governments.
- **Value chain** – a business' value chain encompasses the activities that convert inputs into outputs by adding value. It includes entities with which the business has a direct or indirect business relationship and which either a) supply products or services that contribute to the business' own products or services, or b) receive products or services from the business

### Acronyms and Abbreviations

- **CEDAW** – UN Convention on the Elimination of All Forms of Discrimination against Women
- **CLC** – Community legal centre

- **CRC** – UN Convention on the Rights of the Child
- **CREST** – Corporate Responsibility in Eliminating Slavery and Trafficking
- **CSO** – Civil society organisation
- **CSR** – Corporate Social Responsibility
- **ESG** – Environment, social and governance
- **FMLIT** – Fraud and Money Laundering Intelligence Taskforce
- **GSC** – Global Supply Chain
- **ICCPR** – International Covenant on Civil and Political Rights
- **ICESCR** – International Covenant on Economic, Social and Cultural Rights
- **IFC** – International Finance Corporation
- **IOM** – International Organization for Migration
- **MSA** – Modern Slavery Act
- **NGO** – Non-governmental organisation
- **SDG** – Sustainable Development Goal
- **SME** – Small and medium-sized enterprise
- **The Guiding Principles** – UN Guiding Principles on Business and Human Rights
- **The Framework** – UN Protect, Respect and Remedy Framework for Business and Human Rights
- **UN** – United Nations

### International Treaties and Standards

- Universal Declaration of Human Rights (1948), Arts. 4, 23 and 24
- International Covenant on Civil and Political Rights (1976), Art. 8
- International Convention on Economic, Social and Cultural Rights (1976), Arts. 6-7
- Convention on the Elimination of All Forms of Discrimination against Women (1979), Art.11
- Convention on the Rights of the Child (1990), Art.34

### Human Trafficking

- UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (Palermo Protocol or UN Trafficking Protocol)

### Forced Labour

- ILO Convention No.29 Concerning Forced or Compulsory Labour, 1930
- ILO Convention No.105 Concerning the Abolition of Forced Labour, 1957
- Protocol of 2014 to the Forced Labour Convention, 1930



- UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)

### **Modern Slavery**

- UN Convention to Suppress the Slave Trade and Slavery (1926)
- UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)

### **Relevant Hong Kong Legislation**

- Crimes Ordinance (Cap.200) Section 129
- Personal Data (Privacy) Ordinance (Cap.486)
- Organized and Serious Crimes Ordinance (Cap.455) (Sch.1)

## **Endnotes**

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  - 13 Addressing human rights in business, KPMG International, December 2016, p.10, available at: <https://assets.kpmg/content/dam/kpmg/xx/pdf/2016/11/addressing-human-rights-in-business.pdf>
  - 14 Available at: <https://sustainabledevelopment.un.org/>
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  - 24 See KPMG International's business and human rights statement for a good example, available at: <https://home.kpmg/xx/en/home/about/who-we-are/governance/business-and-human-rights-statement.html>
  - 25 For a list of company policy statements on human rights see: <https://www.business-humanrights.org/en/company-policy-statements-on-human-rights>
  - 26 A list of states that already have action plans in place or have committed to development action plans is available

- at: <https://www.ohchr.org/en/issues/business/pages/nationalactionplans.aspx> . Furthermore, the UN Working Group has drawn up a set of guidelines for governments to follow when developing their action plans, available at: <https://www.ohchr.org/en/issues/business/pages/nationalactionplans.aspx> . As part of their Joint Civil Society Submission (March 2018), the Hong Kong UPR Coalition also called for the development of an action plan by the HKSAR government. Available at: [http://www.justicecentre.org.hk/framework/uploads/2018/UPR/HKUPRC\\_Submission\\_MARCH2018.pdf](http://www.justicecentre.org.hk/framework/uploads/2018/UPR/HKUPRC_Submission_MARCH2018.pdf) (p.13, para. 109)
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  - 32 The Ethical Trading Initiative is a leading alliance of companies, trade unions and NGOs that promotes respect for workers' rights around the globe. Over 80 large brands and retailers with a combined turnover of more than GBP180 billion (as of 2016) make up the collective. The ETI's letter to Prime Minister David Cameron is available at: <https://www.ethicaltrade.org/resources/eti-brc-letter-to-pm-modern-slavery>
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  - 43 Community Business facilitates networks, conducts research, leads programmes and campaigns and provides consultancy and training into inclusive business practices. More information available at: <https://www.communitybusiness.org/training-consulting/understanding-diversity-inclusion-asia>
  - 44 Encompass Hong Kong is a social enterprise that offers training and consultancy services to help organisations meet global standards such as the SDGs. More information available at: <http://encompasshk.com/#about>
  - 45 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. More information available at: <http://www.justicecentre.org.hk/>
  - 46 Rights Exposure provides support in human and labour rights research and advocacy with a special focus on migration, trafficking and forced labour. In addition, the organisation provides bespoke training to large international agencies and activists. More information available at: <https://www.rightsexposure.org/>
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# JUSTICE CENTRE | HONG KONG

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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+852 3109 7359 | [info@justicecentre.org.hk](mailto:info@justicecentre.org.hk) | [www.justicecentre.org.hk](http://www.justicecentre.org.hk)  
Eaton House, 1/F, 380 Nathan Road, Jordan, Kowloon, Hong Kong

Facebook: [justicecentrehongkong](https://www.facebook.com/justicecentrehongkong) | Twitter: [@justicecentrehk](https://twitter.com/justicecentrehk)  
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