

Comments on the Draft General Recommendation on Trafficking in Women and Girls in the Context of Global Migration

May 2020

Justice Centre Hong Kong (“Justice Centre”) appreciates this opportunity to provide comments to the Committee on the Elimination of Discrimination against Women (“the Committee”)’s draft general recommendation on trafficking in women and girls in the context of global migration (“the Draft General Recommendation”). We note that the Draft General Recommendation is comprehensive and well-drafted overall.

“Exploitation” within the definition of human trafficking

In Section III of the Draft General Recommendation, the Committee provided the legal definition of trafficking in persons as stipulated in Article 3(a) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (“the Trafficking Protocol”). We note the Committee did not elaborate on the meaning of “exploitation”, which is not defined in the Trafficking Protocol.

We invite the Committee to clarify that the list of examples of exploitation is not exhaustive, and that the ambit of Article 3(a) captures other forms of exploitation not mentioned in the definition. The words “at a minimum” are intended to make it possible for the Trafficking Protocol to cover forms of exploitation not listed in the definition and forms of exploitation that are not yet known¹. Additional forms of trafficking-related exploitation stipulated in other anti-trafficking instruments include begging, exploitation for criminal activities, and adoption, for example².

Human trafficking for the purpose of criminal exploitation

Justice Centre is particularly concerned about human trafficking for the purpose of exploitation for criminal activities, as we have observed that there is credible evidence potential trafficking victims, including vulnerable women, are exploited to commit drug-related offences in Hong Kong. We are concerned that potential victims have not been identified, and victims are consequently criminalised for unlawful acts committed as a result of their trafficking. For details, please see our submission to the United Nations Working Group on Arbitrary Detention³.

In our exploratory study *Not Stopping Here: Hong Kong as a Transit Site for Human Trafficking*, one case involved a woman who was arrested and charged in Hong Kong for drug-related offences. In interview, she claimed she was asked by her boyfriend, whom she thought was a

¹ UNODC, “Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto” (2006). P. 343, note 22. Available at: https://www.unodc.org/documents/treaties/UNTOC/Publications/Travaux%20Preparatoire/04-60074_ebook-e.pdf

² UNODC, “Issue Paper: The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol” (2015). p.38-39. Available at https://www.unodc.org/documents/congress/background-information/Human_Trafficking/UNODC_2015_Issue_Paper_Exploitation.pdf

³ Justice Centre Hong Kong, “Submission to the United Nations Working Group on Arbitrary Detention” (March 2020). Available at: <https://www.justicecentre.org.hk/report/submission-to-the-united-nations-working-group-on-arbitrary-detention/>

businessperson in the trading business, to take clothing items from Guangzhou, China to Kuala Lumpur, Malaysia via Hong Kong. The clothing items were in fact drugs⁴.

Justice Centre also interviewed Father John Wotherspoon, a Hong Kong-based priest assisting people who have been tricked into trafficking drugs. Father Wotherspoon revealed that he had assisted a number of people arrested in Hong Kong who had been deceived or coerced into carrying drugs through Hong Kong on the way from South America or Africa to Mainland China⁵. The recruitment of potential victims appears to be gender-specific: men are usually deceived into drug trafficking through friendship, while women are usually deceived by intimate partners.

A similar pattern of exploitation is reported by the United States Department of State's 2019 Trafficking in Persons ("TIP") Report: "Reports indicated drug trafficking syndicates coerced South American women, who were subsequently arrested by Hong Kong authorities, to carry drugs into Hong Kong"⁶.

Further, there are media reports of Mainland Chinese women apprehended in Malaysia who were deceived into trafficking drugs by intimate partners. The Malaysian Chinese Association noted that between 2013-2015 over 20 Chinese women who claimed to be deceived into bringing drugs into Malaysia were arrested or convicted⁷. The exploitation of human trafficking victims for drug related offences has also been observed in Europe⁸, for example.

We appreciate that the Committee discussed the need to protect and exempt victims from criminal liability, but would encourage the Committee to explicitly refer to human trafficking for the purpose of criminal exploitation in the Draft General Recommendation. Trafficking for criminal exploitation is an often overlooked aspect of human trafficking, and the lack of awareness about this type of exploitation means that victims are misidentified as offenders and not offered protection.

Please contact Rachel Li (rachel@justicecentre.org.hk), Research and Policy Officer at Justice Centre Hong Kong, with any questions regarding this submission.

About Justice Centre Hong Kong

Justice Centre Hong Kong is a non-profit organisation focused on the promotion of human rights through our legal, psychosocial, research, policy and advocacy work. We are committed to driving change for a just and fair society. Founded in 2007 as The Hong Kong Refugee Advice Centre, over seven years we helped over 2,000 men, women and children on the road

⁴ Justice Centre Hong Kong, "Not Stopping Here: Hong Kong as a Transit Site for Human Trafficking" (January 2019). P.10.

⁵ Not Stopping Here, p. 14. See also Simon Parry, "Hong Kong priest's mission to save drug mules from a system that favours kingpins" South China Morning Post (18 March 2018) <https://www.scmp.com/print/magazines/post-magazine/long-reads/article/2137465/hong-kong-priests-mission-save-drug-mules-system>

⁶ "Hong Kong: Trafficking Profile" in United States Department of State, "Trafficking in Persons Report" (June 2019). P. 229.

⁷ See Gao, M. and Nan, Z. [transliteration], "Many Chinese girls are suspected of committing drug crimes in Malaysia and may be sentenced to death" [article in Chinese] (25 April 2018). <https://bit.ly/32UJ1oN> and Louise Moon, "Chinese drug mule facing death penalty in Malaysia trial could be latest victim of trafficking ring" (27 April 2018) <https://www.thestar.com.my/news/regional/2018/04/27/chinese-drug-mule-facing-death-penalty-in-malaysia-trial-could-be-latest-victim-of-trafficking-ring>

⁸ See for example, RACE, "Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory Study and Good Practice Examples" (September 2014).

to a new life. Building on our expertise in refugee issues, in 2014 we identified a clear need for an increased response to tackling forced labour and human trafficking in Hong Kong, and expanded our remit to fill this gap and rebranded as Justice Centre Hong Kong. We now help around 300 people each year through our direct services and aim to benefit many more through our research, policy and advocacy work.