

11 May 2018

Clerk to Panel on Constitutional Affairs  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

**Written Submission from STOP.**

to

**Legislative Council of the Hong Kong Special Administrative Region, Panel on Constitutional Affairs on the draft outline of its fourth report under the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

**Introduction**

1. Stop Trafficking of People (STOP.) makes this submission to the Legislative Council of the Hong Kong Special Administrative Region, Panel on Constitutional Affairs in relation to "An outline of the topics to be covered in the Fourth Report of the Hong Kong Special Administrative Region under the United Nations Convention on the Elimination of All Forms of Discrimination against Women" (the Outline).
2. STOP is a programme under the Vine Community Services Limited (VCSL) (soon to be renamed Branches of Hope), which is a non-government organisation in Hong Kong. Our goals are to raise awareness about human trafficking, connect with key counter-trafficking groups, provide victims with support, allow their voices to be heard, and to serve as a catalyst for positive change in the fight against modern-day slavery. We are a frontline Hong Kong-based initiative that responds to victims' need through legal referral and social assistance, network building, outreach and public education.
3. STOP appreciates the opportunity to provide comments on the HKSAR's implementation of CEDAW with respect to the topics contained in the Outline. This submission will confine itself to issues relating to the trafficking of women and girls, including sex workers and Migrant Domestic Workers (MDW). The submission will relate primarily to:

Article 6 - Exploitation of Women;

but will also be relevant to the following topics:

Article 5 - Stereotyping and Prejudices;  
Article 11 - Equality in Employment and Labour Rights;  
Article 12 - Equality in Access to Health Facilities; and  
Article 15 - Equality in Legal and Civil Matters.

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## Summary of Recommendations

4. STOP makes the following recommendations to the Government of HKSAR:

**Recommendation 1 - Support the extension of the Palermo Protocol to HKSAR and enact a comprehensive anti-trafficking law that criminalises all forms of trafficking.**

**Recommendation 2 - Strengthen and improve supports and protections for victims of trafficking including protection from criminalisation and access to emergency accommodation, financial, medical, psychological, social, interpretation, legal and other supports.**

**Recommendation 3 - Engage in regular consultation and open dialogue with civil society on matters relating to human trafficking, including the implementation and review of current policies.**

**Recommendation 4 - In relation to Migrant Domestic Workers:**

- a. **Abolish the live-in rule or make it optional, ensuring that those who choose to live out are provided with adequate allowances and supports to secure safe and suitable accommodation.**
- b. **Abolish or extend the two-week rule.**

**Recommendation 5 - In relation to sex workers:**

- a. **Undertake comprehensive research and data collection on the sex industry and the extent of sex trafficking within the sex industry.**
- b. **Increase public awareness of and prevent sex trafficking, including through public education campaigns and training of police and relevant authorities.**

## A Comprehensive Anti-Trafficking Law

- 5. Human trafficking is a complex and hidden crime. Its victims include women and girls from ethnic minorities, disadvantaged groups and other vulnerable settings. Some have been exposed to multiple forms of exploitation and most have been traumatised by their experiences.
- 6. There is a critical need for a single comprehensive law against human trafficking in all its forms to provide a clear and concrete pathway for victims to seek justice and obtain redress. The current piecemeal multi-legislation approach to addressing trafficking issues fails to reflect the true experiences of many victims and the complex nature of the crime.
- 7. The Crimes Ordinance (Cap 200) covers only cross-border trafficking for the purpose of prostitution and does not cover any other forms of human trafficking such as forced labour. While the multiple-legislation approach claims to cover trafficking offences through other related provisions, it is critical that we put a name to the crime. The limited scope of the Crimes Ordinance and current piecemeal approach makes it very difficult for law enforcers to punish traffickers for the crime of human trafficking. Rather, traffickers may be prosecuted for lesser related offences or else slip through the cracks entirely. This approach is wholly inadequate for reflecting the complex experiences of victims and dealing with the seriousness of the perpetrators' crime.

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8. Further, victims of trafficking will have little motivation to come forward in the absence of clear legal remedies and guaranteed victim supports. Our experience as a frontline organisation is that victims often face multiple inefficiencies and obstacles when trying to navigate different departments and explain their situation to different officers. We have had cases where victims have just given up and stopped pursuing their claims entirely.
9. We urge the Government of the HKSAR to take part in the global efforts to eradicate human trafficking and to join the ranks of the increasing number of countries who have moved or are moving away from similar piecemeal approaches to embrace the logic and benefits of single comprehensive law e.g. the UK, USA, Australia etc.
10. In summary, a new anti-trafficking law would greatly improve anti-trafficking efforts in Hong Kong by criminalising all forms of trafficking, filling the gaps in existing law, providing clear remedies and protections to victims and raising the profile of this hidden crime so as to give victims the courage to come forward and law enforcers the confidence to act.

## **Recommendation 1 - Support the extension of the Palermo Protocol to HKSAR and enact a comprehensive anti-trafficking law that criminalises all forms of trafficking.**

### **Protection and Support for Victims of Trafficking**

11. We welcome and recognise efforts by the Government of HKSAR to combat human trafficking through policies and initiatives such as the Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers (March 2018).
12. However, we regret that civil society was not consulted in the development of many of these positive initiatives, including the recent Action Plan. There are a number of NGOs working directly or indirectly on anti-trafficking issues in Hong Kong who have much to offer on this topic. These organisations, many of whom work directly with victims or have connections with relevant local and international organisations, would be grateful to share our experiences and be in dialogue with Government.
13. Additionally, the level of implementation and progress of current policies remains unclear. For example, we note that the Prosecution Code has been amended to include a new section on 'Human Exploitation Cases' and a TIP victim screening mechanism has also been introduced to various law enforcement agencies. However, in media reports about police raids and arrests of illegal migrant workers, it is unclear the extent to which current screening mechanisms have been applied and whether potential victims of trafficking are being referred to appropriate services and protected from criminalisation. Increased transparency around the implementation of policies and relevant timelines would be helpful, particularly in enabling NGOs to connect victims to relevant supports. NGOs could also make meaningful contributions to implementation efforts by providing feedback on the effectiveness of current measures for ongoing review and improvement.
14. Finally, we urge the Government of HKSAR to strengthen and improve supports and protections for victims of trafficking. Through our work, we have observed that access to legal aid, quality interpreters, emergency shelter, medical and psycho-social supports continue to be a struggle for victims. For example, three of our clients have recently been refused legal aid support. It is also our common experience to be unable to access

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interpreters at police stations, hospitals and the immigration office. On other occasions, we have been told by our clients that the interpretation provided was difficult to understand and of poor quality. The five government-funded shelters only provide assistance to female victims who possess an identity card. However, most of our clients are either not in possession of an identity card or they are male victims. We therefore urge the Hong Kong Government to establish a shelter designated exclusively for victims of human trafficking, especially to respond to their special psychological needs.

**Recommendation 2 - Strengthen and improve supports and protections for victims of trafficking including protection from criminalisation and access to emergency accommodation, financial, medical, psychological, social, interpretation, legal and other supports.**

**Recommendation 3 - Engage in regular consultation and open dialogue with civil society on matters relating to human trafficking, including the implementation and review of current policies.**

## **Migrant Domestic Worker (MDW)**

15. At the end of 2017, there were about 370,000 MDW working in Hong Kong, the majority of whom were women. Factors such as their gender, isolation from home, immigration status, ethnicity, language barriers and lack of knowledge about their rights in Hong Kong make MDWs vulnerable to trafficking and various forms of exploitation.
16. In particular, the 'live in rule' dramatically increases the vulnerability of MDWs to exploitation and the 'two week' rule places undue pressure on MDWs to remain in situations of exploitation. A 2016 study found 35.1% of the MDWs surveyed had to work on their day off, 35.2% had to share a room with a child or the elderly and 2% were sleeping in a kitchen or shared living space.<sup>i</sup> For example, one of our clients was made to work 18 hour days and sleep in the kitchen. She recalled that she often felt threatened by her employers, and felt scared by her employers' verbal abuse. In Hong Kong's often space-poor homes, the 'live in' requirement increases the vulnerability of MDWs to labour exploitation, physical violence and sexual abuse by blurring the boundary between work and personal life, increasing the likelihood of overtime work, reducing privacy and isolating MDWs from the community.

## **Recommendation 4 - In relation to Migrant Domestic Workers:**

- a. **Abolish the live-in rule or make it optional, ensuring that those who choose to live out are provided with adequate allowances and supports to secure safe and suitable accommodation.**
- b. **Abolish or extend the two-week rule.**

## **Sex Workers**

17. There is a lack of comprehensive up-to-date data and information about the sex workers in Hong Kong. There are also conflicting views and a general lack of knowledge about the prevalence of trafficking in the sex industry. It would be beneficial for the Government of HKSAR to undertake comprehensive research and data collection on the sex industry, disaggregated by the type of sex work, country of origin and other indicators, and investigate the incidence of trafficking within this industry.

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18. Sex work is highly stigmatised in Hong Kong and sex workers are often subject to negative attitudes and stereotypes. These societal prejudices can expose sex workers to a higher risk of exploitation as they may feel alienated and unable to seek help in light of the discrimination they face. Migrant sex workers are especially vulnerable to abuse as they are usually ignorant of their legal rights in Hong Kong and isolated due to language barriers.
19. Lack of understanding about trafficking in the sex industry coupled with discriminatory attitudes, places sex workers in precarious situations during police raids and anti-vice operations. Sex workers are often treated poorly during these raids, arrested and charged with breaches of immigration and other offences. As discussed at paragraph, it is unclear if present TIP screening mechanisms are being applied in these investigations or if potential victims are referred to appropriate supports and protected from criminalisation for offences committed as a direct consequence of their exploitation. There is a need to raise greater awareness of and prevent trafficking within the sex industry as well as to intensify training among police and other authorities.

## **Recommendation 5 - In relation to sex workers:**

- a. **Undertake comprehensive research and data collection on the sex industry and the extent of sex trafficking within the sex industry.**
- b. **Increase public awareness of and prevent sex trafficking, including through public education campaigns and training of police and relevant authorities.**

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<sup>i</sup> Justice Centre Hong Kong, 'Coming Clean: The prevalence of forced labour and human trafficking for the purpose of force labour amongst migrant domestic workers in Hong Kong' (March 2018). At: <http://www.justicecentre.org.hk/comingclean/> (viewed 11 April 2018)