

Report by Hon. Felix Chung Kwok Pan
MODERN SLAVERY PROJECT
Legislative Drafting Seminar on Modern Slavery & Human Trafficking
26-29 March 2019

Background

Modern slavery, human trafficking and forced labour are a global phenomenon. The International Labour Organization estimates that there are over 40 million people are in some form of slavery today. 24.9 million people are in forced labor, of whom 16 million people are exploited in the private sector such as domestic work, construction or agriculture; 4.8 million persons in forced sexual exploitation, and 4 million persons in forced labor imposed by state authorities. 15.4 million people are in forced marriage.

Human trafficking, forced labour and commercial sexual exploitation are issues faced in some less-developed countries. According to the 2018 Global Slavery Index, the 10 countries with highest prevalence of modern slavery globally are North Korea, Eritrea, Burundi, the Central African Republic, Afghanistan, Mauritania, South Sudan, Pakistan, Cambodia, and Iran.

The Modern Slavery Project was a four year project to encourage and facilitate a greater understanding of the national and international benefits of introducing modern slavery-related legislation and exchange learning. The Legislative Drafting Seminar was held to provide expertise and share experiences to create stronger legislation to tackle the crimes of modern slavery, human trafficking and forced labour.

Hong Kong Situation

Over the years, cases of trafficking in persons (“TIP”) are rare in Hong Kong. Hong Kong Government attaches great importance to combating human trafficking and maintains close co-operation with overseas enforcement agencies in tackling the problem. Human trafficking crimes in Hong Kong is not significant.

In fact, Hong Kong is neither a main destination nor a transit point for human trafficking. Neither is it a place of origin for exporting illegal migrants. There are no signs of increasing trend of such crimes in terms of the number of arrests, prosecutions or convictions.

Hong Kong addresses human trafficking through “multiple-legislation” approach, encompassing offences such as physical abuse, false imprisonment, criminal intimidation, unlawful custody of personal valuables, child abduction, child pornography and exploitation of children, and illegal employment. Some of the offences attract penalties of up to life imprisonment. The Palermo Protocol concept of TIP has also been incorporated into the Prosecution Code issued by the Department of Justice (DoJ) in September 2013. The multiple-legislation approach has served Hong Kong well.

The Laws of Hong Kong (including the Crimes Ordinance and the Protection of Children and Juveniles Ordinance) have already put activities such as trafficking in persons and abduction of children as criminal offences. The Prevention of Child Pornography Ordinance strengthens protection of children against sexual exploitation in the forms of child pornography and child sex tourism.

In addition, Hong Kong Government has been taking vigorous enforcement actions against employers in breach of various labour legislations in seeking to protect the rights of workers, including over 360 000 Foreign Domestic Helpers (FDHs) in Hong Kong, particularly in respect of withholding of wages and non-granting of rest days or statutory holidays.

The Government spares no effort in safeguarding the rights and benefits of FDHs enjoy the same statutory protection under the labour law as local employees and they are further protected through the government-prescribed Standard Employment Contract. The Government maintains close liaison with the governments of FDHs' home countries and their consulates-general in Hong Kong for information sharing and collaboration.

The HKSAR Government has stepped up anti-TIP measures in 2016 and 2017, including:

*To introduce a new mechanism (with an expanded scope) for TIP victim screening and identification by the Police and the Immigration Department (ImmD). Since March 2017, the Customs and Excise Department (C&ED) has also implemented a TIP victim screening mechanism. Assistance in the form of urgent interference, shelter, medical care, counselling, financial assistance and more was provided to victims;

* To enhance inter-departmental co-operation, the Security Bureau (SB) issued a Guideline on Inter-departmental Cooperation for the Handling of Suspected Cases of Trafficking in Persons to set out the principles and procedures of inter-departmental collaboration on the handling of potential TIP cases;

* To grant visa fee waiver by ImmD to FDHs established as victims of criminal cases who need to stay in Hong Kong to act as prosecution witnesses in legal proceedings instituted by the Police. The visa fee waiver arrangement has been extended to cover FDHs acting as prosecution witnesses for ImmD and the LD;

* In order to oversee and co-ordinate cases involving TIP issues handled or submitted by various law enforcement agencies for legal advice, a designated desk to handle these cases for such a purpose has been assigned by the Prosecutions Division of the DoJ in April 2017.

Conclusion

Human trafficking is a heinous crime that is not tolerated in Hong Kong. The well-established legal framework, stringent enforcement actions, independent judicial system, respect for the rule of law in society, have placed Hong Kong on a solid footing to combat human trafficking. The Government has always attached great importance to anti-human trafficking work. I do not agree that the existing legislation of Hong Kong cannot effectively combat and prevent human trafficking.