

Submission to Panel on Constitutional Affairs
Hearing of the UNHRC on the Fourth Report of the HKSAR in the light of the ICCPR

By
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STOP (Stop Trafficking of People) is an initiative under Branches of Hope Limited, a registered Hong Kong charitable organisation aiming to end human trafficking in and through Hong Kong. Through our Crisis Intervention and Care Programme, STOP has assisted over 50 victims of human trafficking since its inception in 2016. We provide comprehensive social assistance and support for trafficking survivors to seek justice and recover from exploitation in Hong Kong. We also aim to address the root causes of modern slavery through our network building, outreach, and public education activities.

This submission expresses our concerns and recommendations for combatting human trafficking in and through Hong Kong.

In accordance with the ICCPR's Universal Declaration of Human Rights, a free human being is only able to enjoy their civil and political freedom and their freedom from fear and want if conditions where everyone can enjoy their civil, political, economic, social and cultural rights are created. Human trafficking and forced labour are serious crimes against humanity and challenge the ideal of a free human being. Victims of human trafficking are usually interlocked with economic, social, and cultural vulnerabilities. In terms of prevention, prosecution and protection, STOP has identified key improvements that the HKSAR Government and the civil society could make in effort to tackle human trafficking.

Protection and Support for Victims of Trafficking

In 2019, according to the HKSAR Government, over 7,500 initial Trafficking in Persons (TIP) victim screenings were conducted by various departments but they only managed to identify 18 victims in 2018 and 3 were in 2019. In comparison, the Civil Society Anti-human Trafficking Task Force Hong Kong has identified 99 trafficked victims from 2017 to 2020, despite the civil society's limited resources. The meagre number of victims identified by the Government does not imply that "TIP has never been a prevalent problem in Hong Kong". As the United Nations Office on Drugs and Crime's (UNODC) 2018 Global Report on Trafficking in Persons stated, "reporting limited numbers of detected victims and few convictions does not necessarily mean that traffickers are not active in these countries". In fact, such low figures exhibit the potential for a "high degree of impunity" and a "limited response to trafficking" in these areas.

Survivors of trafficking often live with physical and psychological scars. When handling traumatised victims, one should be aware of preventing re-traumatisation. As a frontline organisation, STOP has encountered many survivors whose complaints were ignored or concealed by various departments. We suggest the necessity of training officers with trauma-informed care to enhance their sensitivity.

Our clients expressed that their fear of authority and the potential to be criminalised has rendered them to give up during the TIP screening process. In the absence of formal legal provisions that protect victims from criminalisation, the risk of victims being penalised for unlawful acts they committed as a direct consequence of being trafficked remains problematic. One such example of an unlawful act is the violation of immigration law.

The identified victims represent only the tip of the iceberg of a prevalent and invisible problem in Hong Kong. Victims have little incentive to come forward because of the limited legal remedies and support available to them. For example, victims with a visitor visa are excluded from public health care. Victims who choose to seek justice through the legal process are often trapped in endless waiting. In order to encourage victims to pursue cases, instead of relying on civil society organisations, STOP will provide our first-hand experience in a trauma-informed manner to improve the existing victim assistance by the HKSAR Government.

A Comprehensive Anti-trafficking Law

There is currently no comprehensive anti-human trafficking law in Hong Kong. The only legal provision that deals specifically with human trafficking (section 129 of the Crime Ordinance, Cap. 200) applies to trafficking across borders for the purpose of prostitution. Other trafficking-related legal provisions are dispersed throughout various pieces of legislation. Without a clear definition and penalty, this multi-legislation approach is insufficient to hold the perpetrators accountable.

The Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Workers in Hong Kong 2018 has been adopted for 2 years now. However, no sign of an implementation plan with a concrete timeline and clear resource allocations for these new measures have been witnessed. The existing multi-legislation approach also fails to effectively address other forms of human trafficking in Hong Kong, such as in-border sex trafficking, cybersex trafficking, forced marriage and forced criminality. STOP reiterates its call on the HKSAR Government to enact a comprehensive law against modern slavery, which encompasses all forms of trafficking.

Recommendations

In accordance with Article 8 of the ICCPR, slavery and the slave-trade in all their forms shall be prohibited. We encourage the HKSAR Government to fulfil its obligation to protect anyone who is in or through Hong Kong to be free from the risk of trafficking by implementing the following recommendations.

1. Extension of the Palermo Protocol to HKSAR, a comprehensive anti-human trafficking legislation is needed in Hong Kong to criminalise human trafficking activities
2. Establish a system to support and protect victims of trafficking including protection from criminalisation and deportation, and access to emergency accommodation, financial, medical, psychological, social, interpretation, legal, and other support, in a trauma-informed care approach.
3. Enhance inter-departmental coordination, collaboration with civil society, and international cooperation to combat trafficking and forced labour.
4. Abolish any discriminatory policies which contribute to an increased risk of forced labour among domestic workers, including the “two-week rule” and the “live-in requirement”.