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TRAFFICKING IN PERSONS REPORT 2018 - COUNTRY NARRATIVES - HONG KONG

HONG KONG: Tier 2 Watch List

The Government of Hong Kong does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government demonstrated significant efforts during the reporting period by releasing an action plan to combat trafficking and enhance protections for foreign domestic workers; establishing a central steering committee to coordinate anti-trafficking efforts; passing legislation that strengthened the penalties against employment agencies that violate certain labor provisions; increasing the number of investigations for sex trafficking related offenses; and training a large number of front-line officers on victim identification and investigative methods. However, the government did not demonstrate increasing efforts compared to the previous reporting period. The government reported fewer convictions for sex trafficking related offenses and issued sentences that were insufficiently stringent for the seriousness of the crime. Some law enforcement officers did not properly investigate incidents with clear trafficking indicators reported to them by NGOs. Despite maintaining a victim identification mechanism, officials did not consistently identify victims, and the government did not consistently conduct screenings during investigations and police operations. Of the several thousand individuals it screened through the identification mechanism, the government only identified nine trafficking victims. Because the government has devoted sufficient resources to a written plan that, if implemented, would constitute significant efforts to meet the minimum standards, Hong Kong was granted a waiver per the Trafficking Victims Protection Act from an otherwise required downgrade to Tier 3. Therefore Hong Kong remained on Tier 2 Watch List for the third consecutive year.

RECOMMENDATIONS FOR HONG KONG

Enact a comprehensive anti-trafficking law that criminalizes all forms of trafficking, including sex trafficking and forced labor without trans-border movement, in accordance with the definitions set forth in the 2000 UN TIP Protocol; increase efforts to proactively identify sex and labor trafficking victims among vulnerable populations—such as mainland Chinese and foreign migrants, domestic workers, and women and children in prostitution—and refer them to protection services; vigorously prosecute suspected labor traffickers and recruiters, especially those who exploit foreign domestic workers; cease penalization of victims for non-violent crimes committed as a result of being subjected to trafficking; increase legal protections for populations vulnerable to trafficking; enforce new penalties to penalize employment agencies that charge excessive fees to vulnerable populations, particularly foreign domestic workers; increase protective services available specifically for trafficking victims; increase efforts to consult with civil society on anti-trafficking policies; fully implement the action plan to combat trafficking and enhance protections for foreign domestic workers; make labor tribunals more effective through improved translation services, better access to counsel, and anti-trafficking training for judges; grant foreign victims permission to work and study while participating in judicial proceedings against their traffickers; remove requirements that foreign domestic workers must depart Hong Kong within two weeks of quitting or being let go from their positions to renew their visas; provide legal alternatives to foreign victims who may face hardship or retribution in their home countries as a result of their victimization; and increase public awareness campaigns and trainings to educate police, labor inspectors, prosecutors, judges, and the public on human trafficking as defined by international standards.

PROSECUTION

The government maintained anti-trafficking law enforcement efforts. Hong Kong law did not criminalize all forms of human trafficking and the government relied on various provisions of laws relating to prostitution, immigration, employment, and physical abuse to prosecute trafficking crimes. Section 129 of the crimes

ordinance, which criminalized “trafficking in persons to or from Hong Kong,” required transnational movement and did not require the use of force, fraud, or coercion, and was therefore inconsistent with international law. Section 129 prescribed penalties of up to 10 years imprisonment, which were sufficiently stringent and, with respect to sex trafficking, commensurate with punishments prescribed for other serious crimes, such as rape. Section 130 of the crimes ordinance criminalized the harboring, controlling, or directing of a person for the purpose of prostitution and prescribed penalties of up to 14 years imprisonment. Section 131 criminalized procuring a person to engage in commercial sex acts and prescribed penalties of up to 10 years imprisonment.

The absence of laws that fully criminalize trafficking made it difficult to accurately assess the government’s prosecution efforts compared to the previous year and made it difficult to determine which law enforcement actions involved human trafficking as defined by international law. The government reported investigating nine potential cases of labor trafficking and 37 potential cases of sex trafficking in 2017 (19 potential sex trafficking investigations in 2016). Authorities initiated the prosecutions of and convicted two potential labor traffickers, including an employer of a foreign domestic worker and the owner of an employment agency, for conspiracy to defraud the immigration department. The government sentenced both offenders to six months imprisonment, one with a suspended sentence. The government did not report the number of sex trafficking prosecutions initiated in 2017, but reported completing 14 prosecutions and obtaining 12 convictions for offenses related to sex trafficking (28 convictions in 2016), including sections 129, 130, and 131 of the crimes ordinance. Courts sentenced 10 offenders to terms of imprisonment ranging from one to nine months imprisonment and one to a suspended sentence; one offender was sentenced to a hospital order.

Police sometimes did not adequately investigate trafficking cases referred to them by NGOs and often dropped cases with clear indicators of trafficking. The absence of laws criminalizing all forms of trafficking impeded investigators’ ability to charge suspected traffickers, particularly in cases where it was difficult to prove physical assault, theft, recruitment, or transportation. The government designated a team of prosecutors, which it expanded to include additional staff during the reporting period, to prosecute trafficking related crimes. The government amended the prosecution code—an administrative handbook to guide prosecutors in building criminal cases—in 2013 to include the 2000 UN TIP Protocol’s definition of trafficking. However, there was no parallel change in the criminal laws. Prosecutors sometimes used victims’ acceptance to work outside of their contracts under duress as evidence that victims violated their immigration status, instead of as evidence of abuse, and prosecuted victims for immigration violations. The government trained a large number of police, immigration, labor, and customs officials on human trafficking awareness, victim identification, and the investigation of trafficking cases. The immigration and customs departments’ provided trafficking related training to all new employees. Authorities did not report any investigations, prosecutions, or convictions of government officials complicit in trafficking offenses.

PROTECTION

The government maintained efforts to protect victims. Authorities identified 28 trafficking victims in 2017, compared to 36 in 2016. Police, immigration, and customs officials utilized a two-tier victim identification mechanism to screen vulnerable populations and refer potential victims to services. Through this mechanism, authorities screened 4,710 vulnerable individuals (2,515 in 2016), identified 23 individuals with at least one indicator of trafficking, and after conducting full briefings of all 23, determined nine to be trafficking victims (eight victims of labor trafficking and one victim of sex trafficking). The government also identified 19 child victims of sex trafficking during law enforcement operations; although authorities did not prosecute them for crimes committed as a result of being subjected to trafficking, the government arrested and immediately returned all 19 child victims to their home without providing adequate services or ensuring they received assistance upon their return. The government introduced the screening mechanism to nine additional police districts in 2017. Despite this screening mechanism, officials often did not recognize trafficking consistently and did not consistently screen foreign domestic workers or persons in prostitution during investigations and police operations.

The government subsidized nine NGO-run shelters to serve victims of violence, abuse, or exploitation, including trafficking victims, including three dedicated to assisting minor victims. However, no trafficking victims received assistance in government-funded shelters during the reporting period. These shelters could provide temporary accommodation, counseling, and access to public hospital medical and psychological services to local and foreign victims, regardless of gender or age. Some government-funded shelters were specifically equipped to provide

services and protection to child victims. Some victims received assistance from NGOs or foreign consulates. The labor department operated a 24-hour hotline, which was available for trafficking victims to receive crisis support counseling and assistance with referral to authorities or services.

The government reported it had guidelines stating that victims should not be prosecuted for crimes committed as a direct result of being subjected to trafficking. However, the government continued to prosecute possible unidentified victims for crimes committed as a direct result of being subjected to human trafficking, such as violating their labor contracts, using forged identity documents given to them by recruitment agencies or employers, prostitution, and immigration violations. Fears of penalization made victims, including foreign domestic workers, reluctant to report exploitation to authorities. Poor translation services, lack of trained attorneys, the inability to work while awaiting a decision, and judges' inexperience with forced labor cases sometimes impaired victims' attempts to claim back wages or restitution through labor tribunals. The government's policy requiring foreign domestic workers to return home within two weeks after their contract is terminated prematurely deterred potential trafficking victims from leaving or reporting exploitative employment as it imposed a prohibitive cost on changing their employer. The government allowed 31 exploited foreign domestic workers to pursue new employment visas without leaving the country in 2017. The government encouraged victims to participate in the investigation and prosecution of traffickers by offering financial assistance to victims residing overseas to enable their return to Hong Kong as witnesses and offering visa fee waivers to trafficking victims, as well as foreign domestic workers determined to be victims of illegal conduct; the government granted 133 visa fee waivers in 2017. Although this allowed some victims to work during pending prosecutions or labor tribunals, foreign victims were generally unable to do so, which deterred victims from cooperating with authorities or reporting exploitative employment. Hong Kong does not allow individuals to obtain permanent residency status as a result of being subjected to trafficking, even if repatriation may constitute a risk of hardship or retribution in the victim's home country.

PREVENTION

The government increased efforts to prevent trafficking; however, the government did not conduct campaigns to raise awareness of sex trafficking. In March 2018, the government announced the establishment of a high-level steering committee that would coordinate the government's anti-trafficking efforts. In addition, it released an action plan to combat trafficking and enhance protections for foreign domestic workers in March 2018. An inter-departmental working group led by the security bureau, composed of police, immigration, customs and excise, labor, and social welfare departments, continued to meet. NGOs reported weak coordination with government agencies, which continued to impede the government's anti-trafficking efforts. To improve the public's and workers' awareness of the rights of foreign domestic workers and the responsibilities of employers, the government continued to: publish information leaflets that it required employment agencies to distribute; operate workers' rights information kiosks in public areas; work with the Philippine and Indonesian consulates in Hong Kong to provide information briefings to newly arriving domestic workers regarding their rights; and publish translated versions of standard employment contracts in additional foreign languages. The government continued placing advertisements in newspapers, and distributing anti-trafficking pamphlets in several languages to foreign domestic workers at the airport, through their consulates, and in Filipino and Indonesian language newspaper advertisements. Employment agencies and employers often seized these packets from workers.

The government reported investigating 49 cases involving physically and sexually abused foreign domestic workers, prosecuted 15 employers of domestic workers (seven in 2016), and convicted four (five in 2016). The government reported arresting 78 employers of foreign domestic workers and convicting 35 for illegally deploying workers to perform non-domestic duties; sentences included fines and terms of imprisonment ranging from four weeks to two months. In February 2018, the government passed legislation that increased the penalties for operating an employment agency without a license or overcharging workers to include up to three years imprisonment and increase potential fines from no more than 50,000 Hong Kong dollars (HKD) (\$6,400) to 350,000 HKD (\$44,790). The Employment Agencies Administration (EAA) was responsible for inspecting agencies and implementing the new legislation. Inspections of agencies were ineffective and often only consisted of undetailed reviews of documentation. NGOs reported fines and penalties given to employment agencies exploiting foreign domestic workers were too light and did not act as a deterrent for unscrupulous agencies. The EAA conducted 1,846 inspections of employment agencies in 2017; the labor department convicted two agencies for overcharging workers, four for unlicensed operations, and five for other offenses (eight agencies convicted in 2016). The government began to require employment agencies to comply with a newly instituted "code of

practice” covering statutory requirements and standards for Hong Kong-based employment agencies. Authorities could cite the code of practice in decisions to extend or revoke employment agency licenses. The commissioner for labor revoked the licenses of six additional employment agencies on suspicion of overcharging foreign domestic workers and rejected applications for the renewal of several licenses based on non-compliance. Labor officials also issued an amended code of practice outlining the management of potential employees’ passports and personal identification documents. However, some employment agencies reportedly continued to operate—and unlawfully retain workers’ passports, with impunity—after losing their licenses, sometimes under a different name. The government reported efforts to reduce the demand for commercial sex and forced labor. The government did not provide anti-trafficking training to its officials posted overseas.

TRAFFICKING PROFILE

As reported over the past five years, Hong Kong is primarily a destination, transit, and to a much lesser extent, a source territory for men, women, and children subjected to forced labor and sex trafficking. Victims include citizens from mainland China, Indonesia, the Philippines, Thailand, and other Southeast Asian countries as well as countries in South Asia, Africa, and South America. Approximately 370,000 foreign domestic workers, primarily from Indonesia and the Philippines, work in Hong Kong; some become victims of forced labor in the private homes in which they are employed. An NGO report released in 2016 estimated as many as one in six foreign domestic workers is a victim of labor exploitation. Employment agencies often charge job placement fees in excess of legal limits, and sometimes withhold identity documents, which may lead to situations of debt bondage of workers in Hong Kong. The accumulated debts sometimes amount to a significant portion of the worker's first year salary. Some employers or employment agencies illegally withhold passports, employment contracts, or other possessions until the debt is paid. Some workers are required to work up to 17 hours per day, experience verbal, sexual or physical abuse in the home, and/or are not granted a legally required weekly day off. Some foreign domestic workers sign contracts to work in Hong Kong, but upon arrival are coerced or lured to work in mainland China, the Middle East, or Russia.

Some women in Hong Kong—often with the assistance of their families—deceive Indian and Pakistani men into arranged marriages that involve forced domestic servitude, bonded labor in construction and other physically demanding industries, travel and identity document retention, wage theft, and other forms of abuse via exploitative contracts. Separately, criminal syndicates or acquaintances sometimes lure women to Hong Kong from the Philippines, South America, and mainland China using false promises of lucrative employment and force them into prostitution to repay money owed for passage to Hong Kong. Traffickers sometimes psychologically coerce sex trafficking victims by threatening to reveal photos or recordings of the victims’ sexual encounters to their families. “Compensated dating” continues to facilitate commercial sexual exploitation of Hong Kong children and make them vulnerable to trafficking.