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2021 Trafficking in Persons Report: 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 but is making significant efforts to do so. These efforts included investigating more potential cases of sex and labor trafficking than in the previous reporting period, including a case involving a money lending business alleged to have charged foreign domestic workers excessive fees that likely increased their risk of facing debt-based coercion. The government screened more than 6,900 vulnerable individuals for trafficking, trained 880 officials from various agencies, and continued to allocate 62.23 million Hong Kong dollars (\$8.03 million) in its annual budget to fund 98 positions within various agencies dedicated to trafficking issues. However, the government did not demonstrate overall increasing efforts compared to the previous reporting period, even considering the impact of the COVID-19 pandemic on its anti-trafficking capacity. The government did not prosecute or convict any labor traffickers and convicted fewer offenders for sex trafficking-related crimes compared with the previous reporting period. Despite the government screening thousands of vulnerable persons for trafficking indicators, it identified only three victims for the second consecutive year. Ineffective implementation of victim identification procedures continued to result in few victims identified and contributed to authorities penalizing victims for crimes their traffickers compelled them to commit. The government did not enact legislation to fully criminalize all forms of trafficking. Therefore Hong Kong remained on Tier 2 Watch List for the second consecutive year.

PRIORITIZED RECOMMENDATIONS:

Improve the quality of screenings conducted to identify trafficking victims, including by ensuring all children in commercial sex are identified as trafficking victims. • Cease penalization of victims for unlawful acts traffickers compel them to commit and increase interagency coordination to ensure victims are not punished through immigration proceedings, including before investigating their traffickers. • Vigorously investigate and prosecute suspected sex and labor traffickers, and sentence convicted traffickers to significant prison terms. • Engage in continuous and regular collaboration with NGOs and social welfare experts to update anti-trafficking policies, to review victim-centered interview processes and investigations, to establish improved services for trafficking victims, and to create in-depth training programs for the judiciary, labor tribunal, and other task force stakeholders. • Enact a comprehensive anti-trafficking law that criminalizes all forms of trafficking in accordance with the definition set forth in the 2000 UN TIP Protocol. • Ensure authorities offer and refer trafficking victims to services. • Ensure non-resident victims, including children, are provided adequate services in Hong Kong, including before their repatriation. • Increase protections for foreign domestic workers to reduce their vulnerability to trafficking, including by prohibiting worker-charged recruitment fees, permanently eliminating the “two week rule,” affording workers an option to live outside their place of employment, and creating legal maximum working hours. • Proactively investigate unscrupulous employment agencies and money lenders for their complicity in labor trafficking and sufficiently penalize convicted agency operators. • Allow foreign victims to work and study in Hong Kong while participating in judicial proceedings against their traffickers.

PROSECUTION

The government maintained anti-trafficking law enforcement efforts; the absence of laws that fully criminalize trafficking made it difficult both to accurately assess the government’s prosecution efforts compared with the previous year and to determine which law enforcement actions involved human trafficking as defined by international law. 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. Inconsistent with international law, 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. 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 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. Section 137 criminalized living on the earnings of commercial sex acts of others and prescribed penalties of up to 10 years.

Authorities investigated 27 cases related to sex trafficking in 2020, compared with nine investigations in 2019 and 136 in 2018. The government initiated investigations of three potential labor trafficking cases but did not report prosecuting or convicting any cases of labor trafficking for the second consecutive year. The government did not report the number of sex trafficking prosecutions initiated in 2020, but it reported arresting 27 suspects (five in 2019) during investigations for offenses related to sex trafficking, including for violations of sections 130 and 137 of the crimes ordinance. Courts convicted one offender for sex trafficking-related crimes in 2020 (10 convictions in 2019) and sentenced them to three months’ imprisonment. Short sentences, such as this, did not serve to deter trafficking crimes or adequately reflect the nature of the offense. The government did not report any investigations, prosecutions, or convictions of government employees complicit in human trafficking offenses.

Law enforcement officials often did not adequately investigate trafficking cases, including those referred to them by NGOs, sometimes closed cases with clear indicators of trafficking, and did not employ a victim-centered, trauma-informed approach when interviewing victims. The government reported using a “joint investigative process” in trafficking cases to coordinate interviews of victims among law enforcement agencies; however, in previous reporting periods, observers reported weak coordination between law enforcement agencies in practice, which resulted in agencies separately investigating different aspects of cases. Law enforcement generally did not adequately investigate operators of unscrupulous employment agencies or money lenders for their roles in facilitating labor trafficking through debt-based coercion. However, in response to information provided from a local NGO, police investigated one money lender during the reporting period for allegedly charging foreign domestic worker’s interest rates of nearly 100 percent for loans paid to employment agencies in the workers’ home country, significantly increasing their risk of experiencing debt-based coercion. Police arrested four suspects associated with the money lending company on charges of conspiracy to lend money at an excessive rate and money laundering; however, authorities reported they did not identify indicators of trafficking during the reporting period. The absence of laws criminalizing all forms of trafficking impeded officials’ ability to investigate or charge suspected traffickers. This also resulted in the prosecution of trafficking crimes under laws with weak penalties. NGOs previously reported judicial officials lacked an awareness of trafficking. Well-founded fears of penalization and the absence of adequate services resulted in many victims choosing not to report their exploitation or declining to cooperate with authorities in investigations.

The government provided trafficking-related training to approximately 880 officials from various agencies in 2020, compared with 1,400 trained in 2019. Adjusting to pandemic-related travel restrictions, which prevented their ability to attend overseas trainings, officials also joined online workshops and webinars during the reporting period. The Security Bureau cosponsored a training program with the EU for officials from various agencies, the hospital authority, NGOs, and IOM. The government did not report if it continued to distribute an information packet on trafficking for officials likely to come into contact with victims, which it initially distributed in December 2019. The justice department continued to employ a designated team responsible for prosecuting trafficking-related crimes, and the customs department had a four-person team that led its anti-trafficking efforts. The police force employed dedicated teams for investigating trafficking and the exploitation of foreign domestic workers. The government also reported having designated points of contact for trafficking issues within relevant agencies since 2018. Nonetheless, civil society organizations continued to report being unable to reach these designated contacts and teams, including when attempting to refer victims to police and some reported government officials were unable to direct them to a person responsible for trafficking in their agency.

PROTECTION

The government continued to make minimal efforts to protect victims. Police, immigration, and customs officials used a two-tiered identification mechanism to screen vulnerable populations for indicators of trafficking. Through this mechanism, officials referred potential victims for a full identification “debriefing” after determining whether an individual met at least one of seven indicators listed on the standard screening form of the first tier of the identification mechanism. Officials screened 6,912 individuals in 2020, but for the second consecutive year identified only three victims. Two victims identified by authorities were foreign domestic workers exploited in labor trafficking, but the government did not report if the third victim was exploited in forced labor or sex trafficking. The labor department’s (LD) 10 labor relation division offices continued to use the standard screening mechanism and conducted 1,500 screenings in 2020, which led to the identification of one victim in 2020. The immigration department’s Foreign Domestic Helper Special Investigation Section, which the government reported was designed to identify victims at the earliest possible stage, screened 2,500 visa applications of foreign domestic workers, which led to the identification of one victim in 2020.

Ineffective implementation of the screening mechanism and a lack of understanding of psychological trauma associated with trafficking continued to result in few victims identified. In addition, the standard screening form listed the vulnerable populations authorities were required to screen, but it did not include any groups that would include Hong Kong citizens. Law enforcement interviews of victims during the identification process often lacked a trauma-informed approach, exacerbated victims’ emotional distress, were sometimes conducted over many hours without adequate breaks, and, therefore, often did not successfully identify indicators of trafficking. NGOs reported identifying victims of trafficking among those who were not recognized by government officials despite undergoing the official screening process. Hong Kong’s low age of consent, 16, further complicated efforts to identify child victims exploited in commercial sex as trafficking victims. The failure to consistently provide potential victims with immediate stabilizing care upon their initial contact with authorities, as well as a lack of legal assistance for victims, also likely impeded officials’ ability to effectively interview victims and identify trafficking indicators.

The government did not report providing services to any of the three identified victims. Victims commonly preferred to receive services provided by foreign consulates or NGOs, rather than services offered by the government. The government partially subsidized six NGO-operated and three government-operated shelters that served victims of violence, abuse, and exploitation, including trafficking victims. These shelters could provide temporary accommodation, counseling, and medical and psychological services to local and foreign victims, regardless of gender or age. However, contacts reported no trafficking victims stayed in government shelters, likely due to fears the government would not provide adequate services or compensation.

The government could assist exploited foreign victims, including domestic workers, to return to Hong Kong to serve as witnesses in trials by providing financial assistance; but, due to travel restrictions associated with the pandemic, this likely did not occur during the reporting period. To enable foreign victims to temporarily remain in Hong Kong, the government could provide visa extensions with fee waivers and could provide victims who were foreign domestic workers with permission to change their employer; the government granted one identified victim permission to change their employer. Inconsistent coordination between immigration officials and police made it difficult for victims to obtain visa extensions in practice. Foreign victims, including those allowed temporary residency via visa extensions, were generally not permitted to work or study while they remained in Hong Kong. Hong Kong law allowed victims to seek compensation from traffickers through civil suits and labor tribunals. Nonetheless, poor interpretation 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 and deterred some from bringing claims forward.

Although there were no direct reports during the reporting period that authorities penalized trafficking victims for crimes their traffickers compelled them to commit, ineffective victim identification and ongoing reports that authorities were more likely to penalize victims than their traffickers meant this likely occurred in practice. The government typically initiated immigration proceedings against victims, rather than investigating or prosecuting their traffickers. In previous years, some law enforcement officials also reportedly threatened victims with penalization during victim identification interviews. In addition, anecdotal reporting suggested victims of forced criminality, specifically those coerced to carry drugs into Hong Kong, continued to be penalized by authorities without being screened for trafficking indicators. The government continued to intercept mainland Chinese child victims of sex trafficking during anti-vice operations—one in 2020 compared with 15 in 2019—and failed to identify them as trafficking victims or provide them with adequate assistance. Authorities screened the one child identified in commercial sex in 2020 but failed to identify the child as a victim of sex trafficking, despite this being a form of sex trafficking according to definitional standards under international law. Although the government coordinated with the authorities in their country of origin to repatriate these victims, it did not report providing them with sufficient stabilizing services after their initial identification in Hong Kong.

PREVENTION

The government maintained efforts to prevent trafficking. Although many agencies were fully occupied with implementing new public health measures as part of the government’s pandemic mitigation efforts, the government reported it did not divert resources from implementing the 2018 anti-trafficking action plan. The government continued to publicly deny that trafficking is a prevalent crime in Hong Kong, undercutting the anti-trafficking efforts of government officials and the NGO community. An anti-trafficking steering committee led by the Chief Secretary for Administration and the inter-departmental working group led by the security bureau continued to meet. The government continued to allocate 62.23 million Hong Kong dollars (\$8.03 million) in its annual budget to fund 98 positions within various agencies dedicated to trafficking issues. Except for working with an NGO to investigate one potential case of labor trafficking, the government did not report efforts to improve collaboration with civil society. In addition, following the imposition of the National Security Law by the Chinese National People’s Congress on Hong Kong in June 2020, under which any speech critical of the government or its policies could be construed as pro-secession, subversive, or inciting hate against the government, along with increased restrictions to freedom of expression, NGOs and other civil society organizations were less willing to engage with the government, including on human trafficking.

The government did not conduct campaigns to raise awareness of sex trafficking. To improve awareness of the rights of foreign domestic workers and the responsibilities of employers, the government continued to distribute information packets to workers and employers, publish advertisements in Filipino and Indonesian language newspapers, operate workers’ rights information kiosks in public areas, work with the Philippine and Indonesian consulates to provide briefings to newly arriving domestic workers, and publish translated versions of standard employment contracts in 11 foreign languages. The government continued to distribute information cards created by an international organization that listed information on support services available to foreign domestic workers and trafficking victims.

The government’s process for evaluating non-refoulement claims, which did not allow claimants to legally work in Hong Kong, made some refugees vulnerable to trafficking. In addition, the government’s policies requiring foreign domestic workers to live with their employer and to return to their home countries within two weeks after their contracts’ termination (“two week rule”) increased the ability of abusive employers and unscrupulous employment agencies to subject workers to trafficking. In September 2020, the Court of Appeals upheld the government’s live-in requirement. The requirement that workers live with their employers enabled exploitative employers to limit workers freedom of movement and communications, and sometimes required workers to live in inadequate conditions. The lack of regulations setting a maximum number of legal working hours for foreign domestic workers also contributed

to their vulnerability. Throughout the pandemic, the live-in requirement contributed to many workers facing increased workloads and daily work hours, and some employers denied workers’ the ability to take their mandated day off. Observers reported the “two week rule” continued to deter workers from reporting or exiting exploitative conditions. Due to travel restrictions related to the pandemic in both Hong Kong and workers’ home countries, the government temporarily suspended the “two week rule,” allowing some workers to remain in Hong Kong and seek new employment after their contracts ended. Although the government requested employers pay the costs associated with quarantine requirements for workers entering Hong Kong during the pandemic, this was not a requirement, and NGOs reported some employment agencies charged both employers and workers, who incurred additional debt from employment agencies from these expenses, further increasing their vulnerability to debt-based coercion.

The government reported convicting eight employers of foreign domestic workers for illegally using workers to perform duties outside their contracts (34 in 2019) but did not report the number convicted for non- or under-payment of wages (three in 2019); sentences included community service and up to two months’ imprisonment, which were suspended for two years. The government allowed employers previously convicted for exploiting foreign domestic workers to continue to hire workers. Temporary closures of labor tribunals during pandemic-related lockdowns throughout the reporting period resulted in a backlog of cases, which meant some foreign domestic workers with pending cases were required to apply for multiple visa extensions to remain in Hong Kong. Each visa extension lasted two weeks and cost workers 230 Hong Kong dollars (\$30), and the government did not permit these workers to work under visa extensions. At the onset of the pandemic, the government reported it would grant free visa extensions on a case-by-case basis. However, workers still faced difficulties obtaining extensions in practice. In June, the government began to grant automatic 30-day free visa extensions to the majority of workers’ applications.

Hong Kong law permitted employment agencies to charge job seekers, including foreign domestic workers, up to 10 percent of their first months’ salary in recruitment fees. Since enforcement of this rule was lacking, agencies often charged much higher fees and confiscated workers’ passports and/or contracts as collateral, practices which perpetuated debt-based coercion. The government required employment agencies to comply with a code of practice covering statutory requirements and standards for Hong Kong-based employment agencies. Despite being a violation of the code of practice, observers reported money lenders and employment agencies often operated at the same address without consequence; this enabled employment agencies complicit in labor trafficking to indebted workers through loans for recruitment fees that were often beyond the legal limits. The government did not report the number of inspections of employment agencies conducted by the Employment Agencies Administration (EAA) in 2020, compared with approximately 2,000 inspections in 2019. The EAA lacked sufficient resources, and its inspections of agencies were ineffective and often only consisted of cursory reviews of documentation. In addition, the EAA did not proactively investigate unscrupulous agencies and typically required a victim to make a complaint against an agency before initiating an investigation. The EAA was not regularly open on Sundays—the only non-work day for most foreign domestic workers—preventing some workers from filing complaints. To facilitate the ability of foreign domestic workers to make inquiries and complaints, LD operated an online portal as well as a 24-hour hotline available in nine languages. In 2020, LD prosecuted 11 agencies for overcharging workers, operating without a license, or other violations, but it did not report the number convicted (10 agencies convicted in 2019). LD cited non-compliance of the code of practice in decisions to revoke or reject the renewal of licenses of seven employment agencies in 2020 (13 in 2019). Nevertheless, some employment agencies reportedly continued to operate—and unlawfully retain workers’ passports with impunity—after losing their licenses, sometimes reopening under different names. In addition, NGOs reported fines and other penalties given to employment agencies exploiting foreign domestic workers were too light and did not act as a deterrent. Despite having the legal discretion to revoke agency licenses administratively, observers reported the EAA over-relied on criminal convictions of agencies to do so. The government did not make efforts to reduce demand for commercial sex acts. The government did not provide anti-trafficking training to its personnel posted overseas. While the People’s Republic of China included Macau in its accession to the 2000 UN TIP Protocol in 2010, it stated the Protocol “shall not apply” to Hong Kong.

TRAFFICKING PROFILE

As reported over the past five years, human traffickers exploit domestic and foreign victims in Hong Kong, and traffickers exploit victims from Hong Kong abroad. Victims include citizens from mainland China, Indonesia, Kenya, the Philippines, Thailand, Uganda, and other Southeast Asian countries, as well as countries in South Asia, Africa, and South America. Traffickers exploit foreign women, including from Eastern Europe, Africa, and Southeast Asia, in sex trafficking. There were reports that some women in Hong Kong—often with the assistance of their families—deceive Indian and Pakistani men into arranged marriages that involve domestic servitude, bonded labor in construction and other physically demanding industries, and other forms of abuse via exploitative contracts. Traffickers exploit migrant workers in construction, electronic recycling facilities, nursing homes, and private homes. Drug trafficking syndicates coerced foreign women, including through the use of physical violence, to carry drugs into Hong Kong.

Traffickers recruit victims from the Philippines, South America, and mainland China using false promises of lucrative employment and force them into commercial sex. Some foreign victims enter Hong Kong on two-week tourist visas, as part of a circuit of major cities in the region used by traffickers, including Bangkok and Taipei, and are coerced into commercial sex through debt-based coercion. Following increased travel restrictions related to the pandemic, there were fewer foreign individuals in commercial sex in Hong Kong throughout 2020, including trafficking victims. However, NGOs reported increasing occurrences of online solicitation of commercial sex acts, which reduced their access to individuals in commercial sex and may have increased individuals’ vulnerability to coercive tactics. Traffickers use coercive methods such as threats of reporting victims to police or immigration

authorities, withholding of identification documents, and blackmailing victims with threats of online distribution of photographs to coerce them to engage in online commercial sex acts. “Compensated dating” continues to facilitate commercial sexual exploitation of Hong Kong children and adults, making them vulnerable to trafficking. Traffickers exploited victims from Hong Kong in North America in commercial sex.

Approximately 400,000 foreign domestic workers, primarily from Indonesia and the Philippines, work in Hong Kong. Some foreign domestic workers become victims of debt bondage in the private homes in which they are employed. A 2018 NGO task force survey of migrant workers found one-third of Indonesian workers in Hong Kong were asked to sign debt agreements as conditions of their employment. In addition, 56 percent of surveyed workers reported having to pay illegal recruitment fees, and 24 percent had their personal documents withheld by employment agencies or employers. Recent estimates suggest that as many as one in six foreign domestic workers are victims of labor exploitation in Hong Kong. Some operators of employment agencies subject victims to labor trafficking through debt-based coercion by charging workers job placement fees above legal limits, and sometimes withholding their identity documents. The accumulated debts sometimes amount to a significant portion of a worker’s first-year salary, and unscrupulous agencies sometimes compel workers to take loans from money lenders to pay excessive fees; a 2017 study estimated foreign domestic workers spend up to 35 percent of their monthly salary paying back money lenders. Some employers, money lenders, and 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; live in inadequate conditions; and/or are not granted a legally required weekly day off. Throughout the pandemic, many workers faced increased workloads and daily work hours, and some employers denied workers the ability to take their mandated day off. In addition, many workers incurred additional debt from employment agencies for expenses related to quarantine requirements, further increasing their risk of experiencing debt-based coercion. Observers also reported that brothels, bars, and clubs increasingly recruited foreign domestic workers to engage in commercial sex acts, sometimes through fraudulent recruitment methods. Some foreign domestic workers sign contracts to work in Hong Kong, but upon arrival, traffickers coerce or lure them to work in mainland China, the Middle East, or Russia. As demand for foreign domestic workers in Hong Kong increased, NGOs reported workers from countries other than Indonesia and the Philippines were increasingly vulnerable to exploitation. Some employment agencies reportedly hired foreign domestic workers under false pretenses and forced them into commercial sex.

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Austrian Red Cross Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD)	Wiedner Hauptstraße 32, 1041 Wien T (Telephone) +43 1 589 00 583 F (Fax) +43 1 589 00 589 info@ecoi.net	Contact Imprint & Disclaimer F.A.Q. Data Protection Notice
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