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2019 Trafficking in Persons Report: Hong Kong

HONG KONG: Tier 2

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. The government demonstrated overall increasing efforts compared to the previous reporting period; therefore Hong Kong was upgraded to Tier 2. These efforts included introducing the victim identification mechanism to 12 more police districts in 2018 so that it covered all districts, identifying more victims under the mechanism than in 2017, investigating an increased number of labor trafficking cases, launching a hotline for foreign domestic workers, and continuing to increase training of officials on trafficking. The government allocated funding to support implementation of its 2018 anti-trafficking action plan, designated officials within relevant agencies responsible for coordinating the government's anti-trafficking efforts, and appointed police units responsible for investigating trafficking. However, the government did not meet the minimum standards in several key areas. The government did not adequately investigate trafficking crimes, convict any labor traffickers, make sufficient efforts to ensure the safe repatriation of victims to their home countries, enact legislation to fully criminalize all forms of trafficking, or consistently refer victims to services. Officials continued to penalize trafficking victims for unlawful acts traffickers compelled them to commit and did not vigorously penalize unscrupulous employment agencies and money lenders that facilitated debt bondage.

PRIORITIZED RECOMMENDATIONS

Enact a comprehensive anti-trafficking law that criminalizes all forms of trafficking in accordance with the definitions set forth in the 2000 UN TIP Protocol. • Take steps to increase the efficacy of screenings conducted to identify trafficking victims, including by increasing trainings. • Vigorously investigate and prosecute suspected sex and labor traffickers and sentence convicted traffickers to adequate penalties, which should involve significant prison terms. • Increase proactive investigation of unscrupulous employment agencies and money lenders, including by increasing the efficacy of inspections, and sufficiently penalize convicted agency operators to deter activities that promote debt bondage. • Increase the referral and provision of protective services to 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 prior to investigating their exploitation. • In consultation with NGOs and social welfare experts, take steps to consistently conduct

the victim interview process with a victim-centered approach. • Eliminate legally permitted worker-charged recruitment fees, shifting the burden to employers to pay all recruitment fees charged by employment agencies. • Increase efforts to continually consult with civil society on anti-trafficking policies and in the investigation of trafficking and provision of services to victims. • Allow foreign victims to work and study in Hong Kong while participating in judicial proceedings against their traffickers. • Coordinate with source country governments and service providers to protect repatriated foreign victims who are vulnerable to re-victimization and may face hardship or retribution in their home countries. • Take steps to increase understanding among judges in criminal courts and labor tribunals of trafficking and psychological trauma.

PROSECUTION

The government increased 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 it 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 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. 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 14 potential cases of labor trafficking (nine in 2017) and 136 cases related to sex trafficking in 2018 (131 in 2017). Authorities initiated prosecutions of two suspected labor traffickers but did not report obtaining any convictions for labor traffickers in 2018 (two prosecutions and convictions in 2017). The government reported arresting 19 suspects (36 in 2017) in connection with investigations for offenses related to sex trafficking, including sections 129, 130, 131, and 137 of the crimes ordinance, although it did not report the number of sex trafficking prosecutions it initiated in 2018. Courts convicted seven under these provisions (12 convictions in 2017) and sentenced five to terms of imprisonment ranging from three to 13 months and two to suspended sentences and community service.

The immigration and customs departments provided trafficking training to new employees, and the government conducted a one-day training to law enforcement on victim identification. In addition, the government collaborated with NGOs and

international organizations to provide training to police, immigration, labor, and customs officials on victim identification and the investigation of trafficking cases. Nonetheless, law enforcement often did not adequately investigate trafficking cases referred to them by NGOs, sometimes dropped cases with clear indicators of trafficking, and officials did not employ a victim-centered approach when individuals made claims of victimization. The absence of laws criminalizing all forms of trafficking impeded investigators’ ability to investigate or charge suspected traffickers, especially in cases where debt bondage began in a victim’s home country. This also resulted in the prosecution of trafficking crimes under laws with weak penalties. NGOs reported judicial officials also lacked an awareness of trafficking. Well-founded fears of penalization resulted in victims choosing not to report their exploitation or declining to cooperate with authorities in investigations. The government designated new trafficking focal points of contact within relevant agencies and updated its written interagency procedures for handling trafficking cases. In July 2018, Hong Kong Police appointed units responsible for investigating trafficking and exploitation of foreign domestic workers within its Organized Crime and Triad Bureau in all six police regions. Nonetheless, NGOs reported weak interagency coordination and a lack of awareness among front-line police of the units. A designated team of prosecutors was responsible for prosecuting trafficking related crimes. Authorities did not report any investigations, prosecutions, or convictions of government officials complicit in trafficking offenses; however, media reports indicated a police officer was arrested in June 2018 for allegedly assaulting two children involved in “compensated dating.”

PROTECTION

The government maintained efforts to protect victims; however, ineffective victim identification resulted in the penalization of victims. Authorities identified 29 trafficking victims, compared to 28 in 2017. Police, immigration, and customs officials utilized a two-tiered victim identification mechanism to screen vulnerable populations; the government introduced the mechanism to 12 more police districts in 2018 so that it covered all districts. Through this mechanism, officials identified 18 trafficking victims (nine in 2017). Although the government reported conducting more screenings in 2018, observers reported ineffective implementation of the screening mechanism and a lack of understanding of psychological trauma associated with trafficking resulted in few victims identified. In July 2018, the government declared police screened for trafficking all non-local individuals found in prostitution for trafficking. However, in practice, officials often did not recognize trafficking and did not consistently screen foreign domestic workers or persons in prostitution during investigations and police operations. For example, officials arrested 11 child victims of sex trafficking during law enforcement operations and did not identify these children as trafficking victims through the screening mechanism. Authorities immediately returned all 11 to their home countries, without providing services that the government guaranteed trafficking victims or ensuring they received assistance upon their return.

Of the 18 victims identified under the screening mechanism in 2018, the government reported providing six with either permission to change their employer or visa extensions with fee waivers. In addition, authorities identified four victims who held

status as claimants under the government’s process used to evaluate non-refoulement claims, which provided claimants with food allowances and living subsidies. Nonetheless, the government did not report providing further services such as counseling or medical care to identified victims. In addition, the government did not permit those under non-refoulement claims to work unless given permission on a case-by-case basis. Victims allowed temporary residency via visa extensions could not work or study in Hong Kong. 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 access to public hospital medical and psychological services to local and foreign victims, regardless of gender or age. However, contacts reported officials did not consistently refer victims to services, and no trafficking victims received assistance in government-funded shelters during the reporting period. The government offered financial assistance to victims residing overseas to enable their return to Hong Kong as witnesses in prosecutions, but the government did not report extending this to any victims. The government did not report efforts, such as contacting source country governments or NGOs, to ensure the safe repatriation of victims to countries where they may face risk of hardship or retribution, or are vulnerable to re-victimization.

The government continued to penalize trafficking victims, including children exploited through “compensated dating,” victims of forced criminality, and exploited foreign domestic workers, for unlawful acts their traffickers compelled them to commit. Ineffective victim identification and interagency collaboration on trafficking resulted in the government initiating immigration proceedings against victims rather than investigating or prosecuting their traffickers. In August 2018, the government developed a joint investigative process to coordinate interviews of victims among law enforcement agencies. However, NGOs reported the implementation of this process resulted in victims having to undergo multiple interviews in one day and being asked the same questions repeatedly by different officials, sometimes for up to nine hours in one day. Hong Kong law allowed victims to seek compensation from traffickers through civil suits and labor tribunals. Hong Kong courts ruled in 2018 that migrant workers could appear in labor tribunals through video if they had returned to their home country. Nonetheless, observers reported 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, and deterred some from bringing claims forward.

PREVENTION

The government increased efforts to prevent trafficking. An anti-trafficking steering committee led by the Chief Secretary for Administration, which formed and met once during the previous reporting period, met twice and the inter-departmental working group led by the security bureau continued to meet. In February 2019, the government announced the allocation of 62.63 million Hong Kong Dollars (\$7.99 million) to support the implementation of its 2018 anti-trafficking action plan and to create 98 civil service positions within the police, labor, immigration, and justice departments. To improve

collaboration with civil society, the government organized a consultation session with NGOs and international organizations in May 2018; however, civil society reported minimal efforts by the government to increase coordination beyond this meeting, including to investigate trafficking and protect victims. 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, on television, and on the radio; 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; and publish translated versions of standard employment contracts in 11 foreign languages.

The government reported investigating numerous cases involving physically and sexually abused foreign domestic workers, resulting in the conviction of 11 employers (four in 2017). The government reported convicting 29 employers of foreign domestic workers for illegally using workers to perform duties outside their contracts and convicting two for non-payment or underpayment of wages; sentences included fines and terms of imprisonment ranging from four weeks to three months. The government offered visa extensions with fee waivers to 160 foreign domestic workers determined to be victims of illegal conduct to serve as witnesses. The government's policy requiring foreign domestic workers to return to their home countries within two weeks after their contracts' termination deterred workers from reporting exploitative employment; however, the government allowed 16 exploited foreign domestic workers to pursue new employment visas without leaving Hong Kong in 2018. The labor department initiated a dialogue with the government of Indonesia to promote coordination on the protection of Indonesian domestic workers in Hong Kong; however, it was unclear if this resulted in tangible efforts to prevent trafficking.

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, recruiters often charged much higher fees and perpetuated debt bondage. The Employment Agencies Administration (EAA) conducted approximately 2,000 inspections of employment agencies in 2018. The EAA lacked sufficient resources and inspections of agencies were ineffective and often only consisted of undetailed reviews of documentation. In addition, observers reported 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 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 helpers to make inquiries and complaints, the labor department launched an online portal as well as a 24-hour hotline available in nine languages. In 2018, the labor department convicted three agencies for overcharging workers and seven for other offenses (11 agencies convicted in 2017). In addition, from January through March 2019, the government sought charges against 51 employment agencies for overcharging fees and 10 for unlicensed operations; five of these charges were filed against the directors or staff of unlicensed employment agencies. 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 employment agencies that perpetuate debt bondage. 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 required employment agencies to comply with a code of practice covering statutory requirements and standards for Hong Kong-based employment agencies. The labor department cited non-compliance of the code of practice in decisions to revoke or reject the renewal of licenses of 11 employment agencies in 2018. Despite these efforts, some employment agencies reportedly continued to operate—and unlawfully retain workers’ passports with impunity—after losing their licenses, sometimes reopening under a different name. In addition, despite being a violation of the code of practice, observers reported money lenders and employment agencies often operated at the same address without consequence. Police arrested the operator of a money lending business who allegedly withheld the passports of more than 850 foreign domestic workers to whom the operator had given loans—with interest rates up to 125 percent—needed for recruitment fees. An NGO reported 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. The government reported some efforts to reduce the demand for commercial sex acts. The government provided anti-trafficking training to its officials posted overseas, which it did not do in previous years.

TRAFFICKING PROFILE

As reported over the past five years, human traffickers exploit domestic and foreign victims in Hong Kong. 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. Traffickers exploit migrant workers in construction, electronic recycling facilities, nursing homes, and private homes. Approximately 386,000 foreign domestic workers, primarily from Indonesia and the Philippines, work in Hong Kong; some 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. A 2016 NGO report estimated as many as one in six foreign domestic workers are victims of labor exploitation in Hong Kong. Employment agencies often charge workers job placement fees in excess of legal limits and sometimes withhold identity documents, which may lead to situations of debt bondage. The accumulated debts sometimes amount to a significant portion of the 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; 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 traffickers coerce or lure them to work in mainland China, the Middle East, or Russia.

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 forced domestic servitude, bonded labor in construction and other physically demanding industries, and other forms of abuse via exploitative contracts. Reports indicated drug trafficking syndicates coerced South American women, who were subsequently arrested by Hong Kong authorities, to carry drugs into Hong Kong. Separately, criminal syndicates or acquaintances 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. “Compensated dating” continues to facilitate commercial sexual exploitation of Hong Kong children and adults, making them vulnerable to trafficking.

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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 (Telefon) +43 1 589 00 583

F (Fax) +43 1 589 00 589

info@ecoi.net

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