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## Trafficking in Persons Report 2016 - Country Narratives - Hong Kong

### HONG KONG: Tier 2 Watch List

The Hong Kong Special Administrative Region of the People's Republic of China is primarily a destination, transit, and to a much lesser extent, a source territory for men, women, and children subjected to sex trafficking and forced labor. 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 340,000 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. Employment agencies generally charge job placement fees in excess of legal limits, which may lead to situations of debt bondage of workers in Hong Kong. The accumulated debts sometimes amount to up to 80 percent of workers' salaries for the first seven to eight months of employment. Some workers are unwilling to report abusive employers for fear of losing their jobs and being unable to repay their debts; some employers or employment agencies illegally withhold passports, employment contracts, or other possessions until the debt is paid. Domestic workers have also reported working 17-hour days, receiving less than minimum wage, experiencing physical or verbal abuse and confinement in the employer's home, and not receiving a legally required weekly day off. An NGO report released in 2016 estimated that as many as one in six foreign domestic workers are victims of labor exploitation. Some foreign domestic workers sign contracts to work in Hong Kong but upon arrival are sent to work in mainland China or the Middle East. Separately, criminal syndicates or acquaintances sometimes lure women to Hong Kong using false promises of lucrative employment and subsequently 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.

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. Despite these measures, the government did not demonstrate overall increasing anti-trafficking efforts compared to the previous reporting period; therefore, Hong Kong is placed on Tier 2 Watch List. Authorities' investigations and prosecutions for labor trafficking were inadequate for the scale of the problem, and there were no convictions for labor trafficking in 2015 because there remains no specific criminal offense related to the crime. Hong Kong's laws do not prohibit all forms of trafficking and authorities continued to define human trafficking as the trans-border movement of people for prostitution, inconsistent with the 2000 UN TIP Protocol. While the government convicted eight traffickers during the reporting period, sentences were incommensurate with the gravity of the crime, with three perpetrators sentenced to seven months' imprisonment or less. The government did not

appropriately penalize employment agencies that perpetuated labor trafficking via debt bondage. Labor tribunals lacked sufficient translation services, did not provide the right to counsel, and often had judges inexperienced with forced labor cases. Some trafficking victims may have been punished for crimes committed as a direct result of being subjected to trafficking. The government continued to fund partially six NGO-run shelters and three government-owned and -operated shelters for victims of abuse and trafficking, and identified 16 trafficking victims during the reporting period. It continued distribution of anti-trafficking information pamphlets to foreign domestic workers, law enforcement training, and cooperation with the consulates of labor-sending countries.

## RECOMMENDATIONS FOR HONG KONG:

Enact a comprehensive anti-trafficking law that prohibits all forms of trafficking in accordance with the definitions set forth in the 2000 UN TIP Protocol; 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 available services; vigorously prosecute suspected labor traffickers and recruiters, especially those who exploit foreign domestic workers; penalize employment agencies that charge excessive fees; do not penalize victims for crimes committed as a result of being subjected to trafficking; increase protective services for vulnerable populations, such as foreign domestic workers and women in prostitution; make labor tribunals more effective through improved translation services, the right to counsel, and anti-trafficking training for judges; grant foreign victims permission to work and study while participating in judicial proceedings against their traffickers; adopt an action plan to combat trafficking and commit resources to its implementation; provide legal alternatives to foreign victims who may face hardship or retribution in their home countries; and educate law enforcement, government officials, and the public on trafficking definitions aligned with international standards.

## PROSECUTION

The government maintained limited anti-trafficking law enforcement efforts. Hong Kong laws do not criminalize forced labor and authorities continued to define trafficking as the trans-border movement of people for prostitution; this definition is inconsistent with the 2000 UN TIP Protocol definition of human trafficking. Section 129 of the crimes ordinance, which prohibits “trafficking in persons to or from Hong Kong,” requires an element of transnationality given its focus on the movement of persons into or out of Hong Kong for prostitution, and it does not require the use of force, fraud, or coercion. Section 129 prescribes penalties of up to 10 years’ imprisonment, which is sufficiently stringent and commensurate with punishments prescribed for other serious crimes, such as rape. 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. There was no parallel change in the criminal laws, however, and labor trafficking investigations and prosecutions remained low (two cases) in 2015 compared with the scope of the problem. There were no convictions for forced labor in 2015.

In 2015, the government investigated and prosecuted six alleged trafficking cases, compared with four trafficking investigations and one prosecution in 2014. Three cases involved sex trafficking of 11 Thai women, in which five defendants were convicted of managing a vice operation and sentenced to between four and 22 months’ imprisonment and seven additional defendants are pending sentencing. Two cases of foreign domestic workers forced to work in mainland China by

their employers remained pending. The government sentenced three traffickers to 28-30 months' imprisonment for conspiracy to obtain by deception services of three victims transiting Hong Kong on fraudulent documents. A high profile case—filed by an alleged victim of forced labor who stated that he received no assistance from the government—set in motion a judicial review of the government's human trafficking laws, which remains in progress. Prosecutors sometimes used victims' receipt of unlawfully low wages or their acceptance to work outside of their contracts under duress as evidence that victims violated their immigration status instead of evidence of abuse. While victims could go to labor tribunals to attempt to claim back wages, poor translation services, the lack of a right to counsel, the inability to work while awaiting a decision, and judges' inexperience with forced labor cases typically led victims to abandon attempts at restitution. In 2015, authorities trained approximately 400 front-line police officers on trafficking victim identification and more than 500 new immigration trainees on trafficking and victim identification, among other training activities. Hong Kong authorities did not report any investigations, prosecutions, or convictions of government officials complicit in trafficking offenses.

## PROTECTION

The government maintained limited efforts to protect victims and their frequent penalization discouraged victims from self-identifying, seeking assistance, or leaving employment where they suffered exploitation. In 2015, authorities identified 16 trafficking victims, a decrease from 26 in 2014. The government continued to partially fund six NGO-run shelters and three government-owned and -operated shelters that serve victims of abuse, exploitation, and trafficking. Although the government reported screening 7,133 foreign workers and 3,573 persons arrested for prostitution for signs of exploitation and trafficking during the reporting period, it only identified 16 trafficking victims. Potential victims, some of whom were arrested and charged with crimes, were considered for protective services in consultation with the Department of Justice on a case-by-case basis. NGOs and victims reported the government sometimes charged victims with crimes committed as a direct result of being subjected to human trafficking and that victims often pled guilty to these charges to facilitate expeditious deportation. Officials reported having a policy in place to encourage victims to participate in the investigation and prosecution of traffickers, but they did not allow victims to work while participating in trials that were sometimes lengthy, which deterred victims from cooperating with authorities. As a result, many victims opted to repatriate immediately or were deported. In 2015, immigration officials issued 1,824 visa extensions to former foreign domestic workers involved in ongoing legal proceedings in Hong Kong, but it was unclear how many of these cases involved labor exploitation. Hong Kong does not allow for permanent residency status for cases in which repatriation may constitute a risk of hardship or retribution in the victim's home country.

## PREVENTION

The government sustained modest efforts to prevent trafficking. An interdepartmental working group led by the security bureau has been in place since 2010. The government began drafting a national action plan to combat trafficking in 2013, but it has not announced the publication, formal adoption, or implementation of the plan. Authorities continued to distribute anti-trafficking pamphlets in five languages and information packets to foreign domestic workers at the airport, six information kiosks, through their consulates, and in Filipino and Indonesian language newspaper advertisements. These information packages describe foreign domestic workers' rights and their employers' obligations under the law, and provide contact information for relevant government

offices for assistance. NGOs report these packets are sometimes seized by employment agencies or employers. Authorities also conducted publicity campaigns using radio, newspaper, and leaflets to remind employers of their legal obligations to their domestic workers. Labor officials conducted inspections of approximately 1,300 employment agencies, roughly the same number as in 2014. Following inspections, 12 agencies were convicted for various offenses, five licenses were revoked, and investigations were opened into other agencies. NGOs reported employment agencies that violated regulations faced penalties that were too lenient and continued to operate either without a license or under the guise of new ownership. The government made some efforts to reduce the demand for commercial sex through school sex education programs and reported efforts to reduce the demand for forced labor through raising awareness of proper treatment of domestic workers. It reported no efforts to prevent or combat child sex tourism of Hong Kong residents in mainland China or other foreign countries. The government did not provide anti-trafficking training to its personnel posted overseas.