

Article 8: No slavery or servitude; no forced or compulsory labour

55. The position remains as set out in paragraph 102 of the previous report. Articles 4(1) and (2) of the BOR prohibit slavery and the slave trade in all their forms and also the holding of any person in servitude. Forced or compulsory labour is prohibited by Article 4(3) of the BOR. Proven instances of slavery, servitude, forced and compulsory labour remain rare in Hong Kong. Although the Court of First Instance has decided in *ZN v Secretary for Justice* [2017] 1 HKLRD 559 that the applicant was a victim of human trafficking for the purpose of forced labour, the Government is appealing against the Court's decision.

Protection of foreign domestic helpers

56. Some commentators expressed concerns on the protection of the basic rights of foreign domestic helpers (FDHs) in Hong Kong. The Government remains committed to protecting the rights of all migrant workers (including FDHs). FDHs enjoy the same rights and protection as local workers under the labour laws, regardless of their race or country of origin, in relation to their entitlement to weekly rest days, paid statutory holidays, paid annual leave, sickness allowance, maternity protection, long service payment, severance payment, compensation for work-related injuries or death, right to form and join trade unions, and protection against anti-union discrimination, etc. FDHs are further protected through the government-prescribed Standard Employment Contract (SEC), under which they enjoy the Minimum Allowable Wage, free accommodation, free food (or food allowance), free medical care and free return passage to/from their home countries. The regulation of Employment Agencies (EAs) has also been substantially strengthened (see **Annex 8A**).

Protection of FDHs against abuse or exploitation

57. The Government does not tolerate any abuse or exploitation of FDHs. In respect of protecting the employment rights of FDHs, any violation of the Employment Ordinance (Cap. 57) that is supported by sufficient evidence will be prosecuted by the Labour Department (LD). The prompt investigation and prosecution actions taken by the law enforcement authorities and the subsequent six-year jail term imposed on

the former employer of an Indonesian domestic helper for assault and breaches of labour laws in 2015 demonstrate the high importance that the Government attaches to protecting FDHs. From July 2010 to July 2017, LD secured 190 convicted summonses against employers of FDHs for wage offences. Among the convicted employers, eight were sentenced to perform community service for up to 240 hours, while four were sentenced to imprisonment for up to 4 months.

58. FDHs abused or assaulted by their employers are advised to make a report to the Police as soon as possible. The Police will take statements from the FDH in his or her language or dialect through an interpreter. The Police may also co-ordinate with the SWD, NGOs and the FDH's employment agency to arrange for emergency assistance, counseling and temporary residence. With sufficient evidence, the Police will arrest the offenders and take further action as appropriate.

59. Between July 2010 and July 2017, the Police received 259 reports of wounding and serious assault cases involving FDHs who alleged that they had been attacked by their employers. The Police do not maintain statistics on the sentencing outcomes.

60. Clause 3 of the SEC specified that all FDHs shall only work and reside in their employers' residences. If employers breach their undertaking in the SEC and the relevant application forms, ImmD will take into consideration such records in assessing their future applications for employing FDHs. ImmD has strengthened the assessment of contract renewal applications by employers and may refuse such applications in cases where the FDHs are found to be absent from Hong Kong for a prolonged period and/or there are irregularities in the movement patterns of the FDHs. Furthermore, any employer and/or FDH who furnishes false information in the course of an application may contravene the Immigration Ordinance (Cap. 115). We encourage any FDHs who consider that their employers have contravened any contractual terms to report their cases to LD and/or ImmD for assistance and investigation. LD has made extensive efforts in promoting the rights of FDHs (see **Annex 8B** for details).

“Two-week rule”

61. The Committee recommended the Government to consider repealing the “two-week rule”⁵ at paragraph 21 of its previous Concluding Observations.

62. The main purpose of the “two-week rule” is to allow sufficient time for FDHs to prepare for the departure but not for them to find new employers. It is required for maintaining effective immigration control and preventing FDHs from job-hopping and working illegally after contract termination. The Government does not intend to repeal the “two-week rule”.

63. The “two-week rule” does not preclude FDHs from working in the HKSAR again after returning to their home countries. Under exceptional circumstances⁶, ImmD may allow the FDH to change employer in the HKSAR without having to return to his/her home country. In the event that an FDH is involved in a labour dispute and is required to remain in the HKSAR for the proceedings and attending hearings after the completion or termination of his/her employment contract, the FDH may apply to ImmD for extension of stay as a visitor with relevant proof. Each of these applications will be determined on its individual merits. As at 30 November 2017, ImmD approved 6 478 cases for change of employer after premature termination.

Live-in requirement for FDHs

64. At paragraph 21 of its previous Concluding Observations, the Committee recommended the Government to consider repealing the “live-in” requirement, which forms the cornerstone of Hong Kong’s policy of importing FDHs.

⁵ Under the prevailing policy, an FDH must leave the HKSAR upon completion of his/her employment contract or within two weeks from the date of termination of the contract, whichever is earlier. To this end, employers are required under the SEC to provide return passage to their FDHs upon completion or termination of the employment contracts.

⁶ Such as an FDH’s previous employment contract being prematurely terminated owing to the employer’s migration, external transfer, death or financial difficulty, or there being evidence that the FDH has been abused or exploited

65. As in many other jurisdictions in the world, priority in employment should be given to local workforce, and importation of workers should only be allowed where there is confirmed manpower shortage that cannot be filled by local workers. Against this principle, FDHs have been imported since the early-1970s to meet the shortfall of local live-in domestic workers. Given that there is no shortage in supply of local non-live-in domestic workers, any change to the “live-in requirement” will go against the rationale for importing FDHs and the fundamental policy that local employees should enjoy priority in employment.

66. This live-in requirement has been made known to FDHs before their admission into Hong Kong, and specified in the SEC which is signed by both the employer and the FDH beforehand. To safeguard the rights of FDHs, the employers are required to undertake to the Government that they will provide the FDH with free, suitable and furnished accommodation and with reasonable privacy. If an employer fails to provide such accommodation, the FDH may terminate the SEC and/or report to LD for free consultation or conciliation services. The FDH may also report it to ImmD which will take this into account in determining whether the employer’s future applications for FDHs should be refused.

Minimum Allowable Wage and Employees Retraining Levy on employers

67. We would take the opportunity to update paragraph 108 of the previous report – there were seven adjustments to FDHs’ monthly Minimum Allowable Wage since the submission of the previous report, all upward, to the prevailing amount of \$4,410, applicable to contracts signed on or after 30 September 2017. The Employees Retraining Levy on employers of FDHs was abolished on 14 May 2013 so as to ease the burden on families employing FDHs.

Overall regime on combating trafficking in person and victim protection

68. First of all, whilst we note the Committee’s recommendation at paragraph 20 of its previous Concluding Observations to take steps

which could lead to the extension of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (the Palermo Protocol) to the HKSAR, we are mindful, given the HKSAR's liberal visa regime, of the adverse implications to our effective immigration controls and possible abuses by overstayers and illegal migrants if the Palermo Protocol, in particular the provision to permit victims of Trafficking-in-Persons (TIP) to remain in the territory, is applied to the HKSAR. Upon considering these implications, we have no plan to extend the Palermo Protocol to the HKSAR.

69. There is no sign that the HKSAR is being actively used by syndicates as a destination or transit point for TIP, or that TIP is a prevalent or widespread problem in the HKSAR. The Government attaches great importance to combating TIP. We have put in place a package of effective and comprehensive legislative and administrative measures to combat TIP with continuous enhancements over the years, and our law enforcement agencies (LEAs) will continue to take proactive enforcement actions in combating human trafficking and protecting victims. Our efforts are set out in the ensuing paragraphs.

Legislative Framework

70. As regards the Committee's recommendation to include certain practices regarding FDHs in the definition of the crime of human trafficking, the Committee is invited to note that the HKSAR addresses TIP through various pieces of local legislation, encompassing offences such as physical assault, false imprisonment, criminal intimidation, unlawful custody of personal valuables, child abduction, child pornography and exploitation of children, illegal employment, trafficking in persons for the purpose of prostitution, control over persons for purpose of prostitution, causing prostitution, living on earnings of prostitution of others, etc. Some of the offences attract penalty of up to life imprisonment. In addition, there is dedicated labour legislation to protect the rights of workers, including FDHs, particularly in respect of withholding of wages, non-granting of rest days or statutory holidays. This 'multiple-legislation' approach provides LEAs and prosecutors with more flexibility in investigating and prosecuting TIP cases.

71. To enhance prosecutors' awareness of TIP and forced labour, the Prosecution Code published in 2013 by the DoJ added a new paragraph on "Human Exploitation Cases", with the aim and purpose of providing guidance to prosecutors as to what may amount to TIP and exploitation as well as the proper approach to be adopted in cases involving these elements. The definition of TIP as set out under the Palermo Protocol is adopted in the Code.

Inter-departmental co-operation

72. There are established mechanisms for inter-departmental co-operation in combating TIP. At the operational level, the Inter-departmental Joint Investigation Team, set up in 1998, enables intelligence exchange among various departments and joint investigation / co-operation on TIP activities in day-to-day operations, discussion on the current trends in TIP, monitoring of case statistics and law enforcement initiatives to combat the crime. At the policy level, an inter-departmental TIP Working Group was established in 2010 to enhance enforcement strategy against TIP, monitor the overall situation of TIP and formulate the overall strategy for combating TIP in the HKSAR.

73. In 2016, a "Guideline on Inter-departmental Cooperation for the Handling of Suspected Cases of Trafficking in Persons" was issued to provide guidance on the general principles and procedures to enhance inter-departmental co-operation among Government bureaux / departments in anti-TIP work. In April 2017, the Prosecutions Division of the DoJ has assigned a designated desk to oversee and co-ordinate cases involving TIP issues handled or submitted by various LEAs for legal advice.

Victim Identification

74. As regards the Committee's recommendation to intensify efforts for victim identification, the Committee is invited to note that the Police and ImmD have put in place an enhanced mechanism for TIP victim screening and identification since July 2016. The C&ED has also implemented the same since March 2017. Under the mechanism, the officers will conduct a two-tier screening on vulnerable persons who are

arrested or who put themselves forward to the authorities with a view to ascertaining whether they are TIP victims.

Protection for Victims

75. As regards the Committee's recommendation on strengthening assistance, protection and support provided to TIP victims, the Committee is invited to note that the Government already provides holistic and humane protection, support, and assistance to TIP victims, details of which are set out at **Annex 8C**.

Training and Partnership

76. Training on anti-TIP is offered to the officers of LEAs, LD, SWD and prosecutors, etc. In 2017, about 2 000 government officials have received local / overseas anti-TIP training. Relevant LEAs have included the theme of TIP into their induction training for all officers.

77. The Government also co-operates with other jurisdictions, including Australia, the United States and the European Union, etc. and other NGOs to provide specialised training workshops on TIP to officers from various bureaux / departments. The Government also actively participates in international conferences and workshops to identify the best practice to combat TIP and share TIP intelligence and experience. Our anti-TIP efforts are kept under regular review.