

LCQ17: Immigration Department remains vigilant in monitoring “bogus marriages” concerned parties if they are involved in other crimes

Following is a question by the Hon Kenneth Leung and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (May 23):

Question:

It has been reported that some human trafficking offenders arranged bogus marriages for to-be-trafficked persons to enable them to meet the eligibility requirements for entry into certain countries, and then force the trafficked persons to take up illegal employment or engage in prostitution activities in such countries. Regarding bogus marriage-related offences involving human trafficking, will the Government inform this Council:

(1) of the respective numbers of persons who were alleged to have entered into bogus marriages and, on this account, were (i) arrested and (ii) convicted in Hong Kong for the related offences in each year since 2008, with a breakdown by their nationality and gender;

(2) of the respective numbers of persons who were alleged to have arranged bogus marriages for other persons and, on this account, were (i) arrested and (ii) convicted in Hong Kong for the related offences in each year since 2008, with a breakdown by their nationality and gender; the nationalities of the persons for whom they mainly arranged bogus marriages;

(3) as the authorities have pointed out in a paper submitted recently to the Panel on Security of this Council that in respect of persons who had gained entry into Hong Kong by means of bogus marriages, the main purpose of their coming to Hong Kong was to take up illegal employment, among the persons who were arrested or convicted for bogus marriage-related offences mentioned in (1), of the respective numbers of those who were alleged to have also (i) committed the offence of taking up illegal employment, and (ii) engaged in prostitution activities, with a breakdown by their nationality and gender; whether the authorities have, during investigation of these cases, discovered if (a) these persons were forced to work in Hong Kong and were subjected to manipulation, and (b) organised crimes or human trafficking were/was involved in such cases;

(4) given that paragraph 18 of the Prosecution Code of the Department of Justice (DoJ) provides guidelines and pointers to prosecutors in respect of offences relating to the exploitation of persons and the trafficking of them for that purpose, of the number of times for which DoJ handled cases pursuant to this code when instituting prosecutions in the past five years; among such

cases, of the number of those which involved bogus marriage-related offences; and

(5) of the authorities' measures to combat bogus marriage-related offences involving human trafficking, and to prevent such crimes from happening in Hong Kong?

Reply:

President,

The Government has always been concerned about "bogus marriages". The Immigration Department (ImmD) set up a special task force in 2006 to step up enforcement actions to combat such offences to prevent persons seeking entry into Hong Kong by means of "bogus marriages" and intermediaries aiding others to seek entry into Hong Kong through such means. When suspected "bogus marriage" cases are identified, ImmD will conduct in-depth investigations on parties alleged to arrange and participate in "bogus marriages", collect evidence and initiate prosecution.

The reply to the questions raised by the Hon Leung is as follows:

(1) and (2) From 2008 to 2017, ImmD investigated a total of 6 971 suspected cases of "bogus marriage". A total of 10 649 persons were arrested, out of which 1 733 persons were successfully prosecuted and convicted. Relevant statistics breakdown by year is as follows:

Year	Number of cases	Number of arrestees	Number of persons successfully prosecuted
2008	874	908	259
2009	1 033	728	180
2010	1 283	1 504	185
2011	605	1 242	263
2012	432	1 059	240
2013	515	1 102	188
2014	687	1 096	122
2015	461	1 016	113
2016	507	979	98
2017	574	1 015	85
Total	6 971	10 649	1 733

Among the 10 649 persons arrested, 277 were arrested for allegedly arranging "bogus marriages" for others or participating in "bogus marriages"

at the same time, the remaining 10 372 were alleged to have participated in "bogus marriages". Among the above 1 733 persons successfully convicted, 985 were male and 748 were female; 1 280 were Hong Kong residents and 453 were non-Hong Kong residents. Persons successfully convicted mentioned above include intermediaries and parties to "bogus marriages". ImmD does not maintain other statistical breakdown mentioned in the question. As seen from past cases, "bogus marriages" involved both local and non-local residents, and the non-local residents involved mostly Mainland residents.

(3) ImmD does not maintain the figures of persons who were arrested or convicted for offences relating to "bogus marriage" and were alleged to have committed the offence of taking up illegal employment or engaging in prostitution activities at the same time. ImmD so far has not identified any "bogus marriage" case involving trafficking in persons (TIP). If there is any information (including the statements of parties concerned) which indicates that human trafficking offence may be involved in such a case, ImmD will investigate on the case in accordance with the established mechanism.

(4) According to information provided by the Department of Justice (DoJ), where there is a claim that a defendant or intended defendant is a victim of human trafficking, or that a case may involve human exploitation/ TIP elements, the law enforcement agencies will draw the prosecutor's attention to such claims or elements. In appropriate cases, the prosecutor may also draw the law enforcement agencies' attention to such claims or elements in the files submitted for legal advice.

In making a prosecutorial decision, a prosecutor would assess the merits of each claim with a high level of sensitivity, understanding and awareness of the human exploitation/TIP considerations in accordance with paragraph 18 of the Prosecution Code. As all prosecutors are expected to give due consideration to such claims or elements in each case as appropriate, the DoJ has not specifically maintained statistics on the number of cases in which paragraph 18 of the Prosecution Code has been considered.

(5) As mentioned in part 3 of this reply, ImmD so far has not identified any "bogus marriage" case involving TIP. Having said that, ImmD will remain vigilant in monitoring the parties concerned to see if they are involved in other crimes while combatting "bogus marriages". When suspected TIP cases are identified, ImmD will take a series of measures with related law enforcement agencies to enhance victim identification, protection and support, investigation as well as enforcement on the crimes involving TIP.

In fact, the Government has always attached great importance to anti-TIP work, responding to this evolving international issue through targeted and multi-pronged measures (which are now under continuous review and updating) in areas including victim identification, law enforcement, prosecution, victim protection, enhancement in staff training and forming partnership with international and local and overseas stakeholders.

At present, our legislation has provided an adequate and solid legal framework to effectively combat TIP crimes. Although Hong Kong does not have a single legislation prohibiting TIP and the Palermo Protocol has not been

applied here, the legislation of Hong Kong has already covered the conduct of TIP as defined in the Palermo Protocol, mainly including the following six aspects:

(i) Crimes Ordinance (Cap 200) prohibits TIP to or from Hong Kong for the purpose of prostitution; harbouring another person or exercising control or direction over another person for the purpose of that person's prostitution or that that person shall do unlawful sexual acts with others; and any other person from procuring another person to become a prostitute or cause prostitution of that person in Hong Kong or elsewhere. It also prohibits other crimes including rape, procuring another person by threats to do unlawful sexual acts with others and criminal intimidation. Moreover, there are provisions under the Crimes Ordinance that provide extra-territorial effect against certain sexual offences committed against children outside Hong Kong, including related arrangements and advertisements, making them punishable in Hong Kong;

(ii) Human Organ Transplant Ordinance (Cap 465) prohibits commercial dealings in human organs;

(iii) Prevention of Child Pornography Ordinance (Cap 579) prohibits printing, making, producing, reproducing, copying, importing or exporting, publishing and possessing child pornography;

(iv) Immigration Ordinance (Cap 115) prohibits arrangement for an unauthorised entrant to Hong Kong and employing illegal workers;

(v) Employment Ordinance (Cap 57) imposes criminal liability on employers involved in non-payment, under-payment of wages or delay in payment of wages, failure to grant rest days and statutory holidays to employees; and

(vi) other relevant ordinances which prohibit such crimes as assault, forcible taking or detention of persons with intent to sell him or her, child abduction, deception and blackmail, etc.

The most serious penalty for certain offences above is life imprisonment.

The Government established a high-level Steering Committee to Tackle TIP and to Enhance Protection of Foreign Domestic Helpers in Hong Kong (Steering Committee), chaired by the Chief Secretary for Administration, in March 2018 to tackle TIP and enhance protection of foreign domestic helpers (FDHs) working in Hong Kong through a multi-pronged approach. The Steering Committee has endorsed a comprehensive "Action Plan to Tackle TIP and to Enhance Protection of FDHs in Hong Kong" (Action Plan), which outlines a package of multi-faceted measures that are comprehensive, strategic and targeted, and which cover victim identification, protection and support, investigation, enforcement, prosecution and prevention as well as partnership with different stakeholders.

In addition to the ongoing measures, the Action Plan will include several major new initiatives, including appointing dedicated teams or

officers in the relevant law enforcement agencies, such as Hong Kong Police Force, ImmD and the Hong Kong Customs and Excise Department, to handle cases relating to TIP and exploitation of FDHs. The Steering Committee will monitor the full implementation of the Action Plan and ensure the provision of adequate resources to the relevant bureaux and departments for the effective implementation of the Action Plan.

When implementing the Action Plan, the Government will work closely with the civil society, other sectors of the community and other governments; run targeted awareness campaigns via a wide range of suitable channels, including websites, social media, posters, leaflets, etc. to raise public awareness of TIP and exploitation of FDHs, and to promote available victim protection services. The Government will also review the implementation of the Action Plan from time to time and identify further initiatives as and when necessary.