

LCQ18: HKSAR Government attaches great importance to combating trafficking in persons

Following is a question by the Hon Dennis Kwok and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (January 9):

Question:

After reviewing the periodic reports submitted under various international human rights treaties by the Government of the Hong Kong Special Administrative Region (HKSAR) through the Central People's Government, a number of committees under the United Nations (UN) have consistently noted and criticized the insufficient efforts of the HKSAR Government in combating human trafficking, and they have recommended the HKSAR Government to step up its efforts in this respect. Meanwhile, the Trafficking in Persons Report (TIP Report) published by the Department of State of the United States has found that Hong Kong does not fully meet the minimum standards for the elimination of trafficking in persons, and has placed HKSAR on "Tier 2 Watch List" for three consecutive years since 2016. The 2018 TIP Report has noted that the HKSAR Government did not demonstrate increasing efforts compared to the previous reporting period. HKSAR would have been downgraded to Tier 3 automatically had a waiver not been granted to HKSAR due to the HKSAR Government's promulgation of the Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong (Action Plan) which, according to the 2018 TIP Report, if implemented, would constitute significant efforts to meet the minimum standards for the elimination of trafficking in persons. In this connection, will the Government inform this Council:

(1) of the steps it has taken or planned to take to implement each of the recommendations put forth by the following UN committees as set out in the table below:

(i) paragraphs 85 and 97 of the concluding observations of the Committee on Economic, Social and Cultural Rights, on the report of People's Republic of China (Including Hong Kong and Macao) submitted under the International Covenant on Economic, Social and Cultural Rights, and adopted by the Committee in 2005;

(ii) paragraph 88 of the concluding observations of the Committee on the Rights of the Child, on the report of China (including Hong Kong and Macao Special Administrative Regions) submitted under the Convention on the Rights of the Child, and adopted by the Committee in 2005;

(iii) paragraph 20 of the concluding observations of the Human Rights

Committee, on the third periodic report of Hong Kong, China, submitted under the International Covenant on Civil and Political Rights by People's Republic of China, and adopted by the Committee in 2013;

(iv) paragraphs 45 and 46 of the concluding observations of the Committee on the Rights of the Child, on the combined third and fourth periodic reports of China submitted under the Convention on the Rights of the Child, and adopted by the Committee in 2013;

(v) paragraphs 56 and 57 of the concluding observations of the Committee on the Elimination of Discrimination against Women, on the combined seventh and eighth periodic reports of China submitted under the Convention on the Elimination of All Forms of Discrimination against Women, and adopted by the Committee in 2014;

(vi) paragraphs 20 and 21 of the concluding observations of the Committee Against Torture, on the fifth periodic report of China with respect to Hong Kong, China submitted under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and adopted by the Committee in 2016; and

(vii) paragraphs 48 and 49 of the concluding observations of the Committee on the Elimination of Racial Discrimination, on the combined fourteenth to seventeenth periodic reports of China (including Hong Kong, China and Macao, China) submitted under the International Convention on the Elimination of All Forms of Racial Discrimination, and adopted by the Committee in 2018;

UN committees' recommendations	Steps taken/ planned to be taken
(i)	
(ii)	
(iii)	
(iv)	
(v)	
(vi)	
(vii)	

(2) of the specific measures in the Action Plan through which the Government implements the recommendations for HKSAR set out in the TIP Reports, and whether the Government has carried out those measures; if not, whether and when it will do so;

(3) whether any measures in the Action Plan can be implemented only if additional financial and human resources are provided to the government departments concerned; if so, of the details of the resources needed, and whether the resources have been sought and obtained; if not, when and from whom they will be sought;

(4) of the results expected to be achieved by each of the measures in the Action Plan;

(5) whether it has set criteria to assess or evaluate the effectiveness of the measures in the Action Plan; if so, of the details, and whether it has made such assessments or evaluations; if so, of the outcome; if not, whether and when it will do so; and

(6) whether there are other measures through which it implements the recommendations for HKSAR set out in the TIP Reports; if so, whether it has carried out those measures; if not, whether and when it will do so?

Reply:

President,

Trafficking in persons (TIP) is a heinous crime which is not tolerated in Hong Kong. The Hong Kong Special Administrative Region Government (HKSARG) has always spared no effort in combating the crime. In order to provide high-level policy steer on the overall strategy and measures to tackle TIP and enhance protection of foreign domestic helpers (FDHs), the HKSARG established in March 2018 a high-level inter-bureau/departmental Steering Committee, which is chaired by the Chief Secretary for Administration, with the Secretary for Security and the Secretary for Labour and Welfare as vice chairmen. Membership of the Steering Committee includes heads of the Hong Kong Police Force (Police), Immigration Department (ImmD), Customs and Excise Department (C&ED), Labour Department (LD) and Social Welfare Department (SWD), as well as Director of Public Prosecutions of the Department of Justice (DoJ). At the same time, the Government promulgated the Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong (Action Plan), which outlines a package of multi-faceted measures that are comprehensive, strategic and targeted, covering multiple areas including victim identification, investigation, enforcement, prosecution, victim protection and support, prevention, and partnership with different stakeholders, etc.

Our reply (prepared in consultation with the Labour and Welfare Bureau and other relevant policy bureaux and departments) to the Hon Kwok's question is as follows.

(1) There are a total of 15 United Nations (UN) human rights conventions applicable to Hong Kong, among which seven conventions require submission of periodic reports. The HKSARG prepares reports regularly as required to explain the latest developments in relevant areas in Hong Kong and respond to recommendations made by the relevant UN committees, so that the committees can grasp Hong Kong's actual situation, as well as progress made and challenges faced by Hong Kong in various aspects.

In the concluding observations quoted in Part (1)(i) to (vii) in the question, the relevant committees' recommendations on combatting TIP mainly cover the following areas.

1.4.5 Enhance victim identification: The HKSARG kept strengthening and improving the relevant mechanism in the past few years. ImmD first launched a TIP victim screening mechanism in 2015. The mechanism was then gradually extended to some police districts and some formations of the C&ED in 2016 and 2017. As set out in the Action Plan, the Police would further extend the victim screening mechanism to cover all 24 police districts and relevant units. This has already been implemented in July 2018. At the same time, C&ED has also implemented the screening mechanism department-wide. Under the mechanism, the Police, ImmD and C&ED officers will conduct screenings on vulnerable persons (for example, illegal immigrants, sex workers, illegal workers, FDHs, imported workers, etc., as well as suspected victims in other cases) who are arrested or who report themselves as victims to the authorities. LD also plans to implement an initial victim screening mechanism in the second half of 2019 in the branch offices of its Labour Relations Division for early identification of FDHs potentially being exploited or abused when they make employment claims at LD. For those FDHs who may face greater dangers (e.g. being physically abused), LD will refer their cases to relevant law enforcement agencies (LEAs) for investigation as soon as possible.

As the victim identification mechanism has been gradually extended to various LEAs, the number of persons screened under the mechanism has increased by 87 per cent, from 2 515 in 2016 to 4 710 in 2017. During the first 11 months of 2018, 6 778 persons were screened under the mechanism, representing another 57 per cent increase compared with the corresponding period in 2017.

1.4.6 Strengthen investigation and prosecution: The HKSARG has continued to strengthen efforts in this area. As set out in the Action Plan, the Police have already appointed designated teams to handle cases relating to TIP and exploitation of FDHs. Other relevant departments have also planned to set up designated teams in 2019. The "Inter-departmental Joint Investigation Team" (JIT), comprising the Police, ImmD, C&ED and LD, continues to meet regularly to discuss latest TIP trends and enforcement measures against TIP crimes, exchange intelligence, and conduct joint investigations. To further enhance the effectiveness of joint investigations, JIT developed an inter-departmental joint investigation mechanism to deal with relevant cases.

As regards prosecution, a new section on "Human Exploitation Cases" has been incorporated into the Prosecution Code issued by DoJ in 2013 to highlight the identification of such cases and broad principles on their handling, having regard to applicable international standards and practices. A new chapter on "Human Exploitation" is further added to the Prosecution Manual 2017 for the purpose of providing guidance to prosecutors on TIP issues.

1.4.7 Enhance protection and support to victims: The HKSARG has been providing comprehensive and humanitarian protection, support and assistance to victims of trafficking. Depending on the circumstances of individual cases, such protection and support provided by the HKSARG may include:

- (a) witness protection programme;
- (b) shelter, medical services, psychological support, counselling and financial assistance, etc.;
- (c) publicly-funded interpretation during enquiry, investigation and court proceedings (including in the Labour Tribunal);
- (d) financial assistance to enable victims residing overseas to return to Hong Kong to testify as witnesses (covering expenses including accommodation, passage, daily subsistence and visa processing fees, etc.);
- (e) request for overseas LEAs to provide assistance to victims and families in their home country;
- (f) visa extension and waiver of visa fees for victims who need to stay in Hong Kong to act as prosecution witnesses in legal proceedings instituted by the Police, ImmD or LD;
- (g) exceptional approval for FDHs to change employer while in Hong Kong when there is evidence suggesting that they are being exploited or abused by their employers; and
- (h) depending on the facts and circumstances of individual cases and subject to pre-conditions being satisfied, when the situation so warrants, DoJ will grant victims immunity from prosecution for crimes committed as a result of being trafficked or exploited.

Strengthen training: The HKSARG has all along been providing relevant training to officers of LEAs, LD, SWD and prosecutors of DoJ. The number of officials receiving such training has been increasing over the years. During the first 11 months of 2018, over 2 000 officials from the Security Bureau and LEAs, DoJ, LD and SWD, the Hospital Authority and the CEASE Crisis Centre (Note 1) received local or overseas TIP-related training. Among them, the Hospital Authority and the CEASE Crisis Centre participated in such anti-TIP training for the first time. Meanwhile, LEAs continued to actively participate in international or regional conferences and workshops to identify the best practice against TIP. Besides, the HKSARG continues to foster closer partnership with other stakeholders. Last year, the HKSARG actively participated in TIP-related campaigns organised by civil society and other sectors of the community, including the "Launch of the Handbook on Initial Victim Identification and Assistance for Trafficked Persons" and the "International Conference on Combatting Human Trafficking 2018", etc.

Recommendations regarding enactment of comprehensive legislation prohibiting TIP: We kept explaining to relevant UN committees that the laws in Hong Kong are sufficient. There are over 50 legal provisions against various TIP conducts, including physical abuse, false imprisonment, criminal intimidation, unlawful custody of personal valuables, child abduction, child pornography and exploitation of children, illegal employment, etc. Some of these offences attract penalty of up to life imprisonment, forming a comprehensive package of legal provisions against these crimes (a list of these offences is at Annex). Under our existing legislative framework, LEAs may resort to powers and rely on offences provided in different statutes in the course of their investigation, enforcement and prosecution, so that they can cover all nature of crimes involved, subject to individual case details and evidence. This flexibility equips LEAs with more tools and tactics to tackle TIP depending on the details of individual cases, rather than relying

on a single piece of TIP legislation. We will continue to brief the society and counterparts on our situation.

¶ Recommendations relating to the Palermo Protocol (Note 2): We kept explaining to relevant UN committees that although the Palermo Protocol does not apply to Hong Kong, our existing legislative framework above covers a wide range of conducts of TIP as defined in the Palermo Protocol. The unique situation of Hong Kong – a large population in a small area, a very high population density, a liberal visa regime, a vibrant economy, a transportation network well connected with the rest of the world – makes us vulnerable to the ill impacts on our effective immigration control if the Palermo Protocol (especially provisions permitting TIP victims to remain) is fully applied to Hong Kong, leading to various social and security issues, including similar situations as non-refoulement claimants and other illegal immigrants and overstayers being stranded for a long period of time here. The current situation also reflects that our policies and measures in place are effective and appropriate. As such, we must strike a balance.

¶ Strengthen protection of FDHs and regulation of employment agencies (EAs): The HKSARG has all along been firmly committed to protecting FDHs' employment rights and benefits and strengthening the support provided to them, and does not tolerate any abuse of FDHs. LD has been enhancing, through a series of publicity and education work, FDHs' awareness of their rights and benefits and channels for seeking assistance, such as through distributing information packs via non-governmental organisations to FDHs arriving at the Hong Kong airport, staging information kiosks at popular gathering places of FDHs on their rest days, publishing promotional materials, and producing promotional videos, etc. LD also maintains close collaboration with the governments of FDH-sending countries and their consulates-general in Hong Kong, and regularly participates in the welcoming programmes organised by the consulates of major FDH-sending countries in order to enhance the awareness of newly-arrived FDHs about their statutory rights and benefits as well as the channels for seeking assistance. In terms of regulation of EAs, the Employment (Amendment) Ordinance 2018 came into effect in February 2018. It seeks to provide better protection to job seekers (including FDHs) by substantially increasing the penalties on EAs overcharging job seekers or operating without a licence; and widening the scope of the overcharging offence to include (in addition to the licensee) the management as well as persons employed by EAs. LD will continue to enhance the promotion of employment rights and benefits to FDHs and step up enforcement and prosecution against unscrupulous EAs.

(2) and (6) The HKSARG noted the TIP Reports issued by the US Department of State. In the past few years, the TIP report criticized Hong Kong incorrectly and treated Hong Kong unfairly. The HKSARG disagrees with the Report's comments and gradings on Hong Kong. We have already expressed our objection to the US side. The US Department of State has all along ignored the HKSARG's resolve and efforts in combatting TIP. It failed in offering any objective or fair comments on the works done by Hong Kong in combatting TIP and protecting FDHs against exploitation. Recent TIP Reports even contained unsubstantiated allegations and biased criticisms.

As mentioned above, the victim identification mechanism has been gradually extended to various LEAs, and the number of persons screened under the mechanism has increased significantly. During the first 11 months of 2018, only around 0.2 per cent of those screened (15 persons) were identified as victims. This reinforces the fact that TIP is not prevalent in Hong Kong. However, the US Department of State has been interpreting the low victim figure as ineffectiveness of the HKSARG in victim identification. This analysis was simply illogical.

The HKSARG has all along been doing what we consider necessary and effective in combatting TIP, but not in response to the grading given by any other country. Although our continuous efforts in this regard have not received fair comments, the HKSARG will continue, as in the past, to take forward the Action Plan and strive to combat TIP crimes.

(3) In order to take forward various measures set out in the Action Plan, necessary resources have already been set aside under the existing mechanism for relevant departments to strengthen the overall strategy and specific measures in combatting TIP, including victim identification, investigation, enforcement, prosecution, victim protection and support, public education and partnership with different stakeholders, etc.

(4) and (5) Since promulgation of the Action Plan, relevant bureaux/departments (B/Ds) have been taking forward the implementation of measures set out in the Action Plan.

Apart from measures in strengthening the protection of FDHs as mentioned in Part (1) above, LD has also set up a dedicated 24-hour hotline to provide support to FDHs. The hotline began operation on December 19, 2018, providing interpretation service in seven languages (namely Tagalog, Bahasa Indonesia, Thai, Nepali, Hindi, Punjabi and Urdu). In addition, LD also provides a dedicated email account (fdh@labour.gov.hk) and an online form on its dedicated FDH Portal (www.fdh.labour.gov.hk) to facilitate FDHs to make enquiries about their employment matters in Hong Kong and file complaints.

The HKSARG will also continue to foster closer partnership with other stakeholders, to actively participate in TIP-related campaigns organised by civil society and other sectors of the community and meet with various non-governmental organisations to exchange views on anti-TIP works. Moreover, we will continue to provide relevant training to officers of LEAs, LD, SWD and prosecutors of DoJ to maintain their awareness and alertness on TIP.

The Steering Committee will regularly review the implementation of the Action Plan and its effectiveness by analysing the relevant statistical data, the operational experience of various B/Ds, as well as feedback from the civil society, etc. to ensure that the strategic measures in place are effective in dealing with the situation in Hong Kong.

Note 1: The CEASE Crisis Centre, operated by non-governmental organisation, provides crisis intervention and support services which aims to serve victims

of sexual violence and individuals/families encountering domestic violence or other family crises. The support services include 24-hour hotline service, outreaching service and short-term accommodation service. The CEASE Crisis Centre is one of the designated crisis intervention and support services centre for handling TIP victim cases and such services are fully funded by the SWD.

Note 2: That's the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime.