

Questionnaire for NGOs and other stakeholders on domestic servitude

This questionnaire is addressed to stakeholders such as international and regional organisations, national human rights institutions, UN agencies, funds and programmes, non-governmental organisations, trade unions, research institutions, businesses, community initiatives, private individuals, foundations and academia.

The below questionnaire is meant to assist the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, with elaborating a comprehensive report on domestic servitude of migrant women and girls that will be presented to the Human Rights Council in September 2018.

The responses to the below questionnaire should be submitted to the Special Rapporteur on contemporary forms of slavery, including its causes and consequences in English, French or Spanish at srslavery@ohchr.org

The deadline for submissions is 18 May 2017.

If not stated otherwise in your submission, the responses received will be published on the website of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences.

Question 1

Please provide information on your organisation and its work with migrant domestic workers who became victims of contemporary forms of slavery, including the countries in which you work on this issue.

Justice Centre Hong Kong (“Justice Centre”) is a local NGO in the Hong Kong Special Administrative Region, China (“Hong Kong”) working with refugees and asylum seekers, victims of torture and victims of trafficking. We provide legal support services to individuals seeking protection in Hong Kong as well as psycho social support and trauma and rehabilitation services. Building on the experiences of of the clients we serve, as well as on our engagement with the wider sector, we also undertake research and policy work, advocating for systemic change in Hong Kong. In March 2016, we published the results of a year-long study estimating the prevalence of forced labour and trafficking for the purpose of forced labour amongst migrant domestic workers in the city.¹ In December 2017, we released the results of a project exploring the refugee-trafficking nexus amongst Justice Centre clients.²

¹ Justice Centre Hong Kong, *Coming Clean: The Prevalence of Forced Labour and Human Trafficking for the Purpose of Forced Labour amongst Migrant Domestic Workers in Hong Kong*, March 2016: <http://justicecentre.org.hk/comingclean/>

² Justice Centre Hong Kong, *Refugee-Human Trafficking Nexus Research*, December 2017: http://www.justicecentre.org.hk/framework/uploads/2014/03/Report_compressed.pdf

Question 2

A. Please characterise the legal and/or policy frameworks relevant to the protection of migrant domestic workers subject to contemporary forms of slavery, as well as any global trends you would like to highlight. Please include information about provisions criminalising contemporary forms of slavery, those that might establish distinct rights and/or restrictions for domestic workers, including migrant domestic workers (in regards to, for instance, salary, working hours, freedom of movement, freedom of association, limited freedom to change employers, etc.), as well as measures to identify and support migrant domestic workers who are or were victims of contemporary forms of slavery.

B. Please include specific references to the source of law when possible.

Legal and policy frameworks relevant to contemporary forms of slavery in Hong Kong are highly restrictive. Hong Kong is not a signatory to the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ("Palermo Protocol"). Although China is a signatory, Hong Kong has not requested that coverage of the Protocol be extended to cover the territory.³ It is therefore under no obligation under international law to have any laws relating to human trafficking or align its definition of trafficking in persons with the international standards outlined in the Palermo Protocol. Current Hong Kong legislation defines human trafficking only in terms of transnational sex work and does not require any element of force, fraud, or coercion.⁴ In addition, although the 1930 Forced Labour Convention applies to Hong Kong⁵ and the Hong Kong Bill of Rights Ordinance Article 4 states that "no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited," that "no one shall be held in servitude," and that "no one shall be required to perform forced or compulsory labour,"⁶ there are no criminal sanctions against forced or compulsory labour, servitude or human trafficking.⁷ There are no victim protection provisions in legislation either.

³ *United Nations Treaty Collection*, available at: <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280051ba9&clang=en>, accessed on 14 May 2018.

⁴ Section 129, Crimes Ordinance, Cap 200, available at: <https://www.elegislation.gov.hk/hk/cap200>, accessed on 14 May 2018.

⁵ Department of Justice, Hong Kong Government, "List of Treaties in Force and Applicable to the Hong Kong Special Administrative Region (as at 25.04.2018)", available at: <https://www.doj.gov.hk/eng/laws/interlaw.html#Sign>, accessed on 14 May 2018.

⁶ Article 4, Hong Kong Bill of Rights Ordinance, Cap 383, available at: <https://www.elegislation.gov.hk/hk/cap383>, accessed on 14 May 2018.

⁷ *ZN v. Secretary for Justice and Others* [2015] HKCFI 2252; HCAL 15/2015 (11 December 2015), available at: [http://www.hklii.hk/cgi-bin/sinodisp/eng/hk/cases/hkcfi/2015/2252.html?stem=&synonyms=&query=\(ZN\)%20OR%20ncotherj citationtitles\(ZN\)](http://www.hklii.hk/cgi-bin/sinodisp/eng/hk/cases/hkcfi/2015/2252.html?stem=&synonyms=&query=(ZN)%20OR%20ncotherj citationtitles(ZN)), accessed on 14 May 2018.

As of 2017, there were about 370,000 migrant domestic workers in Hong Kong,⁸ constituting roughly 4.7% of the population of the city and 8.9% of total working population.⁹ Most are from the Philippines and Indonesia but approximately 3% are from Sri Lanka, Bangladesh, Nepal, India, Thailand and Myanmar.¹⁰ 98.8% of them were women as of 2016.¹¹

Hong Kong has a formal labour migration scheme for domestic workers and there are a number of regulations controlling their employment conditions. There is a minimum monthly wage (which is less than that enjoyed by other workers),¹² a mandated weekly rest day and free public health care.¹³ Employment agencies must be registered and the fees they can charge are capped at 10% of the first month's wages.¹⁴ There is a Standard Employment Contract, which must be submitted to the Immigration Department.¹⁵ By law, migrant domestic workers must also be given a copy of their contract.¹⁶ There is paid annual leave, paid statutory public holidays, paid return trips to their home country, and parental leave and protection.¹⁷

However, migrant domestic workers are also subject to a number of unique requirements, over many of which various treaty bodies have shown concern over. The "two-week rule" dictates that migrant domestic workers are required to leave Hong Kong upon completion of their contract or within 14 days of the date of termination of their contract.¹⁸ This means that migrant domestic workers must scramble to find alternative employment in Hong Kong within this limited timeframe. The migrant domestic worker migration scheme is also a tied-visa scheme, where

⁸ Hong Kong Government, *Action Plan to Tackle Trafficking in Persons and Enhance Protection of Foreign Domestic Helpers*, March 2018, available at: <http://www.sb.gov.hk/eng/>, p. 2, accessed on 3 May 2018.

⁹ Census and Statistics Department, Hong Kong Government Hong Kong Annual Digest of Statistics (2017 Edition), available at: <https://www.statistics.gov.hk/pub/B10100032017AN17B0100.pdf>, accessed on 3 May 2018.

¹⁰ Data from the Census and Statistics Department, Hong Kong Government, *2016 By-census*, available at: https://www.bycensus2016.gov.hk/en/bc-own_tbl.html, accessed on 3 May 2018.

¹¹ *Ibid.*

¹² Section 7(3), Minimum Wage Ordinance, Cap 608, available at: <https://www.elegislation.gov.hk/hk/cap608>, accessed on 3 May 2018 and Hong Kong Government, "Hiring Domestic Helpers", available at: <https://www.gov.hk/en/residents/employment/recruitment/foreigndomestichelper.htm>, accessed on 14 May 2018.

¹³ Immigration Department, Hong Kong Government, "Employment Contract for a Domestic Helper Recruited from Outside Hong Kong - English Version", available at: <https://www.immd.gov.hk/eng/forms/forms/id407.html>, section 17, Employment Ordinance, Cap 57, available at: <https://www.elegislation.gov.hk/hk/cap57>, and accessed on 14 May 2018.

¹⁴ Sections 50(3) and 57, Employment Ordinance, Cap 57.

¹⁵ Immigration Department, Hong Kong Government, "Employment Contract for a Domestic Helper Recruited from Outside Hong Kong - English Version".

¹⁶ Section 44(3), Employment Ordinance, Cap 57.

¹⁷ Immigration Department, Hong Kong Government, "Employment Contract for a Domestic Helper Recruited from Outside Hong Kong - English Version" and section 12, Employment Ordinance, Cap 57.

¹⁸ Immigration Department, Hong Kong Government, "Conditions of Employment for Foreign Domestic Helpers: A General Guide to the Helper", available at: <https://www.immd.gov.hk/pdfforms/ID911A.pdf>, p.1, accessed on 14 May 2018.

the immigration status of migrant domestic workers is attached to the employer who has signed their contract. Migrant domestic workers are not permitted to change employers without first leaving Hong Kong, except on a discretionary basis and under very specific circumstances.¹⁹ Unlike other employees, migrant domestic workers are not afforded retirement protection.²⁰ As with other employees in Hong Kong, they are not entitled to maximum or standard working hours.

The “live-in” requirement, introduced in 2003, dictates that migrant domestic workers must work and reside in the employer’s residence in Hong Kong.²¹ This is Clause 3 of the SEC, making both employers and migrant domestic workers liable for breaches. Migrant domestic workers have reported that this live-in requirement contributed to abuse.²² It blurs work and rest time and raises privacy concerns.

The Human Rights Committee has shown regret over the Hong Kong Government’s refusal to repeal the live-in requirement.²³ The Hong Kong Government’s response was that this requirement is the *raison d’être* and cornerstone of the FDH importation policy and that it would not propose to repeal it.²⁴ The Hong Kong Government also sees the requirement as a measure to protect the local labour force and avoid potential pressure on demand for private housing.²⁵

This is exacerbated by the fact that in projecting Hong Kong’s population and number of households, the Hong Kong Government uses population figures that exclude migrant domestic workers.²⁶ There is no planning therefore to give space for migrant domestic workers to live. Also, while employers must submit in the SEC a description of the accommodation they will provide for the migrant domestic worker,

¹⁹ Immigration Department, Hong Kong Government, “Foreign Domestic Helpers”, available at: https://www.immd.gov.hk/eng/services/visas/foreign_domestic_helpers.html#c, accessed on 14 May 2018.

²⁰ Mandatory Provident Fund Schemes Authority, ‘MPF Employer’, available at: http://www.mpf.org.hk/engm/information_centre/faq/employer/mpf_employer/index.jsp, accessed on 2 March 2018.

²¹ *Lubiano Nancy Almorin v. Director of Immigration* HCAL 210/2016; [2018] HKCFI 331, available at: http://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=113714&QS=%2B&TP=JU&ILAN=en, para 29, accessed on 14 May 2018.

²² Mission for Migrant Workers, *Live-In Policy increases female FDWs’ vulnerability to various types of abuse*, May 2013, available at: <http://www.migrants.net/live-in-policy-primer-is-online-now/>, p.11, accessed on 9 May 2018.

²³ Human Rights Committee, *Report on follow-up to the concluding observations of the Human Rights Committee*, CCPR/C/117/2, 29 November 2017, available at: http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/CCP_R_C_117_2_eng.pdf, accessed on 14 May 2018.

²⁴ Hong Kong Government, *International Covenant on Civil and Political Rights: Further updates following the Report of the Hong Kong Special Administrative Region (HKSAR) on its follow-up to the Concluding Observations of the Human Rights Committee on the third periodic report of the HKSAR*, available at: [http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/ICCP_R_Follow-up-English\(23.3.2015\).pdf](http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/ICCP_R_Follow-up-English(23.3.2015).pdf), para 8, accessed on 14 May 2018.

²⁵ *Ibid.*

²⁶ Census and Statistics Department, Hong Kong Government, *Hong Kong Monthly Digest of Statistics: Hong Kong Domestic Household Projections up to 2049*, October 2015, available at: <https://www.statistics.gov.hk/pub/B71510FC2015XXXXB0100.pdf>, accessed on 14 May 2018.

there is no inspection undertaken at any point by either the Labour or Immigration Departments to verify that the provided accommodation is suitable or in line with the original submission.²⁷

Finally, whereas “professional” migrant workers who work continuously for seven years in Hong Kong have the possibility to be granted permanent residency, migrant domestic workers are ineligible for this status under the Immigration Ordinance.²⁸

Question 3

Please describe the main challenges and barriers identified in the country or countries in which your organisation works to ensuring the human rights of migrant domestic workers victims of contemporary forms of slavery. Please also specify any global trends that you are aware of.

Without legislation criminalising forced labour or trafficking for the purpose of forced labour, migrant domestic workers who are victims of contemporary forms of slavery are restricted to pursuing other types of claims. Technically, migrant domestic workers are able to leave their employers if they are in an abusive or exploitative situation but there are a number of barriers to obtaining redress. Like other employees in Hong Kong, migrant domestic workers are able to pursue claims against their employers in the Labour Tribunal, the Small Claims Tribunal or even the courts, depending on the nature of their claim. However, migrant domestic workers who stay on to seek legal redress after their contracts end or are terminated are generally not allowed to work.²⁹ They must also apply and pay HK\$160 each time for a discretionary visa extension of stay and must cover their own living costs to support themselves.

There are also barriers for migrant domestic workers to seek international protection. The 1951 Refugee Convention relating to the Status of Refugees and its 1967 Protocol do not apply to Hong Kong. Hong Kong only affords non-refoulement protection to successful claimants.³⁰ The substantiation rate of non-refoulement claims is as low as 0.7%.³¹ One has to be liable to removal to be allowed to make a

²⁷ Justice Centre Hong Kong, *Coming Clean*.

²⁸ Article 24, Basic Law, available at: http://www.basiclaw.gov.hk/en/basiclawtext/chapter_3.html, and Section 2(4), Immigration Ordinance, Cap 115, available at: [http://www.blis.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/\\$FILE/CAP_115_e_b5.pdf](http://www.blis.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/$FILE/CAP_115_e_b5.pdf), both accessed on 23 February 2018.

²⁹ Immigration Department, Hong Kong Government, “Foreign Domestic Helpers”, available at: https://www.immd.gov.hk/eng/services/visas/foreign_domestic_helpers.html#c, accessed on 14 May 2018.

³⁰ Immigration Department, Hong Kong Government, “Making a Claim for Non-refoulement Protection in Hong Kong”, available at: https://www.immd.gov.hk/eng/useful_information/non-refoulement-making-claim.html, accessed on 14 May 2018.

³¹ Immigration Department, the Hong Kong Government, “Enforcement”, available at: <http://www.immd.gov.hk/eng/facts/enforcement.html>, and Hong Kong Government, “LCQ4: Torture claims”, press release, 7 May 2014, available at: <http://www.info.gov.hk/gia/general/201405/07/P201405070624.htm>, accessed on 14 May 2018.

claim.³² In other words, migrant domestic workers have to overstay and become 'illegal' to make a claim, which means a loss of permission to work and income and jeopardizing their chances of securing a visa to work in Hong Kong again.

Screening for contemporary forms of slavery at various platforms through which victims may seek protection is inadequate. There is no known human trafficking screening in the Unified Screening Mechanism for handling non-refoulement claims, the Labour Tribunal or the Small Claims Tribunal. For example, the Hong Kong Government maintains no data about the number of non-refoulement claims made on human trafficking grounds.³³

Question 4

A. Please elaborate on any specific violence, threats of violence, abuse or harassment faced by migrant women and girls who are in situation of domestic servitude.

B. Please elaborate on any other human rights violation faced by migrant women and girls who are in situation of domestic servitude (including, for example, their right to health, water, housing, freedom of movement, freedom of association, etc.).

7.7% of migrant domestic worker respondents in Justice Centre's research on the prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers indicated that they had been threatened by their employers. Threats included wage deductions, the confiscation of mobile phones, cutting off access to the household phones and the internet, yelling, screaming, calling them with degrading language, withholding food, the confiscation of passports. Respondents also reported sexual abuse, restricted freedom of movement outside of the house, not getting enough to eat, not being allowed to take her shower inside the house, being told to wear a certain kind of clothes.³⁴ A former migrant domestic worker client of Justice Centre reported that she had to tell her employer when she was menstruating and would not be allowed prepare food for the employers.

³² Immigration Department, Hong Kong Government, "Notice to Persons Making a Non-refoulement Claim", 4 September 2017, available at: https://www.immd.gov.hk/pdf/notice_non-refoulement_claim_en.pdf, p.6, accessed on 11 May 2018.

³³ Immigration Department, Hong Kong Government, Response to a data request titled "Non-refoulement claims of victims of human trafficking", 8 May 2017, available at: https://accessinfo.hk/en/request/non_refoulement_claims_of_victim#incoming-466, accessed on 14 May 2018.

³⁴ Justice Centre Hong Kong, *Coming Clean*, p. 45- 47.

A survey conducted by NGO Mission for Migrant Workers found that 43% of surveyed migrant domestic workers had no private room; 2% slept in a kitchen, toilet or warehouse.³⁵

Question 5

Please elaborate on the challenges faced by migrant women and girls who are at the risk of or who are already under conditions of domestic servitude to obtain protection against their human rights violations.

See response to Question 3.

Question 6

Please elaborate on the specific situation of migrant women and girls in domestic servitude, taking into consideration factors that might contribute to their increased vulnerability to contemporary forms of slavery, including poverty, identification to minority groups, indigenous people, age, and caste.

Justice Centre estimates that 17% of migrant domestic workers in Hong Kong are working in conditions of forced labour. Of these 14% had been trafficking into the situation.³⁶ The majority of migrant domestic workers in forced labour are young women under 30 years old, who are on their first contract, having secured it outside of Hong Kong in their home country. Indonesian migrant domestic workers are far more likely (70.5% more) to be in a situation of forced labour than non-Indonesians. The most significant factor determining whether migrant domestic workers are likely to be in forced labour related to their debt burden. migrant domestic workers with excessive debt burden (where debt level is equal to or more than 30% of annual income) were six times more likely to be in forced labour than those without high debt.³⁷

Question 7

Please detail any examples of good practice in relation to protecting, identifying and rescuing migrant women and girls in situation of domestic servitude. This might include actions and initiatives taken by governments, civil society organizations, international organizations, media outlets, employers, individuals, survivors, etc.

There are initiatives carried out by civil society organisations, international organisations, employers, survivors and individuals to assist migrant women and girls who are potential victims of domestic servitude. However, Justice Centre has

³⁵ Mission for Migrant Workers, “[Press Statement] New Study Shows MDWs Woes On Unsuitable Accommodation, Lack Of Privacy And Insufficient Amenities”, 10 May 2017, available at: <http://www.migrants.net/press-statement-new-study-shows-mdws-woes-on-unsuitable-accommodation-lack-of-privacy-and-insufficient-amenities/>, accessed on 14 May 2018.

³⁶ Justice Centre Hong Kong, *Coming Clean*.

³⁷ *Ibid*.

not conducted research on these initiatives and is therefore unable to give a nuanced response to this question.

Question 8

Please describe any challenges identified in ensuring that migrant women and girls who are survivors of domestic servitude have access to justice?

There is no comprehensive definition of “human trafficking” in domestic legislation although this has been recommended by the Committee against Torture in its concluding observations on Hong Kong in February 2016.³⁸ In the absence of such definitions, law enforcement agencies and government departments are restricted to enforcing laws against the constituent elements of trafficking rather than the overarching result. For example, the confiscation of passports can be prosecuted as the “unlawful custody of personal valuables” but the exploitation of a worker which results from the confiscation of the passport cannot be prosecuted. Reported cases of migrant domestic workers being asked or even deceived or coerced into illegal work in other jurisdictions such as Mainland China were handled as potential commission of offences such as conspiracy to defraud.³⁹

The Government has recently introduced an Action Plan to Tackle Trafficking in Persons and Enhance Protection of Foreign Domestic Helpers.⁴⁰ However, the Action Plan does not include plans to introduce a definition of “exploitation” or “forced labour” or legislation against forced labour even though the Forced Labour Convention applies to Hong Kong. It is unclear what threshold will be employed by the Government in determining if and when exploitation or forced labour and therefore trafficking occurs. In addition, the Action Plan does not entail any legal obligations or accountability on behalf of the Government. Finally, it is unclear how the Government will consider when to “grant immunity from prosecution to victims.” A recent case highlighted in the media involved the prosecution and conviction of a migrant domestic worker who reported to the Immigration Department that her employer was asking her to clean her employer’s office (illegal deployment) for conspiring to contravene the conditions of stay.⁴¹ The risk of prosecution for offences

³⁸ Committee against Torture, “Concluding observations on the fifth periodic report of China with respect to Hong Kong, China”, CAT/C/CHN-HKG/CO/5, 3 February 2016, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/017/38/PDF/G1601738.pdf?OpenElement>, accessed on 11 May 2018.

³⁹ Apple Daily, “【內地黑傭潮】每周返大陸一次日做 20 小時 菲傭 passport 蓋滿印”, 30 September 2017, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/017/38/PDF/G1601738.pdf?OpenElement>, accessed on 14 May 2018.

⁴⁰ Hong Kong Government, *Action Plan to Tackle Trafficking in Persons and Enhance Protection of Foreign Domestic Helpers*.

⁴¹ I-Cable, “等候發落的外傭”, 19 March 2018, available at: <http://cablenews.i-cable.com/ci/videopage/program/122506638/%E6%96%B0%E8%81%9E%E5%88%BA%E9%87%9D>

committed as a result of being exploited and/or a victim of trafficking is likely to deter migrant domestic workers and other victims of trafficking from reporting offences, negating the efforts outlined in the Action Plan.

Question 9

Please describe any projects delivered by your organisation or other civil society organisations to ensure protection of the human rights of migrant domestic workers victims of contemporary forms of slavery.

Justice Centre provides legal and psychosocial support for migrant domestic workers who are potential victims of contemporary forms of slavery to seek protection. We are also a founding member of the Civil Society Anti-Human Trafficking Task Force Hong Kong, which seeks to enhance coordination and information sharing on counter-trafficking efforts and to increase the collective protection of victims.

Question 10

Please provide any research, data or other information that your organisation has produced or is aware of relating to the protection of domestic workers victims of contemporary forms of slavery.

Justice Centre Hong Kong, *Coming Clean: The Prevalence of Forced Labour and Human Trafficking for the Purpose of Forced Labour amongst Migrant Domestic Workers in Hong Kong*, March 2016: <http://justicecentre.org.hk/comingclean/>

Justice Centre Hong Kong, *Refugee-Human Trafficking Nexus Research*, December 2017: http://www.justicecentre.org.hk/framework/uploads/2014/03/Report_compressed.pdf

Hong Kong Federation of Asian Domestic Workers and Progressive Labour Union of Domestic Workers in Hong Kong, *Between a rock and a hard place: The charging of illegal agency fees to Filipino domestic workers in the Philippines and Hong Kong* October 2016: <https://view.publitas.com/rights-exposure/between-a-rock-and-a-hard-place-en/page/1>

Mission for Migrant Workers, *Pictures from the Inside: Investigating Living Accommodation of Women Foreign Domestic Workers*, May 2017: <http://www.migrants.net/press-statement-new-study-shows-mdws-woes-on-unsuitable-accommodation-lack-of-privacy-and-insufficient-amenities/>

For any questions, please contact our Research and Policy Officer Annie Li (annie@justicecentre.org.hk).

Thank you for your cooperation. Please feel free to include any additional pertinent information on access to justice and remedy that you think would help the Special Rapporteur on contemporary forms of slavery, including its causes and consequences.