

A PATHWAY TO JUSTICE OR A ROAD TO NOWHERE?

Trafficked migrants' experience of
seeking justice in Hong Kong



STOP.
STOP TRAFFICKING OF PEOPLE



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seeking justice in Hong Kong**

**Stop Trafficking of People, Branches of Hope
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About the Organisation

Stop Trafficking of People (STOP) is the anti-human trafficking team of Branches Of Hope, a Hong Kong registered charitable organization established in 2012. With the aim to end human trafficking in and through Hong Kong, STOP provides protection support to survivors of exploitation, educates the vulnerable community to prevent human trafficking, and conducts research to build capacity for responding to the issues.

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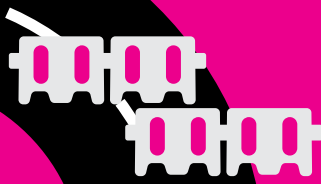
Acknowledgements

STOP extends our deepest gratitude to all interviewees for their time and generosity in sharing with us their experiences and insights. We would also like to thank the following people and organisations for their support in producing this report (in no particular order):

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- **Sons & Daughters**
- **Pilaka Venkata Kamala Priyadarsini**
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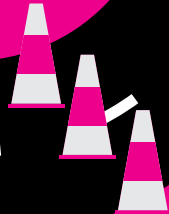
Prosecution

- Lack of comprehensive anti-trafficking legislation
- Infrequent updates & delays in investigation process & proceedings
- Difficulties in evidence collection
- Inconsistent quality of interpretation
- Restricted right to work
- Inadequate provision of information about available services & legal process
- Lack of cross-departmental coordination on trafficking cases



Protection

- Inconsistent professional standards & knowledge amongst officials
- Untransparent screening process blocking access to protection
- Lack of formal referral mechanism for available services



Screening

- Inadequate screening of high-risk groups
- Ineffective screening mechanism of trafficked people



Seeking help

- Fear of losing livelihood
- Fear of being penalised by the authorities
- Lack of confidence in authorities
- Not aware of how to access a remedy
- Difficulties in disclosing what has happened to them
- Fear of traffickers



**ROADBLOCKS
TO JUSTICE**



- **Hold traffickers accountable**



- **Conclude cases in a timely manner**



- **Raise awareness**



- **Prevent future cases**



- **Grant work visas to those pursuing justice**



- **Facilitate peer-to-peer support**



**RECOMMENDED
PATHWAY**

Executive Summary

This report considers how effectively the Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong (the Action Plan)¹ has been implemented and, specifically, whether it has helped trafficked people access justice in Hong Kong SAR.

To inform this research, Stop Trafficking Of People (STOP) conducted in-depth interviews with 11 migrant workers who had been trafficked to Hong Kong for sexual or labour exploitation, and four civil society organisations that support trafficked people. The interviews explored trafficked migrants' experience of using the justice system and how existing procedures might be improved to better meet survivors' needs.

Research findings

Why trafficked people are reluctant to come forward to the authorities

Nearly two-thirds of the trafficked people (seven survivors) interviewed for this research either did not approach the Hong Kong authorities to report the people who were exploiting them or did not disclose issues that were relevant to their case to officials once they were in contact with them. The most common reasons given by participants for not going to the police or other officials were that they were afraid that they would get into trouble with the authorities and would not be able to continue working in Hong Kong.

These concerns are justified as the Hong Kong authorities often deport, arrest and prosecute those who have broken the law (e.g. engaged in sex work, acted as drug mules or broken their conditions of entry), even when they were

1. HKSAR Security Bureau, *Action plan to tackle trafficking in persons and to enhance protection of foreign domestic helpers in Hong Kong*, March 2018. Available at <https://www.sb.gov.hk/eng/special/pdfs/Action%20Plan%20to%20Tackle%20TIP%20and%20to%20Protection%20FDHs.pdf>.

coerced into doing so by their traffickers. Only two individuals were granted immunity from prosecution as a consequence of having been trafficked in 2021.²

Interviewees also lacked confidence in the Hong Kong authorities' ability to resolve the problems they faced. Some participants believed the police would be unwilling to investigate or that there was little likelihood of their traffickers being caught.

I didn't have confidence that they would help me ... I had no hope in the Hong Kong government from the start. - Patricia

For others, a lack of awareness of how to file a report, or an unwillingness to talk about the traumatic experiences they had been subjected to, prevented them from reporting their traffickers to the authorities.

I didn't know how to make a complaint, whom I can turn to, or whether anyone would believe me at all. The helplessness was so strong I actually thought about jumping from the building. - Dolores

... I wake up scared and in tears, almost every day ... Recalling and talking about my experience still has the same emotional and physical effects on me and that is why I do not want to talk about it. - Chaturi

The fear of their traffickers and the possible repercussions for them and their families also stopped some interviewees from seeking help.

I am afraid - that is why I do not pursue the case. - Tisha

2. US Department of State, *Trafficking in persons report – Hong Kong: Tier 2 watch list*, July 2022. Available at <https://www.state.gov/wp-content/uploads/2022/04/337308-2022-TIP-REPORT-inaccessible.pdf>.

For most interviewees, it was a combination of the above issues which forced them to endure rather than report their exploitation.

If I do report the case, I wouldn't be able to work, my debt would be unpaid, my family would still be in danger, and we would lose our land. Going to the authorities in Hong Kong would not solve anything. - Afiya

Victim screening procedures are not working effectively

In recognition of the fact that trafficked people may be unwilling or unable to self-identify to the authorities, the Action Plan extended the screening mechanism for identifying trafficked people to all police districts and other relevant department.³ The Plan also expanded the groups that should be screened because they are at higher risk of being trafficked to include: migrant domestic workers, sex workers, irregular migrants and other mainland and foreign workers who come to the attention of the authorities.

While the numbers being screened have increased (reaching 7,678 in 2021), this still only represents a fraction of those identified by the HKSAR government as being at higher risk of being trafficked and who should be screened.

Furthermore, even where screening does take place, it rarely identifies victims of trafficking. Hong Kong officials conducted 14,590 initial screening interviews in 2020 and 2021, but only identified a total of four trafficked people.⁴

3. "Trafficking in persons", *HKSAR Security Bureau*. Available at <https://www.sb.gov.hk/eng/special/bound/iimm.html> (accessed 1 December 2022).

4. "Human trafficking report rebutted", *News.Gov.HK*, 20 July 2022. Available at https://www.news.gov.hk/eng/2022/07/20220720/20220720_105112_663.html.

The HKSAR government has argued this is because human trafficking is not “a prevalent problem in Hong Kong.”⁵ However, there is strong and consistent evidence that large numbers of people are trafficked and subjected to exploitation in Hong Kong.

Recent research suggests that as many as one in six migrant domestic workers are victims of labour exploitation in Hong Kong.⁶ Even if just 10% of these cases involved the movement of people through deception and coercion for the purposes of their exploitation, then this would still be equivalent to some 6,000 victims of trafficking. This does not include those who are trafficked for sexual exploitation or other forms of labour exploitation beyond domestic work.

Only three of the 11 interviewees confirmed that they had been screened. This is despite the fact that more than half of the participants reported the problems they were facing to the authorities, all of them were from high risk groups listed by the authorities and had at least one of the trafficking indicators (e.g. their identification documents were taken or they were threatened by their employers) that should trigger a full trafficking debriefing.

They didn't ask any questions [relevant to] the TIP (trafficking in persons) screening indicators, and they never told me whether I am identified as a trafficked person. - Patricia

All of the above strongly indicates that the screening mechanism is frequently not being initiated when it should be and, when it is used, it fails to identify trafficked people effectively.

5. See n 4 above.

6. 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. Available at <https://www.justicecentre.org.hk/framework/uploads/2016/03/Coming-Clean-The-prevalence-of-forced-labour-and-human-trafficking-for-the-purpose-of-forced-labour-amongst-migrant-domestic-workers-in-Hong-Kong.pdf>.

The professional standards of some officials need to improve

Interviewees' experience of dealing with law enforcement officials was mixed and depended on the individuals that handled their cases. While some participants found officials to be respectful and sensitive to their needs, nearly two-thirds of interviewees (seven survivors) stated that officials were either hostile to them, did not treat them professionally, or were not sensitive to the fact that they had been through difficult or traumatic experiences.

At the meeting, there were no policewomen, only three men (two male officers and a male interpreter) and me. Even though they know that this case is about sex work and the investigation is about human trafficking [for sexual purposes]. ... the police weren't listening at all. ... the meeting was only 20 minutes. I dropped the case after being threatened with deportation. - Sandra

The pressure (during statement taking) was so intense I felt sick, and had difficulties breathing, but they did not care. ... Eventually, I collapsed due to high blood pressure. I was sent to the hospital immediately at 1.00am, and the doctors advised that I be hospitalised. The officers said to call them when I am discharged. - Ravima

A minority of interviewees also noted that their interpreters were either not competent enough or acted inappropriately and this impacted on their ability to communicate the circumstances in which they had been trafficked.

I was told by the interpreter just to answer what the judge asked. When I asked the interpreter to explain how I was coerced to write the termination letter by my employer, the interpreter refused. Several times the interpreter did not interpret what I had said. - Ravima

Procedural flaws in the investigative process were also observed in the testimonies provided by participants. Officials did not adequately investigate

evidence of trafficking and often did not consider people who had been subjected to more nuanced forms of coercion to have been trafficked.

Law enforcement officers frequently did not take appropriate steps to collect evidence. For example, less than half of the participants (four survivors) were asked by officials whether other people worked with them in the place where they were exploited, thereby missing a potential opportunity to interview witnesses who could corroborate information given in witness statements. In one case, the police failed to record physical evidence of abuse and lost additional evidence that was provided to them:

...the bruises and nail marks from my assault were fresh and evident, but the police did not take any pictures, and as the marks faded over time, I had no evidence to prove that I was physically assaulted in my employment tenure. - Chaturi

Coordination between law enforcement agencies should take place around interviewing trafficked people and progressing their cases, but several interviewees had to file multiple reports in different governmental departments (e.g. the Labour Department for compensation, the Police Department to report assault and the Immigration Department for visa extensions).

As many trafficked people suffer from post-traumatic stress disorder, being asked to retell abusive experiences time and again may have a negative impact on their mental health. Trauma can also impede people's ability to remember events, it is also likely to result in inconsistencies between the different statements given. These inconsistencies are then used to attack the credibility of the trafficked person's account and regularly lead to their case being dismissed.

The above issues are an important part of the explanation for why hardly any people are identified as having been trafficked and so few prosecutions of traffickers take place.

Inadequate provision of information

None of the interviewees were told about the witness protection programme and only around a quarter (three survivors) said that officials properly explained the legal process to them. Nearly two-thirds of participants (seven survivors) also complained that they were not kept informed about the progress of their case.

... the biggest stress comes from not knowing what will happen next. ... They (the officials) never tell us whether things might proceed on a certain date... what is next or if they are still investigating my case. - Patricia

Of equal concern is the fact that none of the interviewees were told about NGOs that could assist them and only one woman reported being given information on welfare support that was available. The provision of this information is an essential part of enabling trafficked people to pursue a legal remedy as most will not be allowed to work and will have no means of supporting themselves while their case is being investigated.

... (the officials) were not worried about my livelihood, or how I [would handle] the situation. It felt like they were only bothered about gaining a general idea of my complaint and never bothered about my condition.
- Esme

Under the Action Plan, timely support and assistance should be provided, where appropriate, to victims of trafficking (e.g. shelter, medical services, psychological support, etc.), but this rarely happens in practice. In 2021, the HKSAR government did not report providing services to any trafficked people or referring anyone for the support they required.⁷

7. See n 2 above.

More than half of the interviewees specifically mentioned how important counselling was to help them recover and move on from the exploitation they suffered. However, in all cases these services were provided by NGOs and none of the participants were referred for counselling by a government official.

Counselling has helped me see that I am more than someone who has been sex trafficked and that I can also be someone who has a normal job.

- Gloria

It is likely that the lack of a formal referral process and clear guidelines directing officials to inform trafficked people of their rights and organisations that can assist them is contributing to this problem.

Measures that would improve the justice system

Hold traffickers accountable for their crimes

The HKSAR government is committed to ensuring the effective prosecution of traffickers, but despite the action it has taken to try and facilitate this, only five individuals were convicted for crimes relating to trafficking for either sexual or labour exploitation in 2020 and 2021.⁸

With respect to employment agencies, 16 were prosecuted for overcharging workers, operating without a license or other offences, and 14 had their licences revoked or their renewal applications rejected in 2020-21.⁹ This enforcement action is not commensurate with the scale of the problem given that Hong Kong Federation of Asian Domestic Workers Union (FADWU) identified some 150 registered Hong Kong employment agencies that were

not fully complying with the Code of Practice for Employment Agencies (e.g. charging illegal recruitment fees or confiscating workers' documents).¹⁰

Even in the small number of cases where sanctions were levied against individuals or employment agencies involved in trafficking, these often were insufficient to be a deterrent (e.g. agencies who had their licences revoked continued to operate under a different name and individuals convicted for trafficking for sexual exploitation were sentenced to as little as four months' imprisonment).¹¹

The fact that only a handful of successful prosecutions for trafficking take place each year risks undermining confidence in the justice system. The HKSAR government should take steps to remedy this situation by: improving the procedures for identifying trafficked people and investigating cases; ensuring that migrant workers are not penalised for coming forward to the authorities; fully informing victims about the legal process and their rights; and providing practical support and assistance to trafficked people.

In addition, the introduction of comprehensive anti-trafficking legislation would help to ensure that more traffickers are properly held accountable for their crimes. Although the HKSAR government maintains that trafficking offences, as defined in the Palermo Protocol, are covered by existing provisions,¹² this is not accurate as Hong Kong's existing legislative framework does not prohibit and punish internal trafficking or trafficking for labour exploitation.

The absence of consolidated anti-trafficking legislation limits law enforcement officers' options and compels them to focus on offences that are components

8. In a statement responding to US Department of State report, the HKSAR government noted that it arrested 278 people in 2021 for prostitution-related crimes. However, it does not appear that these arrests were related to trafficking activities. See n 2 and n 4 above.

9. The number of conviction was not reported. See n 2 above.

10. Hong Kong Federation of Asian Domestic Workers Unions, *Agents of change? Assessing Hong Kong employment agencies' compliance with the Code of Practice*, 2018. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_655280.pdf

11. See n 2 above.

12. See n 3 above.

of trafficking and which they can prosecute (e.g. facilitating illegal entry into Hong Kong or unlawfully retaining another person's travel documents), rather than exploring whether the pattern of offences and behaviour might constitute trafficking in persons.

As noted above, this frequently results in traffickers being prosecuted for comparatively minor offences and facing punishments (fines, community service, short periods of imprisonment, non-renewal of a licence, etc.), which do not reflect the gravity of the crime.

In April 2022, Hong Kong's own judiciary also concluded that the absence of laws criminalizing all forms of trafficking undermined the Government's anti-trafficking work and that the failures in the police investigation into whether a migrant domestic worker was a victim of trafficking or forced labour were "causally connected to the absence of specific legislation".¹³

Prevent future trafficking cases

Several interviewees underlined the importance of changing policies and practices so that other people are not subjected to trafficking and its related harms in the future.

Of course it would have been nice if [my traffickers] were punished for what they have done to me. Do I want the Immigration Department to pull up their socks? Sure, yes. But to create awareness and improve protection for other survivors and vulnerable people, already means justice to me. - Gloria

Most of the Action Plan's measures to prevent trafficking are focused on awareness raising initiatives. However, the HKSAR government's public

statements declaring that there is no evidence that trafficking in people "is a prevalent or widespread problem in Hong Kong"¹⁴ could be undermining this work. It may also lead some law enforcement officers to conclude that it is not worth dedicating time and resources to something which is not a significant problem.

Interviewees also felt that more still needs to be done to inform employers about their legal responsibilities to their employees, and to alert migrant workers to the risks of trafficking and where they can go for assistance.

More awareness raising about the type of trafficking I had experienced is needed for people from my country ... to help us avoid falling into traps like these. - Ravima

Unfortunately, the Action Plan does not address some key policy changes, which would do the most to prevent the trafficking and exploitation of migrant domestic workers: the requirement that migrant domestic workers live with their employers, the Two-Week Rule, and government actions related to 'job hopping'. The mandatory live-in requirement obliges all migrant domestic workers to "work and reside in the employer's residence". This makes it easier for exploitative employers to control and exploit them. If workers challenge their exploitative working conditions, this could result in their contract being terminated, leaving them with no job, nowhere to live and no way to repay their debts or support their families.

Furthermore, after the termination of their contract, the Two-Week Rule stipulates that the migrant domestic worker must find new employment within two weeks or leave Hong Kong. Finding a new job in this short period of time is extremely difficult to do, particularly if they are engaged in a court case with their former employer. Migrant domestic workers who decide to leave their

13. HKSAR Department of Justice, *CB v Commissioner of Police and Secretary for Justice* [2022] HKCFI 1046, Summary of judicial decision. Available at https://www.doj.gov.hk/en/notable_judgments/pdf/HCAL_466_21_HCAL_617_21.pdf.

14. See n 3 above.

jobs prematurely also run the risk of being accused of ‘job-hopping’, which could result in the Immigration Department denying their visa applications for future employment in Hong Kong. These crackdowns put workers’ right to resign on the line, and force those experiencing ill treatment at work to endure and stay put. As found in a survey conducted by FADWU between November 2021 to May 2022, the concern that their future visa applications might be rejected due to suspected ‘job-hopping, was found to be the top reason why exploited migrant domestic workers in Hong Kong do not break contract despite experiencing abuse.¹⁵

UN human rights bodies have, for many years, called on the HKSAR government to repeal the Two-Week Rule and the live-in requirement for migrant domestic workers. This was reiterated most recently in July 2022, when the UN Human Rights Committee noted that these policies continue to:

... put those workers at high risk of abuse and exploitation by their employers and employment agencies and to prevent them from reporting exploitative employment and abuse due to fears of losing their job and having to leave Hong Kong.¹⁶

Conclude cases in a timely manner

Seeking redress through either civil or criminal proceedings can take several years to complete and the longer the case goes on, the more difficult a trafficked person’s situation in Hong Kong becomes. Interviewees repeatedly underlined how waiting for prolonged periods of time for an outcome of their case made it difficult for them to survive financially and took its toll on

15. “Alleged ‘job-hopping’ silences migrant domestic workers facing abuse, FADWU calls for a stop to discriminatory policies”, Hong Kong Federation of Asian Domestic Workers Unions, 7 August 2022. Available at <https://www.facebook.com/HKFADWU/posts/pfbid02Asv3QhB5865bUXksKHTf6H7CwBGdrZ3UsQe6BPDdoD8QbxyjKHhyBGQjNNxTNAMdl>.

16. United Nations Human Rights Committee, *Concluding observations on the fourth periodic report of Hong Kong, China*, 27 July 2022. Available at https://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/CCPR_C_CHN-HKG_CO_4_49295_E.pdf.

their mental health as they could not move on with their lives. The Covid-19 pandemic also forced some court closures, and exacerbated delays in concluding cases.¹⁷ For some trafficked people the waiting can be as hard as the exploitation they suffered.

These issues force many trafficked people to abandon their case or to agree to disadvantageous out of court settlements because they do not have the resources to pursue their case. In this way, justice delayed often leads to justice being denied to trafficked people and the HKSAR government should do more to expedite the investigation and conclusion of trafficking cases.

The first hearing was supposed to be in December 2020. They postponed it to March 2021, which was postponed again to June. They then told me that there will be no appointment until 2022. I was winning the case, but I can’t continue as I had to prioritize my kids. - Sandra

Grant work visas to those pursuing justice

Interviewees consistently stressed that having the opportunity to support themselves and be economically independent while pursuing their cases was crucial as it allowed them to sustain themselves and their families during the legal process and assisted with their recovery.

I was kept in Hong Kong for more than three years to wait for the result (of my case) ... During this time, I was not allowed to work, despite being completely capable – this took a huge toll on my mental health. I scrambled to survive ... I was in deep mental stress and was being treated for depression. I did not see the difference between my state and that of a prisoner’s. - Ravima

Not being able to work broke me in Hong Kong. - Sandra

17. See for example: “Courts to generally adjourn all proceedings between March 7 and April 11”, *HKSAR Government Press Releases*, 4 March 2022. Available at <https://www.info.gov.hk/gia/general/202203/04/P2022030400480.htm?fontSize=1>.

Promote other forms of restitution and support

Accessing justice should help victims to move on with their lives. In this context, it would be beneficial if part of the restitution process involved the provision of long-term support services, both in Hong Kong and the countries of origin. These services should include reintegration support, education, training, continued healthcare and counselling for those who need it.

Several interviewees underlined how important engaging with other survivors of trafficking was in supporting their own recovery process and that access to peer-to-peer support groups should be made available to all trafficked people.

... being able to talk to other survivors with similar experiences also helped a lot in my recovery. ... (to) have somebody to talk to, knowing that someone will support me no matter if I win or lose. - Maria

Another part of the restitution process could involve providing long-term work visas to those who are identified as victims of trafficking. This would encourage those who have been exploited to come forward to the authorities and enable them to rebuild their lives.

Recommendations for the HKSAR government

Victim Identification, Investigation, Enforcement and Prosecution

- Improve professional standards in the identification of trafficked people and the investigation of their cases by strengthening training and supervisory mechanisms.
- Ensure that all at-risk groups are screened and enhance screening procedures to improve victim identification (e.g. ensure the purpose of screening questions are properly explained and provide adequate opportunities for answers to be clarified).

- Ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) and enact legislation that criminalizes all forms of human trafficking, including for internal trafficking and trafficking for labour exploitation. Individuals and employment agencies that might be involved in trafficking should be proactively investigated.
- Ensure that all interpreters are fully qualified, that they perform their duties professionally and that there are enough interpreters so that interviews can be held promptly.
- Mechanisms to expedite trafficking cases should be explored, including improving inter-departmental coordination, so that trafficked people do not have to file multiple reports and ensuring designated anti-trafficking contacts are fully operational in all relevant government departments.

Victim Protection and Support

- Victims of trafficking should not be penalised for coming forward to the authorities or sanctioned for offences they were compelled to commit as part of being trafficked.
- Victims of trafficking should be able to seek legal redress through the provision of work visas and adequate welfare assistance.
- All potentially trafficked people should be fully informed about the legal process (e.g. the option to apply for remote hearing), their rights and what assistance they can access or be referred to. They should be regularly updated on their case and any decisions reached should be communicated in writing and fully explained.
- Other forms of restitution should be supported for victims of trafficking (e.g. facilitating access to: reintegration support, education and training; healthcare and counselling; and peer-to-peer support groups).

Prevention

- Migrant domestic workers' vulnerability to trafficking should be reduced by repealing the Two-Week Rule and the requirement for migrant domestic workers to live with their employers, and ending 'job-hopping' crackdowns.
- Undertake further awareness-raising initiatives (e.g. to alert migrant workers to the risks of trafficking and where they can go for assistance).

Partnership

- Establish a referral mechanism and enhance cooperation with the civil society to discuss how to improve policies and procedures to combat trafficking and better support victims.

1 Background and Purpose of the Research

... listen to me, because no one knows better than us. No one knows better than the people who went through trafficking. - Afiya

In March 2018, the Hong Kong Special Administrative Region (HKSAR) government established a high-level inter-departmental Steering Committee with strategic responsibility for tackling trafficking in persons. The Steering Committee was tasked with implementing the Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong (hereinafter referred to as “the Action Plan”).¹⁸

The Action Plan contains a range of measures to address the prevention, protection, prosecution and partnership components of the HKSAR government’s anti-trafficking strategy. An annual budget of HK\$62.23 million was allocated to ensure the effective implementation of the Action Plan in both 2020 and 2021.

However, in 2022, the US Department of State’s Trafficking in Persons Report placed Hong Kong on the Tier 2 Watch List for the third consecutive year, stating that it “does not fully meet the minimum standards for the elimination of trafficking, but is making significant efforts to do so.”¹⁹

The aim of this research is to consider how effective the Action Plan has been in tackling human trafficking and specifically whether it has helped trafficked people to access justice in Hong Kong. The report examines trafficked migrants’ experience of using the justice system and explores how existing procedures might be improved to better meet survivors’ needs.

18. HKSAR Security Bureau, *Action plan to tackle trafficking in persons and to enhance protection of foreign domestic helpers in Hong Kong*, March 2018. Available at <https://www.sb.gov.hk/eng/special/pdfs/Action%20Plan%20to%20Tackle%20TIP%20and%20to%20Protection%20FDHs.pdf>.

19. US Department of State, *Trafficking in persons report – Hong Kong: Tier 2 watch list*, July 2022. Available at <https://www.state.gov/wp-content/uploads/2022/04/337308-2022-TIP-REPORT-inaccessible.pdf>.

2

Methodology

Stop Trafficking in People (STOP) conducted qualitative, semi-structured interviews with migrants who have experienced trafficking in Hong Kong. A total of 11 migrant trafficking survivors were interviewed between 23 October and 10 December 2022 as part of the research.

Potential interviewees were screened by STOP to ensure that they were: (1) at least 18 years old; (2) presented with clear indicators of having been trafficked and subjected to labour or sexual exploitation in Hong Kong;²⁰ and (3) that they sought assistance from the authorities, a consulate or a civil society organisation after the Action Plan was launched in March 2018.²¹

A total of five participants were trafficked for sexual exploitation and six for labour exploitation, all of which were in domestic work. Those who were sexually exploited came primarily from Uganda, with one from Kenya and one preferring not to identify her nationality. Those who were trafficked for labour

20. All the survivors interviewed for this research had at least two of the following indicators of trafficking: deceived about their terms and conditions of work; unable to leave their job; abducted or kidnapped; under/late/non-payment of wages; financial penalties or debt bondage; hazardous work conditions [e.g. inadequate time-off]; confiscation of travel/identification documents; threats/actual physical/sexual/verbal violence; restrictions on freedom of movement; threats/actual denunciation to authorities; and threats/actual deprivation of food, shelter or other necessities. The indicators of trafficking used for this research are consistent with those adopted by the Hong Kong authorities and the International Labour Organization. See Trafficking in persons”, *HKSAR Security Bureau*. Available at <https://www.sb.gov.hk/eng/special/bound/iimm.html> [accessed 1 December 2022]; and, International Labour Office, *Operational indicators of trafficking in human beings*, 2009. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf.

21. Interviewees were not required to have gone through the trafficking identification screening process conducted by the HKSAR Government or the International Organization for Migration (IOM) to participate in this research, nor were they excluded if they had received a negative screening result, providing they met the other research criteria (including showing at least two indicators of having been trafficked).

exploitation were from Sri Lanka (4) and the Philippines (2). The survivors interviewed were all women, and between 29 and 48 years of age.

Interview questions (See Appendix 2.) focused on the nature of participants' engagement with the Hong Kong authorities and the wider justice system. Interviewees were also asked questions to explore what a successful justice process would look like from their perspective, and how they could be better supported to help them recover and move on from their experiences.

To protect the identities of the individuals who were interviewed, their names have been changed in this report.

Further interviews were carried out with representatives of four civil society organisations, which provide services to trafficked people in Hong Kong to gather their views on how effectively the Action Plan has been implemented and their broader experience of how efficiently the justice system works. These NGOs were: Sons and Daughters, the Progressive Labour Union Of Domestic Workers In Hong Kong (PLU), HELP for Domestic Workers, and Justice Without Borders.

Information gathered from the interviews was supplemented by desk research, which was carried out from October to December 2022.

The research findings are set out in four main chapters, which look at: why trafficked migrants are reluctant to come forward to the authorities ; measures taken by the Hong Kong authorities to identify trafficked people; trafficked migrants' experience of engaging with the authorities; and measures that would improve the justice system.

3

Why trafficked migrants are reluctant to come forward to the authorities

Nearly two-thirds of the trafficked migrants interviewed for this research (seven participants) either did not approach the Hong Kong authorities to report the people who were exploiting them, or confirmed that there were trafficking issues relevant to their case that they did not disclose to officials when they did make contact with them.

The principle reasons given by interviewees for their reluctance to approach or fully engage with the authorities about their trafficking experience are set out below.²²

3.1 Fear of being penalised by the authorities

The most common reasons given by participants for not going to the police or other officials to try and resolve their problems were that they were afraid that they would face legal punishment and would not be able to continue working in Hong Kong.

I never go and seek help (either at the hospital or from the police) even if I get into trouble, because I am not supposed to work ... If I go to hospitals, people might ask a lot of questions, so I didn't go to the hospital for treating my wounds. Instead, I'll just go buy medicine and tend to my wounds by myself. - Patricia

22. It should be noted that most survivors gave more than one reason to explain why they did not come forward to the authorities.

These concerns are justified as the Hong Kong authorities often deport, arrest and prosecute those who have broken the law, including those who have been coerced into sex work, acted as drug mules or broken their conditions of entry. This happened to one interviewee and her subsequent police record means she is now unable to secure another job abroad and cannot support her family.

I got into trouble without knowing that it was illegal. They (the police) should have been more open to listening to my story, ... Now I cannot leave my country to work abroad ... This is the only way for me and my family to survive ... I want to come back to Hong Kong or go to another country to work. I want to be able to earn money and look after my family.

- Ravima

In principle, there is provision for the non-prosecution of crimes that have been committed as part of the trafficking process in Hong Kong, but in practice this rarely happens. In fact, just two individuals were granted immunity from prosecution as a consequence of having been trafficked in 2021.²³

When one of STOP's clients went to the police for help and reported that she had been trafficked and forced into sex work she was warned that she risked incriminating herself as sex work is illegal in Hong Kong. Sons & Daughters also confirmed that they were aware of cases in which people who had been trafficked were penalised for breaching immigration laws (e.g. overstaying) and the PLU reported that migrant domestic workers are often arrested after having been made to work in places other than the location stated on their employment contract.

Challenging exploitative employers can also have negative legal consequences for migrant workers. For example, the PLU highlighted a case in which a migrant domestic worker's employer told immigration officers that her

contract had been terminated, but did not inform the worker. Consequently, she unknowingly overstayed in Hong Kong past the 14-day expiry (under the New Condition of Stay, 1987, or the Two-Week Rule), and she was fined HK\$230 and sent back to the Philippines.

Migrant workers who try to use the justice system to end an abusive situation often have their employment contracts terminated and may also have a counter-claim made against them, as was the experience of one of the interviewees.

The employer has put a counter-claim in the Labour Tribunal, they said that I have broken the contract. - Kayra

Participants who did not go to the police or other officials to resolve their problems also stressed that if they and other trafficked people were confident that they would be supported rather than penalised by the authorities, then they would be more willing to come forward and report their abusers.

Programmes should be put in place so that trafficked persons would feel safe and protected when talking to the authorities. Victims should not be punished for things they were forced to do. - Afiya

When responding to trafficked people who have committed crimes, listen to us with an open-mind, and without bias or favour. ... If they (law enforcement officers) are kind and helpful enough, then victims will feel comfortable to seek help. Even if I had done something wrong, I will come forward. - Ravima

The other issue that deters migrant workers from coming forward to report exploitation and abuse is the fear that it may prevent them from being able to work and provide for their families. This is because there is no right to work for those who have brought charges against their traffickers.

23. See n 19 above.

Although migrant domestic workers can apply to change employers if their contract is prematurely terminated and there is evidence of abuse or exploitation, data provided by the HKSAR Labour Department indicates that very few people benefit from this provision. From January 2020 to November 2022, just 38 migrant domestic workers had their applications to change employers because of abuse or exploitation approved.²⁴

Even those who have an existing visa that allows them to change jobs worry that a potential new employer will not hire someone who has had their contract terminated, is involved in an ongoing legal case, or has previously taken an employer to court.

When the contract is terminated then it is extremely difficult to find another job. The problem lies not only in finding employment opportunities, but also in the fear that the new employer might be prejudiced against us due to such history. I have to financially support my three children and my husband back in my home country because my husband is not in a position to work. - Esme

This well-founded fear of being penalized and not being able to continue working in Hong Kong means that many trafficked people choose to endure rather than report their exploitation.

... it is not worth taking the risk... they are not sure if they come forward, they (might) end up being the ones behind bars instead of their traffickers. - Sons & Daughters

It's not because they don't want to seek help, it's because they cannot afford to seek help. - PLU

3.2 Lack of confidence in the authorities

Several interviewees also stated that they did not report their traffickers because they lacked confidence in the Hong Kong authorities' willingness and ability to resolve the problems they faced.

I didn't have confidence that they would help me ... I had no hope in the Hong Kong government from the start. - Patricia

It may be that the HKSAR government's public assertions that human trafficking is "not a prevalent problem" in Hong Kong has also reduced trafficked people's confidence in the system as they may perceive that they are not likely to be believed if they go to the authorities.

In some cases, the distrust of Hong Kong's law enforcement officers was rooted in their experience of police in their own country.

In Africa if we go to the police, the police will do anything to you. - Sandra

Other interviewees thought there was no point in reporting their traffickers to the police, as there was little likelihood of them being caught or punished.

My brokers – the job agency back in my country - and the mamasan who received me, none of them are fully based in Hong Kong. ... I feel like even if I had reported her, before the authorities begin an investigation, she can just go back to her home country, and easily get away with it. It would not have made any impact. - Gloria

²⁴ Information provided by the HKSAR Labour Department in correspondence with STOP on 9 January 2023.

3.3 Not aware of how to access a remedy

Through the Action Plan, the Government has sought to raise migrant workers' awareness of their legal rights and the channels through which they can seek assistance. These measures include: distributing information on migrant domestic workers' rights and the responsibilities of employers, publishing adverts in Filipino and Indonesian language newspapers, working with the Filipino and Indonesian consulates to provide briefings to newly arrived domestic workers, and publishing the standard employment contracts in 11 languages.

In addition, the Labour Department operates an online portal and a 24-hour hotline with interpretation available in seven languages to answer any questions migrant domestic workers might have and to assist them in making complaints.²⁵ Since the hotline was established, the number of calls it receives has increased from 3,836 in 2019 to 12,287 in 2021.²⁶

Despite these measures, several participants stated that they did not contact the authorities to report their exploitation because they did not know how to file a report.

I didn't know how to make a complaint, whom I can turn to, or whether anyone would believe me at all. The helplessness was so strong I actually thought about jumping from the building. - Dolores

The biggest challenge was that I am really scared and I do not know where to ask for help. - Maria

I knew nothing about the Hong Kong justice system. - Kayra

Some victims of trafficking are not making complaints because they do not have the correct information about how the procedures in the justice system work. For example, most survivors are unaware that they can request a remote hearing so that they can pursue a case even if they are not able to stay in Hong Kong. Others believe they can only make a complaint if they have their identity documents.

The mindset of Hong Kong authorities towards remote hearings has been changing since COVID. Due to the ever-changing travel and quarantine requirements, the courts were more open to granting such applications for litigants who were overseas. Yet, the barriers to cross-border litigation begin before the claim is even filed - from time to time, frontline officers may refuse to receive the case because the worker is not in Hong Kong... Regardless, the number of survivors choosing to pursue cross-border litigation is limited, as they may not have received information about it as an available option. - Justice Without Borders

Some of them (migrant domestic workers), their employers have confiscated their passports and a few workers have the misconception that they cannot file a report without a passport. - PLU

25. "Dedicated 24-hour hotline set up for foreign domestic helpers", *HKSAR Government Press Releases*, 19 December 2018. Available at <https://www.info.gov.hk/gia/general/201812/19/P2018121700560.htm?fontSize=1>.

26. The Labour Department does not keep statistics on the nature of the calls made to the hotline. Information provided by the HKSAR Labour Department in correspondence with STOP on 9 January 2023.

3.4 Difficulties in disclosing what has happened to them

Several interviewees noted that it was extremely hard for them to go to the police and explain what had happened to them as this would force them to relive the trauma of the exploitation and abuse that they had been subjected to.

... I wake up scared and in tears, almost every day and I do not know what can be done to help me move forward from here. ... Recalling and talking about my experience still has the same emotional and physical effects on me and that is why I do not want to talk about it. - Chaturi

I did not tell them about sexual abuse because I did not want to. I just wanted to feel safe. - Tisha

The police asked me to show how the abuse was conducted. I found it difficult to answer. ... I did not want to go back to the memories. - Kayra

In addition, one participant also mentioned that they did not fully disclose what had happened to them because of a sense of shame.

The police would give me advice and tell me that if I feel any fear, I can share with them. They said, 'the police are your friend'. But because of shame, I feel I was not as open with the officers then, as I was with you today. - Gloria

3.5 Fear of traffickers

Fear of their traffickers and the possible repercussions for them and their families also prevented some survivors from going to the Hong Kong authorities to seek help.

No. I am afraid still, up to today, I have to look around going anywhere. I would not invite anyone to my place or even tell them where I am living. ... I am afraid - that is why I do not pursue the case. - Tisha

I did not talk about my trafficking experience at all. I thought about it, but the other girls told me it wouldn't be wise ... If I do report the case, I wouldn't be able to work, my debt would be unpaid, my family would still be in danger, and we would lose our land. Going to the authorities in Hong Kong would not solve anything. - Afiya

4

Measures taken by the authorities to identify trafficked people

For all the above reasons, trafficked people may be unwilling or unable to self-identify to the authorities. In recognition of this, the Action Plan contains a series of measures, which are designed to facilitate the prompt identification of people who have been trafficked to Hong Kong. The HKSAR government confirmed that the victim identification procedures contained in the Action Plan “were firmly in place by end-2019.”²⁷ These include:

- Providing training on trafficking issues to officials from various agencies. Training was delivered to some 1,700 officials in 2021 (up from 880 in 2020);²⁸
- Appointing dedicated teams and points of contact in the relevant law enforcement agencies to handle trafficking cases, including in each of the police’s six regions and at each branch office of the Labour Department’s Labour Relations Division;
- Expanding the screening mechanism for identifying trafficked people to all 24 police districts in July 2018;²⁹ and
- Extending the screening procedures to other relevant agencies, including the Immigration Department, the Labour Department and the Customs and Excise Department.

27. “Human trafficking report rebutted”, *News.Gov.HK*, 20 July 2022, https://www.news.gov.hk/eng/2022/07/20220720/20220720_105112_663.html.

28. See n 19 above.

29. See n 18 above.

4.1 Victim screening procedure

The screening process to establish whether someone has been trafficked takes place in two stages. An initial screening interview is conducted by officials using seven questions to determine whether there are indicators that the person has been trafficked (e.g. were identification documents taken; were salary deductions made; was the interviewee forced to work; were they beaten, threatened or restricted from contacting friends and family; etc.).

If one or more of the answers to these questions is positive, then the official should carry out a full debriefing in which 12 standard questions will be asked to confirm whether the person has been trafficked or not. These questions probe the recruitment and transportation process; debt issues; the nature of the work they were promised; the use of force or threats; earnings; whether they worked alone; and what assistance they need.

The measures taken under the Action Plan to expand the screening process have undoubtedly resulted in a sharp increase in the number of initial screenings that are carried out by the authorities. These rose from 4,710 in 2017 to 6,912 in 2020, and in 2021 they reached 7,678.³⁰

However, very few of those who were screened went on to have a full debriefing, despite the low threshold required for this to take place. In 2021, just 212 full debriefing interviews were conducted, which means less than 3% of those who were screened were identified as having any indicators of having been trafficked.³¹

Despite conducting 14,590 initial screening interviews of people who were vulnerable to trafficking in 2020 and 2021, Hong Kong officials only identified a total of four trafficked people in this two-year period.³²

30. See n 18 and n 19 above.

31. Information provided by the HKSAR Security Bureau in correspondence with STOP on 10 January 2023.

32. The single trafficked person identified in 2021 was initially screened by the Foreign Domestic / Helpers Special Investigation Section of the Immigration Department, which was established in 2019. See n 27 above.

The HKSAR government has argued that the very small number of trafficking victims that have been identified through screening supports its assertion that trafficking is not “a prevalent problem in Hong Kong.” It has further stated that it is “baseless and unfair to cast doubt on the quality of the screenings in the city and discredit its screening procedure merely because of the low number of victims so identified.”³³

However, there is strong and consistent evidence that significant numbers of people are trafficked and subjected to exploitation in Hong Kong. For example, in 2018, FADWU published in-depth research, which found that more than half of the migrant domestic workers they interviewed (253 out of 450) were paying illegal agency fees and nearly a quarter (108 out of 451) had had their passport or other personal documents withheld by their employment agency or their employer.³⁴

In 2016, research by Justice Centre Hong Kong found that as many as one in six migrant domestic workers are victims of labour exploitation in Hong Kong.³⁵ Even if just 10% of these cases involved the movement of people through deception and coercion for the purposes of their exploitation, then this would still be equivalent to some 6,000 victims of trafficking. This of course does not take into consideration those who are trafficked for sexual exploitation or other forms of labour exploitation beyond domestic work. In this context, it is reasonable to assume that the screening process is failing to identify large numbers of trafficked people.

33. See n 27 above.

34. Hong Kong Federation of Asian Domestic Workers Unions, *Agents of Change? Assessing Hong Kong employment agencies' compliance with the Code of Practice*, 2018. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_655280.pdf.

35. *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. Available at <https://www.justicecentre.org.hk/framework/uploads/2016/03/Coming-Clean-The-prevalence-of-forced-labour-and-human-trafficking-for-the-purpose-of-forced-labour-amongst-migrant-domestic-workers-in-Hong-Kong.pdf>.

4.2 The implementation of screening for high risk groups

In 2019, the HKSAR government expanded the groups that should be screened because they are at higher risk of having been trafficked, so that it included: migrant domestic workers, sex workers, irregular migrants and other mainland and foreign workers that come to the attention of the authorities. In 2021, the HKSAR government also started screening all migrant domestic workers who applied for a new visa or who sought to renew an existing one.³⁶

However, in practice the numbers currently being screened - 7,678 in 2021 - still only constitutes a fraction of those identified by the HKSAR government as being at higher risk of being trafficked. For example, the number being screened in 2021 would be equal to about 2% of the migrant domestic workers working in Hong Kong.

It also appears that individuals involved in the sex industry are not routinely screened for trafficking indicators despite being a high risk group. One of the interviewees noted that little priority was given to identifying persons who have been trafficked for sexual exploitation.

In terms of the justice system dealing with sex trafficking, I feel like more needs to be done. Generally, it appears to me that the authorities put more resources and are more focused on fighting crimes like drug trafficking. And sometimes police would pose as a customer in undercover operations and arrest girls and women like myself who are forced to do sex work. I am not sure whether they have done anything about finding out the girl's situation and trafficking experience. - Gloria

36. The authorities did not include Hong Kong citizens amongst any of the vulnerable populations that should be screened. See n 19 above.

Where screening of sex workers does take place, it is failing to identify those who have been trafficked. For example, the HKSAR Police screened 703 sex workers for trafficking indicators in 2020 and 2021, but it did not identify any trafficking victims.³⁷

Media reports also indicated that officials identified children as being involved in commercial sexual exploitation during police raids on brothels, but no children were identified as having been trafficked.³⁸

The failure to identify any persons who were trafficked into the sex industry in 2021 may be linked to the fact that the Action Plan does not make any mention of trafficking for sexual exploitation and the HKSAR government has not conducted any campaigns to raise awareness of sex trafficking.

More generally, trafficked people who come to STOP for assistance frequently have not been screened and this is also the experience of other civil society organisations that work with trafficked people who were interviewed for this report.

I have not known any (migrant domestic) worker who has been given a screening interview. - PLU

37. Information provided by the HKSAR Police in correspondence with STOP on 6 January 2023.

38. See for example: <16歲少女當PTGF 2日接8客 拒再接客被勒索3萬 3女子認罪>[16-year-old PTGF served eight Johns in two days. Extorted 30 thousand for refusing to continue. Three women plead guilty.], HK01, 18 November 2021. Available at https://www.hk01.com/%E7%A4%BE%E6%9C%83%E6%96%B0%E8%81%9E/702451/16%E6%AD%B2%E5%B0%91%E5%A5%B3%E7%95%B6ptgf-2%E6%97%A5%E6%8E%A58%E5%AE%A2-%E6%8B%92%E5%86%8D%E6%8E%A5%E5%AE%A2%E8%A2%AB%E5%8B%92%E7%B4%A23%E8%90%AC-3%E5%A5%B3%E5%AD%90%E8%AA%8D%E7%BD%AA?utm_source=01webshare&utm_medium=referral&utm_campaign=non_native; "Hong Kong Doctor, banker among suspects arrested after police raid brothel providing underage sex workers", *South China Morning Post*, 10 January 2022. Available at <https://www.scmp.com/news/hong-kong/law-and-crime/article/3162804/hong-kong-doctor-banker-among-suspects-arrested-after>; "Underage pimp arrested over putting girl in prostitution", *The Standard*, 23 October 2022. Available at <https://www.thestandard.com.hk/breaking-news/section/4/196221/Underage-pimp-arrested-over-putting-girl-into-prostitution>.

Of the survivors who were interviewed for this research, only three of the 11 could confirm that they had been screened (two answered that they did not know, the rest said they had not been screened). This is despite the fact that more than half of the participants reported the problems they were facing to the authorities, and all the survivors were from high risk groups and had at least one of the trafficking indicators that should trigger a full trafficking debriefing by Hong Kong law enforcement officers (e.g. their identification documents were removed or they were threatened by their employers).

They didn't ask any questions from the TIP (trafficking in persons) screening [guideline], and they never told me whether I am identified as a trafficked person. - Patricia

In addition, where screening does take place, it is sometimes carried out in a way, which does not easily facilitate the identification of people who have been trafficked. For example, some of STOP's clients who have recently approached the Labour Department have been given a form, which includes similar questions to those used in the initial TIP screening interview, but terms like 'human trafficking', 'modern slavery' and 'trafficking in persons' do not appear in the questionnaire and the purpose of the form is not properly explained to those who are completing it.

The failure to properly communicate what information the questionnaire is seeking to obtain may be part of the explanation for why none of STOP's clients who have completed the form were invited back to the Labour Department for a full debriefing interview.

Other civil society organisations have also observed that some of the language used in screening interviews is quite legalistic (e.g. whether a situation is 'involuntary' and what constitutes 'coercion') and that this might be leading to misunderstandings, especially when the question is being translated and there is insufficient explanation about why it is being asked.

All of the above issues, combined with other factors like trust or shame, could influence the way questions are answered, particularly when the interviewee is required to provide a 'yes' or 'no' response, and this could result in trafficking indicators being missed. Reflecting on this, HELP for Domestic Workers noted:

... we think that conducting qualitative interviews is a better method for carrying out TIP screenings at any stage, to allow victims and officials to clarify questions and reduce occurrences of miscommunication. - HELP for Domestic Workers

5

Trafficked migrants' experience of engaging with the authorities

5.1 The professionalism of officials

When migrants who have been trafficked do engage with Hong Kong officials, the way that they are treated is crucial to creating a safe environment, winning their trust and overcoming pre-existing concerns.

Unfortunately, nearly two-thirds the research participants (seven survivors) stated that officials were either hostile to them, did not treat them professionally or were not sensitive to the fact that they had been through difficult or traumatic experiences.

Sandra, went to the police because she wanted to prosecute her traffickers and help other women who might find themselves in a similar situation to her. However, the police were unprofessional and forced her to drop the case by threatening to deport her.

At the meeting, there were no police women, only three men (two male officers and a male interpreter) and me. Even though they know that this case is about sex work and the investigation is about human trafficking [for sexual purposes]. ... The police asked how they could help me, as the traffickers are not locals and I don't have their contact. They then told me to drop the case ... the police weren't listening at all. ... the meeting was only 20 minutes. I dropped the case after being threatened with deportation. They told me that sex work is forbidden, meaning that I worked in Hong Kong illegally and broke the law. ... after the encounter with the police, I lost confidence and trust in the police. - Sandra

Another interviewee stated that when she went to the police for protection, they did not make basic enquiries to try and establish whether she had been trafficked.

(The police) ... did not investigate. No statement was taken. - Tisha

Other respondents also related incidents in which the officials they interacted with were unprofessional or unsympathetic.

When I went to Immigration to request a (visitor) visa extension after my contract was terminated, the officer there questioned my decision and said I should just go home. - Dolores

... they didn't care when I am distressed. ... They also told me I cannot stay in Hong Kong and cannot work. It makes me feel unsafe and worried, that one day I might wake up and be deported. ... sometimes they will remind me how I'm not supposed to stay in Hong Kong, and it stresses me out. - Patricia

In Ravima's case, officials continued to interview her even after she became unwell and only stopped after she collapsed and had to be sent to hospital.

On the day I was arrested at the Immigration Office ... I was confused and very frightened. I had to answer so many questions and the statement was almost 50 pages long. I tried to answer everything, but was very tired and told [the officers] my mind was not clear. No breaks were given to me, but I was given warm water and food for lunch. Though I was told that I have a choice not to answer questions, the officers never really let me skip questions. The pressure was so intense I felt sick, and had difficulties breathing, but they did not care. ... Eventually, I collapsed due to high blood pressure. I was sent to the hospital immediately at 1.00am, and the doctors advised that I be hospitalised. The officers said to call them when I am discharged. - Ravima

However, some interviewees did report positive interactions with officials who listened to their concerns and were both respectful and sensitive to their needs.

I believe that the officials were respectful in their behaviour with me ... I felt a sense of safety explaining my situation to them. - Esme

I felt that the police officials and the officials at the Immigration and Labour Department allowed me to tell my side of the story and did not seem judgemental in their response. ... The officials at Wong Tai Sin police station also cooperated to a great extent by rescheduling the interviews when I was not in a state to attend the meetings and answer their questions. - Chaturi

In my experience with the authorities, they really do try to listen. Sure, they might not be able to relate with a trafficked person's situation, but they show empathy. During my conversations with them, they would check in on me from time to time, ask if I am feeling ok to continue and if I need to take break. -Gloria

Most of the officers listened to my problem. They are good at communicating with me. Just one policeman made me uncomfortable once. ... A higher ranking officer intervened. - Kayra

The testimonies cited above indicate that trafficked migrants' experiences of dealing with law enforcement officials are very mixed and seem to be dependent on the individuals who are handling their case. Indeed, some interviewees reported positive and negative experiences both within and across the different departments they were liaising with. For example, while most of the positive testimonies above relate to the police, two women who were trafficked into sex work reported that they received better treatment from immigration officials.

They (the police) were not sensitive about my situation. ... There were two women at the immigration - they were sympathetic to my experiences.

- Sandra

The immigration listened non-judgmentally, but when it comes to police, when myself and my peers come across them both on the streets or at the station, they have not been respectful and didn't seem to take us seriously. - Afiya

Other interviewees noted that they were treated better when they had a legal representative or an NGO support worker with them.

I recognised that things are easier with the authorities when I have a lawyer with me. - Ravima

(I was treated professionally by officials) ... but only when my lawyer is also present. Without one, they are not respectful. - Dolores

STOP's experience of how officials engage with trafficked migrants who seek their assistance has also been mixed. When accompanying clients to meetings with the police or at the Labour Department, we have generally found officials to be patient and helpful and to have acted professionally (e.g. giving sufficient breaks and ensuring a female officer is arranged for an interview with a client who has experienced sexual violence). On one occasion, the police made an extra appointment for a client to explain what it means for a case to be 'bound over' and what implications it would have if she chose to pursue this option.

On the other hand, STOP has also encountered instances of bad practice. One example involved a client who approached the police to report the exploitation that she had been subjected to, only to have a police officer dismiss the severity of what she had experienced and attempt to discourage her from filing a complaint by asking: "Isn't this the first time your employer has done that? Are you sure the incident is serious enough for you to make a police report?"

Where officials display unprofessional or hostile behaviour to survivors who have sought their assistance, this is likely to have an extremely detrimental impact on the way those individuals perceive the justice system in Hong Kong. In addition, it will undermine wider efforts to combat trafficking, as those affected will share their negative experience and thereby make it less likely that other trafficked people will come forward to report their abusers to the authorities.

5.2 Information on their legal rights

Only three of the 11 survivors who participated in this research said that officials properly explained the legal process to them. For some survivors, this had a long-term impact on their lives and those of their families.

... my options were not sufficiently explained to me. Nobody told me how this case would be handled. I did not know that with a criminal record in Hong Kong (for offences committed related to my trafficking), I would not be able to work abroad in other countries. ... I recently found a job abroad and wanted to take it, but ran into issues while trying to obtain police clearance. Unable to go, and given the unemployment condition now in my home country, my child's education has stopped, and our living conditions have much deteriorated. - Ravima

The officials did not spend much time and effort in explaining the available options post escaping the abusive employment conditions. This made me feel like I had no control over the situations because I was neither aware nor briefed about the procedures of the law. - Esme

I wasn't told that I wouldn't be able to work during the six months I was in trial. - Maria

Similarly, none of the interviewees were told about the witness protection programme and only three were notified about visa extensions and fee waivers for witnesses in legal proceedings.

5.3 Information on their legal rights

None of the interviewees were informed about NGOs that could provide them with assistance and only one woman reported being given any information on welfare support that was available.

The provision of this information is an essential part of enabling trafficked people to take forward cases against those who have exploited them, as most will not be allowed to work and will therefore be dependent on others for assistance with their subsistence costs (e.g. accommodation, food and transport).

In addition, if officials did spend more time helping trafficked people to access the support they need, it could act as an important bridge and build trust between those reporting abuse and law enforcement officers. The importance of being able to access support services was highlighted by the majority of interviewees.

... After the assault, I did not receive a salary and had no money ... The shelter provided free dinner, and I also received food from Feeding Hong Kong. I received a monthly allowance from the staff at IOM (International Organization for Migration), and other members at the church also gave me money when I am in need. The staff also provided counselling and medicine. I was very grateful for all the help I received. - Maria

... for the first year nobody mentioned anything about STOP's services, which includes accommodation, travel and basic needs assistance. I was living off the aid of my friends. Eventually, when my friends could not sustain me any longer, we went together to my lawyer's office. Then, I was told about STOP. - Ravima

If not for the NGOs, I would have slept on the streets. Even when I went to the consulate, I was told there was no space at their shelter. The Hong Kong government should provide shelter for migrant domestic workers in need. - Dolores

In Tisha's case, the police did not even provide information on where she could get assistance when she told them she was too afraid to go back to her apartment because her trafficker knew where she lived.

The policeman from report room said, "You have already reported (the case). What do you want from us? Go to your friend's house." ... I went to Sons & Daughters again. They helped to find me emergency housing.
- Tisha

Several interviewees felt alienated by officials' failure to offer support or engage with them regarding their day to day survival needs and assumed that this meant they did not care about their welfare.

... (the officials) were not worried about my current livelihood or situation, or how I am handling the situation. It felt like they were only bothered about gaining a general idea of my complaint and never bothered about my condition. ... Prior to my contact with the STOP team, I was not aware of my rights, nor did any official inform me of the same ... (without STOP) it would have been extremely difficult to survive - financially, mentally and legally. - Esme

They were not worried about how I could survive. They asked exactly what happened. That was what they were interested in. My personal life and health, financial conditions, how I lived, they never asked. - Kayra

The PLU also noted that officials rarely considered how people who came to them for help survived in Hong Kong or asked about their welfare.

We hope this will change. It can be as simple as giving out information about assistance vulnerable workers can receive or NGO contacts they can reach out to.- PLU

Many victims of trafficking will also need to be referred for medical treatment to help them recover from both physical and psychological injuries. More than half of the interviewees specifically mentioned how important counselling was in terms of helping them recover and move on from the exploitation they suffered. However, in all cases this was provided by NGOs and none of the participants were referred for counselling by a government official.

They (Sons and Daughters) listened to me and gave me a counsellor. The counselling service was helpful. - Patricia

... I hated it (counselling) at first. I did not know why I needed it, but over time, I found healing and confidence. Counselling has helped me see that I am more than someone who has been sex trafficked and that I can also be someone who has a normal job. - Gloria

Counselling has helped me to a great extent to move past the trauma, along with medical treatment. ... the trauma still affects me ... I am trying to get over the experience by helping others like me, people in the same situation as I was once trapped in. - Esme

Counselling and joining different activities helped, I have something different to do everyday. Having a support network is very important.
- Patricia

I would like to have medical check-up because of the forced unprotected sex act. - Tisha

I wish they would have at least helped provide me the medical documents I needed to support my legal case. Shelter, psychological support and counselling, as well as other basic assistance, are also important.

- Dolores

5.4 Accessing services provided by the HKSAR government

Under the Action Plan, the HKSAR government undertakes, where appropriate, to provide timely support and assistance to victims of trafficking (e.g. shelter, medical services, psychological support, etc.). However, as noted in the testimonies above, this rarely happens in practice and trafficking survivors are usually dependent on NGOs for financial assistance and other support. In 2021, the HKSAR government did not report providing services to any trafficked people or referring anyone to the services they required.³⁹

It is likely that the lack of a formal referral process and clear guidelines directing officials to inform trafficked people of their entitlements and organisations that can assist them are contributing to this problem.

Moreover, legal aid is crucial to enabling trafficking survivors to pursue justice as without it they cannot afford to take forward civil claims and seek compensation. However, in STOP's experience it is very difficult to access legal aid and individuals need professional help to do so (e.g. from lawyers or NGOs). Even then, many will have their first application refused and this can lead to significant delays in registering and investigating their case.

My lawyer helped me to apply for legal aid for the personal injury claim in August 2020. In November 2020, my case got rejected by legal aid because of a lack of reasonable grounds. It finally got approved in 2021.

- Kayra

³⁹. See n 19 above.

I wanted to highlight that the moment legal aid started to listen to me, the process after was smooth. Before that, things were moving really slow. - Dolores

5.5 Issues in the investigative process

As has been noted above, some officials do not screen individuals who present with clear indicators of having been trafficked or properly investigate their cases. The research indicates that one of the reasons for this is that many law enforcement officers do not have a full appreciation of what activities constitute trafficking.

Interviewees shared examples of officials finding it hard to understand why someone would “choose to suffer exploitation” rather than run away, and of a case where a woman was told she was not (identified as) a victim of human trafficking because she had voluntarily entered into an employment contract with her employer.

Civil society organisations that work with trafficked people also noted that officials often have a narrow perception of the type of exploitation that meets the definition of trafficking. This would typically be someone who has been subjected to severe labour exploitation and physical violence, but would often not include people who have been subjected to more nuanced forms of coercion or who have broken laws or immigration regulations, irrespective of whether this took place as a consequence of being trafficked.

... we also observe that in cases where a trafficked victim is arrested for breaking the law (e.g. involvement in illegal work or drug trafficking), or when the victim does not fit the common victim profile of an exploited female migrant domestic worker (e.g. male migrant domestic worker

forced to work on construction sites), the authorities tend not to recognize these cases as human trafficking and thus, no referrals would be arranged for TIP-related investigations. Instead, the victims are usually treated as the accused. - HELP for Domestic Workers

Other interviewees highlighted how officials did not adequately investigate evidence of trafficking or gave little weight to information provided that was relevant to their trafficking claim. For example, Dolores stated that all the officials that she had contact with told her that she didn't have a case because she terminated the employment contract and ignored the fact that she was coerced into signing the termination paper by her employer.

... I feel that the immigration officers don't focus on the main issue, about how I was unfairly terminated. - Dolores

Furthermore, only four out of the 11 participants were asked by officials whether other people worked with them in the place where they were exploited. This is a key question to ask any potential victim of trafficking as those working alongside them may also have been exploited and be in need of assistance or be able to corroborate the information already provided to officials.⁴⁰

I was only asked about the working conditions and my experience under other employers, but no enquiry was made to learn whether there were other people in similar exploitative situations as mine. ... The law requires us to present proof of the allegations we press against our employers but they do not understand that most, almost all, helpers do not have proof of their traumatic experiences for our phones are confiscated by the employer, along with passports and other important documents. - Esme

40. For this reason, it is included as one of the standard questions that law enforcement officials should ask a person to establish whether they have been trafficked during the full debriefing.

Such procedural flaws were not uncommon in the testimonies provided by participants in this research. In Chaturi's case, there were multiple instances of officials failing to follow basic investigative procedures. For example, Chaturi informed officials that she had been beaten by her employers, had her identity documents removed and was prevented from contacting her friends and family in Sri Lanka, but she was still not screened for trafficking. She also stated that the police did not document the physical evidence of injuries when she reported the incident and that she was not given copies of her hospital records.

...the bruises and nail marks from my assault were fresh and evident, but the police did not take any pictures, and as the marks faded over time, I had no evidence to prove that I was physically assaulted in my employment tenure. ...

(At the hospital) They took pictures of my wounds, but I was not provided with a copy of the same and I never received any medical report of the clinical investigation conducted. - Chaturi

Chaturi provided statements and additional evidence to the police, but this was lost. Her lawyer thought that evidence may have been misplaced because the case was handled by multiple officers over an extended period of time.

My case was dragged on for a period of 4.5 years, not because of lack of evidence, but because ... they lost the key evidence I provided them with. ... safeguarding the evidence that victims like me provide is also a crucial step in ensuring that justice is served. The police should have been more professional and respectful in handling the sensitive evidence I provided and trusted them with. - Chaturi

Chaturi underlined how hard it was to deal with the police's investigative failures, particularly given how difficult it was for her to report and pursue the case in the first place.

I did not feel a sense of control (over the legal process) as I was scared ... I was extremely stressed about finding a job and how I would maintain my finances without any source of income. ...

The exploitative working conditions ... continue to haunt me – the abuse, the lack of food, controlling and monitoring each move, the fear that leads me to avoid taking up similar work till now. ...I still find it difficult to sleep, relax and maintain basic conversations with those around me as a result of the trauma. I do not wish to meet or talk to anyone around me, my mood is usually low and I am not the same person who left for Hong Kong. - Chaturi

The limited and flawed investigation of potential trafficking cases appears to be a significant part of the explanation for why so few people are recognised as trafficked. Indeed, Hong Kong's own judiciary has confirmed that officials have failed to identify individuals as being trafficked even when they have come forward to the authorities to report their exploitation.

An example of this is the case of CB, a migrant domestic worker who was subjected to exploitation and sexual abuse by her employer between September 2018 and April 2019. She reported her case to the police in December 2019 and, following her screening, was found not to be a victim of trafficking or forced labour.

The Court quashed this decision in April 2022 and found that the police had failed to conduct an effective investigation into whether CB had been trafficked. The Court identified multiple, basic procedural errors that were committed during the investigation, many of which overlap with issues raised by interviewees in this research. For example, the Court noted that the assessing police officer had:

Failed to take into account relevant evidence, including video evidence of CB's employer engaging in sexual acts with previous domestic workers;

- Failed to follow-up with previous migrant domestic workers;
- Accepted evidence on behalf of the employer at face value;
- Provided no documentation of having reached a finding on forced labour; and
- Reached a conclusion that CB was not trafficked by relying on issues, which were either irrelevant or to which only minimal weight should be given.⁴¹

In 2020, a separate judicial review case was heard involving ZN, a male migrant domestic worker from Pakistan, who was deceived by his employer, subjected to beatings and degrading treatment, had his freedom of movement restricted and was not paid for four years. The facts of this case are not disputed by the HKSAR government. It was accepted that ZN was a victim of forced labour; that he approached the relevant authorities with sufficient evidence to make them aware of this; and that the authorities failed to take appropriate action.

The Court described the Government's response to ZN's attempts to report his mistreatment as "woefully ineffectual" and "disgraceful." The HKSAR government accepted that ZN had been trafficked for forced labour and that it had failed to discharge its duty to properly investigate the complaint.⁴²

The Court found that the Government's failure to investigate was due to "the lack of training of the officers of the various government authorities involved" and "the total lack of central supervision and coordination in terms of investigating and combating such violations."⁴³

41. HKSAR Department of Justice, *CB v Commissioner of Police and Secretary for Justice* [2022] HKCFI 1046, Summary of judicial decision. Available at https://www.doj.gov.hk/en/notable_judgments/pdf/HCAL_466_21_HCAL_617_21.pdf.

42. HKSAR Department of Justice, *ZN v Secretary of State for Justice and Others* [2019] HKCFA 53. Available at https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=126569.

43. *Ibid*

The Action Plan aimed to improve the identification of trafficked people through awareness raising and training of frontline officers, but there are clearly still issues in these areas, which need to be addressed.

It may also be that the HKSAR government's public statements declaring that there is no evidence that trafficking in people "is a prevalent or widespread problem in Hong Kong"⁴⁴ are undermining its own awareness raising and training initiatives by delivering mixed messages. It is likely that some law enforcement officers and senior officials will not dedicate time and resources to something, which the Government is consistently saying is not a significant problem. This could result in trafficked people either not being referred for screening or the initial screening interview being carried out in a cursory way so that the indicators are not identified and acted upon.

5.6 Interpretation

All but one of the participants needed an interpreter and issues around their training and professionalism were identified by interviewees. While the majority were offered interpreters, one woman said she was unable to change her interpreter and another said she had to request one herself.

I requested another interpreter, but they (the police) did not provide.

- Sandra

I didn't know I could ask for one at first. Later, I was the one who requested for one at the second tribunal. - Dolores

In general, interpreters arrived promptly once they were requested, but interviewees had mixed experiences with the quality of the interpretation that was provided. Several were broadly positive about the interpreters they were given:

44. "Trafficking in persons", *HKSAR Security Bureau*. Available at <https://www.sb.gov.hk/eng/special/bound/iimm.html> (accessed 1 December 2022).

I believe that they did a professional job and properly communicated what I wanted to say. - Esme

For the language I speak, there are three interpreters that the government frequently books – two women and a man. The man and one of the ladies were extremely nice. But the other female interpreter, her interpretation was good, but I feel she was not very respectful. I remember her giggling while I was in the middle of explaining my situation to immigration. - Gloria

However, in a minority of cases, interpreters were either not properly qualified or acted inappropriately and this impacted on the ability of the survivors to communicate the circumstances in which they had been trafficked.

The interpreter did not really help ... I was told by the interpreter just to answer what the judge asked. When I asked the interpreter to explain how I was coerced to write the termination letter by my employer, the interpreter refused. Several times the interpreter did not interpret what I had said. There was also a letter presented in court. I asked the interpreter to explain what it was, again the interpreter refused. ... I didn't know I could ask for a different interpreter. The same interpreter was assigned for my case in succeeding proceedings. - Dolores

I was told I can either answer the question or remain silent. For some of the questions, I did not want to answer, but the officer asked me repeatedly. The female interpreter also forced me to answer questions. She told me that I have to answer, otherwise I will be in trouble – that I would have to face the court and be removed from Hong Kong, back to Sri Lanka. ... As for the interpreter at the police interview, he was using google translate to translate documents, and it was not accurate. ... I never asked (for a different interpreter) because I didn't know if this is something I should or could ask for. - Ravima

I was given an interpreter who is Chinese and he does not speak my language. I asked whether I can go with a STOP worker, but they say I could only go by myself. - Sandra

I had a mixed experience as I was provided with two different interpreters. The initial interpreter in my case was quite unprofessional and did a terrible job with her translations, adding to the already existing language barrier. However, the interpreter I was provided with after requesting for change was quite professional and accurate in her services. She did a much better job. - Chaturi

In the last case, Chaturi also noted that it took some time to find a new interpreter and even when they did it was difficult to schedule meetings because she was only available on Saturdays. Both these issues contributed to the long delays in her case. Civil society organisations also noted that it was difficult to find qualified interpreters for some languages and dialects in Hong Kong (e.g. Amharic) and this could lead to meetings being postponed and the investigation of a person's case being delayed.

5.7 Delays in the investigation

Any delay in starting or taking forward an investigation can impede its effectiveness, particularly when the opportunity to gather evidence is lost or the accused is given time to evade justice (e.g. by leaving Hong Kong).

This is illustrated by Esme's case. She filed a police report against her employer in September 2019. The case is still being processed, but there was a long delay before the inquiry was initiated, during which time her employers moved and the police are now having trouble locating them. Esme only had an interview with Labour Department officials a year after she reported her exploitation and by then the severity of her physical injuries had diminished (no investigation was conducted into the impact her traumatic experiences had on her mental health).

The officials investigated for the physical pain and damage one year after the incident of abuse. The reports from the clinical investigations were issued two weeks later and mentioned that the intensity of physical harm was only 1%. - Esme

Other interviewees also reported long delays in their cases being initiated and slow progress once they got underway.

I went to the Immigration Department three months after my arrival in Hong Kong (December 2017) ... I told them I was forced to work in the sex industry. It took some time until they began the screening process in June 2018. ... It took another year to complete all interviews ... Up to this day, my TIP screening has not been concluded. - Gloria

I reported my first employer in November 2016. ... The case finally finished 15 December 2021. ... With the second employer, we settled outside of court. - Dolores

For trafficked people, pursuing a legal remedy is extremely difficult as most will have no means of supporting themselves while the case is being investigated. This may be because they are: not allowed to work as they do not have a valid visa; unable to find work as employers may not hire someone who is taking their former employer to court; or unable to work due to injury or trauma.

It is also hard for them to put their experiences behind them and move on with their lives, while they are waiting for the judicial proceedings to be concluded. For some trafficked people, the waiting can be as hard as the exploitation they suffered.

As evidenced above, seeking redress through either civil or criminal proceedings can take several years and the longer the case goes on the more difficult the trafficked person's situation in Hong Kong becomes. These factors

can compel those who have been exploited to discontinue their case or agree to an out of court settlement that is not in their interests. In this way, justice delayed does often lead to justice being denied to trafficked people.

5.8 Being kept informed about the case

As well as having to wait extended periods for their cases to be concluded, nearly two-thirds of interviewees (seven survivors) said they were not kept informed about the progress of their case.

... the biggest stress comes from not knowing what will happen next. ... They never sit down with us and tell us whether things might proceed on a certain date ... what is next, or if they are still investigating my case ... I feel like sometimes I am in prison, [I] am allowed to eat the food I want, to communicate and to move around, but I cannot leave the country.- Patricia

... they didn't update me about the progress of the case. - Sandra

There were no follow up meetings (after reporting her employer to the police for abuse). ... I am always the one to follow up by calling and asking my lawyers - Dolores

In addition, once the authorities reach a decision this is often not properly communicated or explained to the individuals affected, including whether they have been recognised as a trafficked person.

I heard from my lawyer that the police did not identify me [as a victim of human trafficking]. But up till now, I have not received any document or any verbal notification directly from police. - Ravima

They asked me a lot of questions, they asked about evidence and took pictures of my scars. But they still rejected my case. They don't give us reasons for the rejection. - Patricia

... all I received was a letter mentioning the end of the investigation, due to lack of evidence, sometime in early 2020. - Esme

... the officials did not inform me whether I was identified as a survivor of human trafficking.- Maria

It is also STOP's experience that key documents, such as copies of medical records and TIP screening reports, are not automatically provided to those pursuing trafficking cases. The HKSAR Security Bureau has noted that screening results "in general will not be provided if the person is not identified as a TIP victim, but relevant information could be made available upon enquiry."⁴⁵ While the authorities will normally produce copies of these documents if they are requested, this is not always the case.

For example, STOP supported a woman in 2019 who was declared not to have been a victim of trafficking, but she was not given any written confirmation of the decision or an explanation of how they reached this conclusion. She asked for this information to be provided, but still has not had any response, even though this request was made more than a year ago.

5.9 Coordination on trafficking cases

In the Action Plan, the HKSAR government outlined its intention to improve coordination of trafficking issues by: improving inter-departmental cooperation on individual cases; working with NGOs to exchange views on facilitating referrals and the provision of assistance to trafficked people; and engaging with governments in major source countries.

45. Information provided by the HKSAR Security Bureau in correspondence with STOP on 10 January 2023.

Some civil society organisations reported having developed good working relationships with officials on individual trafficking cases.

Officers in charge from various departments are also quite proactive when it comes to communicating with us and the client, and we generally share a good rapport. They would call to obtain more details about the client's situation and would closely engage NGO staff to help pass on information or messages to migrant domestic workers.- HELP for Domestic Workers

... it is good to see that the HK government is receptive to our beneficiaries receiving outside support. - Sons & Daughters

There is scope to develop and build on these partnerships. For example, since the implementation of the Action Plan in 2018, the HKSAR Civil Society Anti-Trafficking Task Force has only had one roundtable meeting with government representatives (25 October 2021). At the meeting, the Task Force made recommendations on improving the screening questions and developing training for front line officers. These proposals were welcomed, but there has been no follow-up meeting to progress these or other issues.

In relation to liaison and cooperation between government departments, the HKSAR Security Bureau underlined that a joint investigation protocol was developed in August 2018 under which potential victims will be jointly interviewed by the relevant departments, where needed, so as to avoid making them repeat the same story to different officials. It also noted that "legal representatives or non-government organisations may be present to support the interviewee as and when appropriate."⁴⁶

However, this often does not happen and trafficking victims frequently have to file multiple reports and make several witness statements in different

46. Information provided by the HKSAR Security Bureau in correspondence with STOP on 10 January 2023.

governmental departments (e.g. the Labour Department for compensation, the police to report physical or sexual assault and the Immigration Department for visa extensions).

This makes the process of accessing justice much more difficult for trafficked people, not least because every time they have to make a new witness statement, they are forced to relive the traumatic experiences they have been through. As some trafficked people suffer from post-traumatic stress disorder (PTSD), this can have a very negative impact on their mental health and recovery process.

Furthermore, trauma can also impact their ability to hold their traffickers to account for the exploitation they have suffered. This is because trauma impedes people's ability to remember events accurately or, in some cases, at all. If traumatised victims of trafficking are asked to recall the details of upsetting events, some of which may have happened months or years ago, multiple times, it is very likely that there will be inconsistencies in the different statements given. These inconsistencies are frequently used to attack the credibility of the trafficked person's account of what happened to them and regularly lead to their case being dismissed, either by law enforcement officials or at Court or Tribunals.

...one of the key impacts of trauma is that it can alter one's ability to retrieve those memories ... If the responder is not aware of the impact of trauma on memory, there is a chance they would mistake all instances of inconsistencies or failures to recall in a victim's report as proof of their lack of credibility. - Sons & Daughters

It would better serve the interests of trafficked people and the justice process if inter-departmental coordination was improved. Ideally, once a report of trafficking is made, the receiving department would take responsibility for sharing the witness statement and appropriate case details with the other relevant departments so that they can take the necessary action (e.g.

prevent an employer from hiring migrant domestic workers, investigate an employment agency, issue a fee waiver for a visa extension, etc.).

I want the process to be in one place. Often I have to go to different places for my case. It is a problem. - Kayra

It should be stressed that inter-departmental coordination does already take place on specific issues. For example, in cases involving severe labour exploitation and incidences of physical violence, police officers will generally issue an official memo to the Immigration Department informing them that legal proceedings are taking place and a visa fee waiver should be granted to allow them to stay in Hong Kong. However, inter-departmental coordination is unlikely to happen in cases that do not involve physical violence or if the individual has broken any laws in the process of being trafficked.

Increased coordination should also take place with appropriate consulates and embassies so that sending countries and all the relevant Hong Kong departments are aware of any individuals or agencies that are being investigated or have been sanctioned by any of the appropriate authorities. As one interviewee noted, improved liaison with countries of origin might also help with the identification and prosecution of traffickers.

... if the Hong Kong authorities can connect with Ugandan authorities, it might help to deliver justice.... the local government may be able to verify the information and may have a bigger chance of finding the trafficker.
- Sandra

Under the Action Plan, the HKSAR government committed to establishing designated contacts and teams to handle trafficking work. While the Police do have designated investigation teams in each of the six regions, civil society organisations contacted for this research had not had any contact with any specialist teams or individuals in the Labour or Immigration Departments.

If the designated contacts and teams were fully operational in all relevant government departments, they could help improve inter-departmental coordination and streamline the reporting process for trafficked people.

6

Measures that could improve the justice system

Most justice systems measure success against a limited number of benchmarks, which generally focus on the number of criminal convictions obtained and the severity of the sentences that are passed. However, this approach may not be in the best interests of survivors of trafficking (e.g. because it forces them into an adversarial judicial process, which can cause additional trauma) and may not align with their perceptions of what a positive outcome for their case would look like.

A justice system, which takes full account of the needs and desires of survivors of trafficking will encourage greater engagement from those who have been exploited and is more likely to deliver better outcomes for all stakeholders.⁴⁷

In this context, interviewees were asked what they considered to be key components of a good justice system; what could be done to make procedures in Hong Kong work more fairly and effectively; and whether there were alternative pathways to justice that should be promoted. The issues that were most commonly selected as essential are examined in detail below.⁴⁸

47. For more discussion of these issues see: Hussemann et al., "Bending towards justice: Perceptions of justice among human trafficking survivors", *Urban Institute*, April 2018. Available at <https://www.ojp.gov/pdffiles1/nij/grants/251631.pdf>; And, Dalberg, "Making justice more survivor-centric: Applying alternative justice models to human trafficking in South East Asia", *Porticus*, April 2021. Available at <https://api.cofraholding.com/media/2161/applying-alternative-justice-models-to-human-trafficking-in-south-east-asia.pdf>.

48. Participants were asked to indicate how important they thought nine different aspects of seeking justice are by selecting either: 'essential', 'very important', 'important' or 'less important'.

6.1 Hold traffickers accountable for their crimes

All interviewees thought that it was essential that traffickers are held accountable and punished for the crimes they committed. For many, this is linked to ensuring that others are not exposed to similar exploitation, as well as being a fundamental part of their own recovery process.

If you let this person run free, they will harm other people. Everyone deserves justice. - Patricia

(I feel I would have justice) ... if my trafficker was held accountable, or if I had ways to get out of [the trafficking] situation. I also think prevention is very important.- Afiya

If I can get the traffickers to confess, it would heal my scars.- Sandra

In the Action Plan, the HKSAR government stated it would ensure the effective prosecution of traffickers, but despite the action it has taken to try and facilitate this,⁴⁹ the number of investigations and prosecutions of traffickers remains extremely low.

Only four potential cases of trafficking for labour exploitation were investigated in 2020 and 2021 and there were no prosecutions for labour trafficking during this period.⁵⁰ In respect of trafficking for sexual exploitation, during 2020 and 2021 the HKSAR government reported arresting 47 suspects during investigations for offences related to sex trafficking, including for violations of

49. In March 2019, the HKSAR government reviewed and updated the “Guidelines on Inter-Departmental Cooperation for the Handling of Suspected Cases of Trafficking in Persons” and the Department of Justice has sought to improve prosecutors’ awareness of the circumstances in which exploitation may amount to trafficking or forced labour. See n 44 above.

50. It is possible that some additional individuals may have been prosecuted for offences related to trafficking. For example, in 2021, 26 employers were prosecuted for aiding and abetting migrant domestic workers to breach their conditions of stay and 20 employers were prosecuted for offences such as assault and criminal intimidation. See n 19 and n 27 above.

Sections 130 and 137 of the Crimes Ordinance.⁵¹ However, only five individuals were convicted for crimes relating to sexual exploitation and none of these appear to be for the specific offence of trafficking in persons for the purpose of prostitution (Section 129 of the Crimes Ordinance).⁵²

Furthermore, even where successful convictions are obtained, the sentences secured do not generally reflect the seriousness of the crime. For example, two of the five convictions obtained in 2020-21 for crimes committed in relation to trafficking for sexual exploitation resulted in sentences of four and eight months’ imprisonment.⁵³

With respect to employment agencies, the Action Plan states that the HKSAR government will increase penalties for agencies that operate without a licence or overcharge job seekers. However in 2020-21, the Labour Department prosecuted a total of just 16 agencies for overcharging workers, operating without a license or other offences (it did not report the number convicted). A further 14 employment agencies had their licences revoked or their renewal applications rejected for non-compliance with the Code of Practice for Employment Agencies over the same two-year period.⁵⁴

The HKSAR government has cited the above statistics as evidence that it is complying with its commitment in the Action Plan to take “rigorous enforcement action to ensure employment agencies are operating in compliance with the law.”⁵⁵ However, the action taken is not commensurate with the scale of the problem and falls far short of the Government’s promise to act robustly to curtail the activities of rogue employment agencies.

51. The Crimes Ordinance criminalises acts, which may be committed while trafficking someone for sexual exploitation, including: harbouring, controlling or directing a person for the purpose of prostitution (Section 130); procuring a person to engage in commercial sexual acts (Section 131); and living off the earning of the commercial sex acts of others (Section 137).

52. In a statement responding to US Department of State report, the HKSAR government noted that it arrested 278 people in 2021 for prostitution-related crimes. However, it does not appear that these arrests were related to trafficking activities. See n 19 and n 27 above.

53. See n 19 above.

54. *Ibid.*

55. See n 27 above.

To put the size of the problem in context, FADWU's 2018 research identified some 150 registered Hong Kong employment agencies that were not fully compliant with the Code of Practice and found that 74% of interviewees' agencies were not complying with four or more key standards in the Code of Practice (e.g. they were charging illegal recruitment fees and confiscating workers' documents).⁵⁶

Given that this issue has been well documented for over a decade and that the Employment Agencies Administration (EAA) can revoke or withdraw the licence of agencies, which do not comply with the Code of Conduct using its administrative powers, it is difficult not to conclude that insufficient priority is being given to taking enforcement action against those agencies who break the law or do not comply with the Code of Conduct.

The fact that only a handful of successful prosecution for trafficking take place each year risks undermining confidence in the justice system, particularly when even conservative estimates put the number of victims of trafficking at several thousand.

... they (the traffickers) are still running the same business, and they are not the only ones. That's why I said, the government only deals with the problem superficially. ... they do not get to the root of the problem.

- Ravima

The HKSAR government should take steps to remedy this situation by: improving the procedures for identifying trafficked people and investigating cases; ensuring that migrant workers are not penalised for coming forward to the authorities; fully informing victims about the legal process and their rights; and providing practical support and assistance to trafficked people.

56. See n 34 above.

In addition to the above, STOP and other civil society organisations that work with trafficked people believe that a bespoke anti-trafficking law would make a significant contribution to ensuring that traffickers are properly identified and held accountable for the offences they have committed.

The case for comprehensive anti-trafficking legislation

There is currently no specific law in Hong Kong, which criminalises all forms of human trafficking in line with the Palermo Protocol,⁵⁷ even though Hong Kong's Prosecution Code and other relevant official documents⁵⁸ do use the Protocol's definition of trafficking in persons.⁵⁹

The Crimes Ordinance does prohibit trafficking in persons for the purpose of prostitution, but the scope of this offence is limited to "trafficking in persons to or from Hong Kong" and consequently it does not apply to internal trafficking. There is currently no legislation in Hong Kong to criminalise trafficking for labour exploitation or for the use of forced labour.

In the absence of statutory legislation criminalising all forms of trafficking, law enforcement agencies are forced to rely on a patchwork of more than 50 provisions, relating to various areas of law (e.g. immigration, prostitution, employment, etc.), to prosecute criminal offences that may have been committed when someone is trafficked. These provisions include, but are not limited to the:

57. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) has not been ratified by the HKSAR Government. China included Macau in its accession to the Protocol in 2010, but stated that it would not apply to Hong Kong.

58. See for example, n 44 above.

59. The Palermo Protocol defines trafficking as: "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, which shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

- Offences Against the Person Ordinance, which prohibits forcible taking or detention of person, with intent to sell him;
- Protection of Children and Juveniles Ordinance, which prohibits abduction of child or juvenile;
- Prevention of Child Pornography Ordinance, which prohibits printing, making, producing, reproducing, copies, importing, exporting, publishing or possessing child pornography;
- Human Organ Transplant Ordinance, which prohibits commercial dealings in human organs;
- Crimes Ordinance, which prohibits certain acts of intimidation and control over persons for purpose of unlawful sexual intercourse or prostitution;
- Immigration Ordinance, which prohibits arranging passage to Hong Kong of unauthorized entrants and employing a person who is not lawfully employable;
- Employment Ordinance, which prohibits non-payment, under-payment or delayed payment of wages and the failure to grant rest days or statutory holidays to employees; and
- Theft Ordinance, which prohibits the dishonest appropriation of property belonging to another with the intention of permanently depriving the other of it.

Furthermore, a range of government departments are responsible for dealing with the different criminal acts that take place during trafficking. As has already been noted, this means witness statements have to be made multiple times and this can lead to delays and inconsistencies in how separate branches of the government approach the same case.

... criminal acts of human trafficking are broken up into separate elements. ... For instance, deceptive recruitment, poor conditions of work, non-payment of wages or unreasonable dismissal are seen as issues handled by the Labour Department; illegal deployment is handled by the Immigration Department; and physical and sexual abuse is handled by the Police Department. - HELP for Domestic Workers

The HKSAR government maintains that trafficking in persons, as defined in the Palermo Protocol, is comprehensively covered and effectively prohibited by the various provisions outlined above.⁶⁰ However, this is not accurate as Hong Kong's existing legislative framework does not prohibit and punish internal trafficking or trafficking for labour exploitation, as required by the Protocol.

This was underlined in the ZN case. In issuing its findings, the Court of Final Appeal concluded that Article 4 of the Hong Kong Bill of Rights, which states that no one shall be held in slavery, servitude or be required to perform forced labour – “does not contain a prohibition against human trafficking either generally for exploitation or specifically for forced or compulsory labour.”⁶¹

In July 2022, the UN Human Rights Committee called on the HKSAR government to adopt a comprehensive anti-trafficking law and criminalise all forms of human trafficking. It specifically noted its concerns over:

“... the persisting gap in prohibiting all forms of human trafficking in its various provisions of laws relating to human trafficking. ... the very small number of victims identified through its victim screening procedure. ... (and) the expressed intention of Hong Kong, China not to extend the application of the Protocol (to its territory).”⁶²

The HKSAR government has argued that there is no indication that the effectiveness of its anti-trafficking work has been undermined by the lack of consolidated anti-trafficking legislation⁶³ and that its ‘multiple-legislation’ approach “provides law enforcement agencies and prosecutors with more flexibility when investigating and prosecuting trafficking in persons cases.”⁶⁴

60. See n 44 above.

61. See n 42 above.

62. United Nations Human Rights Committee, *Concluding observations on the fourth periodic report of Hong Kong, China*, 27 July 2022. Available at https://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/CCPR_C_CHN-HKG_CO_4_49295_E.pdf.

63. See n 27 above.

64. See n 44 above.

Yet, the reality is that in absence of a law, which specifically prohibits and punishes trafficking in people for both labour and sexual exploitation, law enforcement officers have limited options and are compelled to focus on offences that are components of trafficking and which they can prosecute (e.g. facilitating illegal entry into Hong Kong or unlawfully retaining another person's travel documents).

As noted above, this frequently results in traffickers being prosecuted for comparatively minor offences and facing punishments (e.g. fines, community service, short periods of imprisonment, non-renewal of a licence, etc.), which do not reflect the gravity of the crime or act as a deterrent. This undercuts the Government's counter-trafficking efforts and fails to deliver justice to those who have been subjected to abuse and exploitation.

If Hong Kong did have comprehensive anti-trafficking legislation, it would enable law enforcement officers to prosecute the offence of trafficking, and secure penalties that are commensurate with this crime. This would not preclude them from prosecuting the constituent crimes committed as part of the trafficking process in addition to, or instead of, the trafficking offence itself. Consequently, it would give the HKSAR government more opportunities to effectively punish traffickers.

Testimony from research participants also indicates that officials concentrate on collecting information about offences, which the perpetrators can be charged with, rather than exploring whether the pattern of offences and behaviour might constitute trafficking in persons. This makes it less likely that they will identify trafficking victims, provide them with appropriate support or secure penalties for trafficking in people, which are commensurate with the crimes that have been committed.

In April 2022, Hong Kong's own judiciary also concluded that the absence of laws criminalizing all forms of trafficking is undermining the effectiveness of the Government's anti-trafficking work. The Court found that the failures

in the police's investigation into whether a migrant domestic worker, CB, was a victim of trafficking and forced labour were "causally connected to the absence of specific legislation". In reaching this conclusion the Court noted that:

- A bespoke criminal offence provides a reference and focal point for law enforcement action. The CB case shows that the absence of a specific offence meant that none of the investigative steps taken by the police were directly for the purpose of investigating trafficking or forced labour and instead officers focused on the available offence of indecent assault. This was reflected in the lack of any written record assessing or making a finding in relation to forced labour;
- Forced labour has an additional dimension to the offence of indecent assault;
- The evidence from the case shows that an investigation focused on conventional sexual offences is likely to be different from one specifically looking at forced labour offences, which may require a more nuanced approach to questions of consent and the consideration of patterns of behaviour;
- The investigative duty imposed by Article 4 of the Hong Kong Bill of Rights (prohibiting slavery, servitude and forced labour) does not fit well with a criminal justice system in which there is no specific criminal offence targeting forced labour.⁶⁵

Although CB's employer was initially convicted on two counts of indecent assault and sentenced to 30 months in prison,⁶⁶ if offences for trafficking and forced labour were available it is very likely that: the police would not have

⁶⁵. See n 41 above.

⁶⁶. This conviction was successfully overturned on appeal due to a procedural error in trying the case which led the appeal judge to conclude that the conviction was unsafe and the case should be heard again. See: HKSAR Department of Justice: *HKSAR v Arthorp Brian Drew* [2022] HKCFI 1102. Available at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=143835&QS=%2B&TP=JU.

curtailed their investigations into these issues; the perpetrator would have received a longer sentence; and CB would have been recognised as victim of trafficking and received appropriate support.

In addition, having a comprehensive anti-trafficking offence would raise awareness and the profile of the issue, both amongst law enforcement officers and the wider public, and provide additional impetus to other anti-trafficking initiatives such as joint investigation procedures and the development of referral mechanisms with NGOs.

Creating awareness can also help push the authorities to do more, if they would finally see human trafficking to be a serious, real problem, the same way they see drug trafficking. - Gloria

6.2 Prevent future trafficking cases

More than three quarters of the interviewees (nine survivors) thought it was essential that policies and laws are changed to help ensure that other people do not experience trafficking and its related harms in the future. Several expressed that their pursuit of legal recourse was motivated by the desire to prevent others from being exposed to the same exploitation that they endured.

Of course it would have been nice if [my traffickers] were punished for what they have done to me. Do I want the Immigration Department to pull up their socks? Sure, yes. But to create awareness and improve protection for other survivors and vulnerable people, already means justice to me. - Gloria

I still remember the case and the mental torture. I will feel justice is done when the court says what the employer did is wrong, and the employer has to accept the result. I want the employer to learn a lesson, not to repeat what has happened to me to another person. - Kayra

If I could get one of the traffickers in court, it could put a stop in the trafficking. ...I wanted to bring the traffickers to face the law and to answer for their crimes, but I wasn't able to. ... I am also thinking about other people in the same situation ... - Sandra

The measures contained in the Action Plan to prevent trafficking are primarily focused on training and awareness raising, although it does make a commitment to prevent abusive employers from employing new migrant domestic workers in Hong Kong. However, there are questions about how effectively this is being implemented as some employers who have been found to have exploited migrant domestic workers are still allowed to hire new workers.

This happened in Dolores' case. She explained that even though she won her compensation claim against her employer, they were not banned from hiring new domestic workers and escaped with just a warning. Dolores went to the Consulate to complain that this action was inadequate, but they only said they would take note of her complaint.

Chaturi also felt that more needs to be done to prevent exploitative employers from being able to recruit new migrant domestic workers.

The Immigration Department and Labour Department should work efficiently to restrict abusive employers from hiring new domestic helpers and such restrictions should be on a household basis as the same household can change employers and still employ domestic helpers, extending the possibility of trauma to another helper. - Chaturi

Unfortunately, the Action Plan does not address some key policy changes, which would do the most to prevent the trafficking and exploitation of migrant domestic workers: the requirement that migrant domestic workers live with their employers, the Two-Week Rule, and government actions related to 'job hopping'.

The mandatory live-in requirement obliges all migrant domestic workers to “work and reside in the employer’s residence”. This makes it easier for exploitative employers to control them and more difficult for migrant domestic workers to draw a distinction between work and leisure time, as they cannot leave their employer’s household at the end of a working day. If the worker challenges their conditions this could lead to their contract being terminated, leaving them with no job, nowhere to live and no way to repay their debts or support their families.

If their employer does end their contract, then the Two-Week Rule stipulates that the migrant domestic worker must secure new employment within two weeks or leave Hong Kong. Finding a new job in this short period of time is extremely difficult to do, particularly if they are engaged in a court case with their former employer. Migrant domestic workers who decide to leave their jobs prematurely also run the risk of being accused of ‘job-hopping’, which could result in the Immigration Department denying their visa applications for future employment in Hong Kong. These crackdowns put workers’ right to resign on the line, and force those experiencing ill treatment at work to endure and stay put. As found in a survey conducted by FADWU between November 2021 to May 2022, the concern that their future visa applications might be rejected due to suspected ‘job-hopping’, was found to be the top reason why exploited migrant domestic workers in Hong Kong do not break contract despite experiencing abuse.⁶⁷

UN human rights bodies have, for many years, called on the HKSAR government to repeal the Two-Week Rule and the live-in requirement for migrant domestic workers. This was reiterated most recently in July 2022, when the UN Human Rights Committee stressed its concern that these policies continue to:

... put those workers at high risk of abuse and exploitation by their employers and employment agencies and to prevent them from reporting exploitative employment and abuse due to fears of losing their job and having to leave Hong Kong.⁶⁸

During the pandemic, travel restrictions limited the availability of migrant domestic workers in Hong Kong and the HKSAR government responded by temporarily suspending the Two-Week Rule and allowing workers to remain in Hong Kong and seek new employment after their contracts ended. The available evidence indicates that this policy change reduced the trafficking and exploitation of migrant domestic workers.

NGOs reported this suspension, as well as domestic workers’ increased bargaining power with employment agencies due to a decrease in available foreign domestic workers in Hong Kong, contributed to a decrease in workers’ risk of exploitation and debt-based coercion. One NGO study found that fewer employment agencies charged workers illegal fees during the year.⁶⁹

6.3 Conclude cases in a timely manner

More than three quarters of the interviewees (nine survivors) thought it was essential for the justice system to work quickly and be accessible to all. Interviewees repeatedly underlined how waiting for prolonged periods of time for an outcome on their case made it difficult for them to survive financially and took its toll on their mental health as they could not move on with their lives.

67. “Alleged ‘job-hopping’ silences migrant domestic workers facing abuse, FADWU calls for a stop to discriminatory policies”, *Hong Kong Federation of Asian Domestic Workers Unions*, 7 August 2022. Available at <https://www.facebook.com/HKFADWU/posts/pfbid02Asv3QhB5865bUXksKHTf6H7CwBGdrZ3UsQe6BPDdoD8QbxyjKHhyBGQjNNxTNAMdl>.

68. See n 62 above.

69. See n 19 above.

These incidents took place a year and a half ago. ... I have been stuck in this position because I cannot go back to Sri Lanka and neither can I find a new employer ... the mental stress and tension resulting from such legal cases affect me and so many others in situations similar to mine, so expediting the investigation process will be of assistance to everyone. ... the system needs to work efficiently in terms of delivering justice on time ... Had the same been extended to my case, my employer would not have had the opportunity to disappear.- Esme

I feel like it's been two years... If I did not meet the organization (Sons and Daughters), I don't know where I would be, I might still be on the streets doing sex work or maybe doing drugs.- Patricia

Unless investigations are concluded more quickly, those who have been exploited will continue to be forced to agree to disadvantageous out-of-court settlements or to abandon their legal action altogether because they do not have the resources to pursue their case.

The first hearing was supposed to be in December 2020. They postponed it to March 2021, which was postponed again to June. They then told me that there will be no appointment until 2022. I was winning the case, but I can't continue as I had to prioritize my kids.- Sandra

6.4 Grant work visas to those pursuing justice

Nine of the interviewees also believed that having the opportunity to support themselves and be economically independent while pursuing their cases was an essential part of a fair justice system. The participants even considered this to be marginally more important than being financially compensated for harms caused by their exploitation.

While the HKSAR government can provide visa extensions with fee waivers to allow migrant workers to stay and pursue their cases, these are not always granted to victims of trafficking, as many are unscreened or failed to be identified as a victim of TIP for the reasons stated above, thus ineligible to receive protection and support outlined in the Action Plan. Even when visa extensions are granted, the individual is rarely allowed to work or study while they remain in Hong Kong.

Participants underlined that being able to work was crucial for sustaining themselves and their families during the legal process, but also that it was pivotal in promoting their mental wellbeing and helping them to recover from their exploitation.

I could not return to Sri Lanka until my case ends. I was kept in Hong Kong for more than three years to wait for the result, from 2019 to 2021. ... During this time, I was not allowed to work, despite being completely capable – this took a huge toll on my mental health. I scrambled to survive and worried a lot ... I was falling behind with my mortgage payment and could not finance my daughter's education in university. I was in deep mental stress and was being treated for depression. I did not see the difference between my state and that of a prisoner's.- Ravima

Not being able to work broke me in Hong Kong. I was helpless and was akin to a beggar when I cannot work. I want to work to support myself, to contribute to the economy. We are useless because of the restrictions.
- Sandra

The biggest challenge is not being allowed work, which ties in with the high living price in Hong Kong and not being able to receive enough assistance from the authorities. ... Going back home and being at peace is a better solution than staying in Hong Kong, unable to work and unable to live like a normal person.- Patricia

Interviewees also noted how they felt that they were being punished by not being able to work and how this also put them at risk of further exploitation.

*... I don't want to rely only on those who are kind and give me money.
... (the police) explained to me that during the case I wasn't allowed to work. It felt unjust as I was the victim, but I was not allowed to work.*

- Maria

It is a challenge surviving here when you cannot work ... it's costly to live in Hong Kong. This kind of takes them (trafficked people) back to being vulnerable again. To survive, they would have to do illegal work like sex work again. I think ... giving survivors of trafficking the right to work can help the system work better. - Gloria

6.5 Raise awareness

More than half of the interviewees (seven survivors) thought it was essential that the HKSAR government undertake initiatives to raise public awareness about trafficking crimes and the types of exploitation that are taking place in Hong Kong.

I think Hong Kong people need to know that human trafficking is happening in Hong Kong. ... Hong Kong people think Hong Kong is safe, but it is not safe for people who have been trafficked here. - Patricia

... inform employers of the legal actions for their wrongdoings and misbehaviour. If appropriate awareness is created, I believe that most employers would not mistreat their helpers. - Esme

The employers have to be seriously educated about treating helpers equally and with respect. ... serious punishments should be legally outlined for abusive employers. - Chaturi

Although the Action Plan includes measures to raise awareness, participants stressed that more needs to be done and that migrant workers must be better informed about the risks of trafficking, what their rights are and where they can go for assistance.

People get trafficked out here and they do not even realize that what they have gone through is sex trafficking. Like for me before, I used to view sex trafficking as people being put in containers and tortured, but now I realize it can happen in many ways. - Gloria

More awareness raising about the type of trafficking I had experienced is needed for people from my country ... to help us avoid falling into traps like these - Ravima

... I hope also to see more awareness raising materials for overseas workers, to inform us about where to reach out for free lawyers, and emergency numbers to call. - Dolores

... the biggest challenge that my community of domestic helpers face is our lack of proper knowledge and education of our employment and living conditions in Hong Kong. ... Prior to their arrival to Hong Kong, domestic helpers must be informed of the risks and trained to handle legal situations or harassment. - Esme

6.6 Facilitate peer-to-peer support

Less than half of the interviewees (five survivors) thought it was essential that victims of crime are given the opportunity to talk to other people who have been through similar experiences so that they can support each other to address the problems they face. However, two of the participants identified this as the single most important thing that they wanted to see provided as part of the process of seeking justice.

Several interviewees also underlined how important the process of engaging with other survivors of trafficking was in supporting their own recovery process.

I also find bringing [survivors] together to heal, and learn from one another to be helpful. Even though most of the time, the women wouldn't want to share with [others] their thoughts because of shame or trust issues – we all have these moments – once they form a bond, the group can become part of the survivor's support system. - Gloria

There was a time when I was always angry and anxious about what happened to me, and didn't want anyone to talk to me. ... The counselling and welfare service has been very helpful, being able to talk to other survivors with similar experiences also helped a lot in my recovery. ... Through this experience, I connected with people similar to my case, we can talk about our experiences and compare the situations we face, to express ourselves. This allowed me to have access to different agencies and have somebody to talk to, knowing that someone will support me no matter if I win or lose. - Maria

I also wished that I was provided with the opportunity to talk to someone who had similar experiences as me. Connecting with them would have provided me with a sense of reassurance and support at the time. - Chaturi

Sons & Daughters also highlighted that peer-to-peer support has the potential to empower trafficked people and may encourage them to come forward to the authorities and report their exploiters.

When exploitation is discussed with a shared context, particularly when it is delivered by survivors, I think that can send a very powerful message to other victim-survivors that what they have experienced is not their fault, and could be really transformative to them to open up to accessing justice. - Sons & Daughters

6.7 Promote other forms of restitution and support

Interviewees did not generally consider being able to confront perpetrators for the harms caused as being an essential component of the justice process (only three classed it as essential). Participants were more focused on traffickers being held accountable for what they had done and ensuring that the exploitation they suffered did not happen to someone else.

For me, I don't really have the need to face the employer again and demand an apology from the employer. But I would want to know if the employer's behaviour has changed. - Maria

In terms of restitution, eight survivors thought it was essential that a victim of a crime should receive payment for the harms caused, even though it is difficult to financially compensate someone for the damage done or the opportunities that have been lost.

My parents are both unwell. I had to sacrifice the time with them, working longer in Hong Kong to sustain my family. If I did not come across this problem, I could be spending time with my parents now. - Kayra

Part of the pathway to justice should be about helping those who have been exploited and abused to recover physically, mentally and materially. This is often a long process and support should not end when a victim's case comes to an end or they return to their country of origin.

In this context, it would be beneficial if part of the restitution process involved the provision of long-term support services, both in Hong Kong and in countries to which the victims of trafficking return. These services should

include reintegration support, education, training, healthcare and counselling for those who need it.

Back when I was in Hong Kong, I was not really open to therapy, ... all of the things I had to talk about were too triggering. But now that I am ready, I cannot afford it in Uganda.- Afiya

Counselling also helped me a lot. I was able to tell my problems and explain everything. I hope to continue, but there is no access where I am in the Philippines.- Dolores

Two of the participants also spoke positively about the assistance they received from NGOs in Hong Kong to support them in starting small businesses after they returned to their home countries.

The restitution process could also involve providing long-term work visas to those who are identified as victims of trafficking. This would encourage those who have been exploited to come forward to the authorities and support their social reintegration and recovery process.

7

Conclusion

Maria was the only interviewee whose confidence and trust in Hong Kong's justice system improved based on her experience of using it and who felt justice was done in her case.⁷⁰

The police and officials are helpful, everyone worked hard for my case. The judge in the Labour Department was really fair and helped me a lot, which boosted my morale.

... the Hong Kong justice system was different from my expectations. I expected the law will be biased and will side with the locals, and I was proved wrong. In Hong Kong, law is law, and I appreciate that. - Maria

Maria's case was unusual because she had video evidence taken on her mobile phone of her employer assaulting her. The existence of this evidence meant that Maria did not struggle to convince the authorities that she was a victim of a serious crime. It also helped ensure that she was treated well by officials, who she described as being sensitive and "apologetic because a local person did that to me".

The documentary footage of the assault also facilitated a quick and successful resolution of her case. The trial was concluded in six months and Maria's employer was sentenced to four weeks' imprisonment (suspended for 18

70. Only one other interviewee felt justice was done in their case and she was also the only other participant whose exploiter was held accountable for what they did. Two other interviewees said that their confidence in the Hong Kong justice system had improved, although that they didn't feel justice was done in their case and they were not identified as trafficked or offered assistance. Their confidence in the system still improved because they started with low expectations and had some positive interactions with law enforcement officials.

months) and banned from hiring another migrant domestic worker by the Consulate.

Unfortunately, Maria's experience of the Hong Kong justice system was the exception, rather than the rule. In trafficking cases, finding prima facie evidence of wrongdoing is often challenging, especially when the mechanisms of coercion are nonphysical, such as verbal intimidation and emotional abuse, and when the offences take place in people's homes or behind closed doors where there are no witnesses to corroborate what has happened.

The testimonies from interviewees generally indicate that accessing justice in Hong Kong remains an extremely challenging process for trafficked people. Those that come forward for assistance are unlikely to be recognised by officials as victims of trafficking and risk being penalised by the Hong Kong authorities as well as punished by their traffickers.

The investigation process often takes years, during which time the trafficked person is generally not allowed to work and struggles to survive. When a case is finally concluded, it rarely results in the trafficker being held accountable for their crimes.

The following case study illustrates many trafficked people's current experience of seeking justice in Hong Kong.

.... we had a client who acted as a prosecution witness against their employer for conspiring to breach their condition of stay. The client was deceptively recruited to Hong Kong to work as a domestic worker. Yet, later when they arrived in 2018, the client was coerced to do manual labour on construction sites. They suffered very poor working conditions, was unpaid, and was eventually laid off in 2019.

.... The client kept in touch with the Immigration investigation team and coordinated to charge the employer. However, during this time, the client must stay in Hong Kong to coordinate with other government departments. As far as we know, this client was not screened for TIP, did not receive (social) assistance of any kind from the Government, nor referred and provided information on NGO services available to them. They also had to pay visa extension fees. The case took almost three years to complete. Yet, their traffickers were ultimately acquitted due to lack of evidence. - HELP for Domestic Workers

This case highlights the difficulties that survivors of trafficking face in trying to obtain redress through the courts and the limitations of a traditional justice system, which is focused on securing successful prosecutions and requires a standard of proof that is often not possible to reach in trafficking cases.

Therefore, it is extremely important that the Hong Kong authorities adopt procedures, which are built around the needs of survivors of trafficking and diversifies the pathways through which they can achieve justice. This should include: taking additional measures to prevent future cases of trafficking, both through policy changes and targeted awareness raising; granting work visas to those pursuing judicial remedies; and promoting alternative forms of restitution (e.g. provision of compensation payments and facilitating access to reintegration support, employment opportunities and peer-to-peer support groups).

8

Recommendations for the HKSAR government

STOP urges the HKSAR government to implement the following recommendations:

Victim Identification, Investigation, Enforcement and Prosecution

- Improve professional standards in the identification of trafficked people and the investigation of their cases by strengthening training and supervisory mechanisms.
- Ensure that all at-risk groups are screened and enhance screening procedures to improve victim identification (e.g. ensure the purpose of screening questions are properly explained and provide adequate opportunities for answers to be clarified).
- Ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) and enact legislation that criminalizes all forms of human trafficking, including for internal trafficking and trafficking for labour exploitation. Individuals and employment agencies that might be involved in trafficking should be proactively investigated.
- Ensure that all interpreters are fully qualified, that they perform their duties professionally and that there are enough interpreters so that interviews can be held promptly.
- Mechanisms to expedite trafficking cases should be explored, including improving inter-departmental coordination so that trafficked people do not have to file multiple reports and ensuring designated anti-trafficking contacts are fully operational in all relevant government departments.

Victim Protection and Support

- Victims of trafficking should not be penalised for coming forward to the authorities or sanctioned for offences they were compelled to commit as part of being trafficked.
- Victims of trafficking should be able to seek legal redress through the provision of work visas and adequate welfare assistance.
- All potentially trafficked people should be fully informed about the legal process (e.g. the option to apply for remote hearing), their rights and what assistance they can access or be referred to. They should be regularly updated on their case and any decisions reached should be communicated in writing and fully explained.
- Other forms of restitution should be supported for victims of trafficking (e.g. facilitating access to: reintegration support, education and training; healthcare and counselling; and peer-to-peer support groups).

Prevention

- Migrant domestic workers' vulnerability to trafficking should be reduced by repealing the Two-Week Rule and the requirement for migrant domestic workers to live with their employers.
- Undertake further awareness raising initiatives (e.g. to alert migrant workers to the risks of trafficking and where they can go for assistance).

Partnership

- Establish a referral mechanism and enhance cooperation with the civil society to discuss how to improve policies and procedures to combat trafficking and better support victims.

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Appendix 2

Sample Research Questionnaire

Preferred pseudonym: _____

Date of interview: _____

Gender: _____ Nationality: _____

Year of birth: _____

Type of work done in HK: _____

Dates of work in HK during which you were exploited (from when to when): _____

1. Were you deceived, pressured or coerced in any way (e.g. because of debts you had to repay, confiscation of your identity documents, threats or abuse, etc.) to work against your will, including working under terms and conditions, which you did not agree to? YES / NO

If YES, in what way(s)?

2. Did you face any other problems at work? YES / NO

If YES, please provide details.

3. Did you contact or have any interactions with the police or other Hong Kong authorities to try and resolve your problems? YES / NO

If NO, why not? Circle all appropriate reason(s) below and then ask if there are any other reasons why they were reluctant to go to the Hong Kong authorities for help).

- a) I was not aware of my rights or how to access a remedy;
- b) I did not trust the authorities or did not think they would help resolve the issue;
- c) I went elsewhere for help (state where, e.g. consulate, NGO, etc.);
- d) I was afraid of consequences (e.g. losing job, being deported, arrested, etc.);
- e) Other (state the reason, e.g. fear of trafficker, etc.).

If YES:

a) Which one(s)? (e.g. police, Labour Department, health services, Immigration officers, Department of Justice, etc.)

What was the date of first contact and closing of the case or investigation?

b) Was there anything relevant to your case that you did not disclose to the officials? YES / NO

If YES, what were they?

c) How did you feel you were treated by officials once you had told them what happened to you?

d) Did the official ask you whether there were other people working with you in the place where you were exploited? YES / NO

e) Did the official ask what kind of assistance you needed from the police, consulate or other government or non-governmental agency? YES / NO

4. Have you been screened/assessed to find out if you were trafficked to Hong Kong? YES / NO / DON'T KNOW

If YES:

a) By whom (e.g. first responder, IOM, police, Immigration, NGO service provider, etc.)?

b) Did they identify you as trafficked? YES / NO

If NO,

a) Was this at the first interview (initial screening) or the second interview (full debriefing)? First interview / Second interview / Don't know

b) Did they explain why they reached a negative decision? YES / NO

If YES, what was the reason?

5. During your contact with Hong Kong officials and/or law enforcement agencies, did you generally feel that they:

a) Allowed you to tell your side of the story and listened to you in a non-judgmental way? YES / NO

b) Were sensitive to the fact that you had been through a difficult/traumatic experience? YES / NO

c) Explained the legal process, your options and gave you some feeling of control over what happened next? YES / NO

d) Kept you informed and regularly updated about the progress of your case? YES / NO

e) Treated you professionally and with respect? YES / NO

If NO, please explain why you felt this way.

f) Did not engage with key information that you provided (e.g. ignored, dismissed or did not take seriously what you told them) and instead focused on other issues they were interested in? YES / NO

If YES, please explain what they ignored and what they focused on.

g) Were they hostile to you and/or discriminated against you?

If YES, please explain why you felt this way.

6. Did anyone inform you of your rights as a victim of crime or a survivor of human trafficking? YES / NO

If YES, who?

7. Did anyone offer to provide you with an interpreter? YES / NO

If YES, and you accepted, how long did you have to wait to be provided with one?

If YES, do you think they did a professional job and properly communicated what you wanted to say? YES / NO

If NO, please provide details and if you were provided a different interpreter.

8. Did any Hong Kong official provide you with information about the following services:

a) The provision of welfare support and assistance (e.g. shelter, medical services, psychological support, counselling, financial assistance, etc.)? YES / NO

b) Visa extensions and fee waivers for witnesses in legal proceedings? YES / NO

c) NGOs that may be able to provide support and services? YES / NO

d) The witness protection programme? YES / NO

9. Are there services that were not provided to you, which would have helped you? YES / NO

If YES, what were they?

10. Did anything happen to the person(s) who exploited you (e.g. were they arrested, charged, fined, sent to jail, etc.)? YES / NO / DON'T KNOW

If YES, what happened to them and how long did it take to get this outcome?

If NO, why not?

11. Do you feel that justice was done in your case? YES / NO

If YES, what helped you feel like justice was done?

If NO, what would have to happen to make you feel that you got justice for what happened to you?

12. What would you say was the biggest challenge you faced in trying to resolve your problems and get justice in Hong Kong?

13. Are there any parts of the Hong Kong justice system that you think work well or any interactions you had with individuals, which were positive, including service provision? YES / NO

If YES, please explain.

14. Based on your experiences, has your confidence and trust in the Hong Kong justice system:

Improved / Stayed the same / Got worse

Please explain why:

15. On a scale of 1-10 (with 1 being terrible and 10 being excellent), how would rate your overall experience of seeking justice in Hong Kong?

16. What should be done to help the system work better and deliver justice to those who have been exploited?

17. Please tell me how important you think the following issues are in a good justice system by ranking them as Essential, Very Important, Important or Of Little Importance:

That the people responsible for committing crimes are held accountable and punished for what they did (e.g. by serving time in prison, paying fines, etc.):
Essential / Very Important / Important / Of little importance

That the victim of a crime should receive payment for the harms caused (i.e. financial compensation for the suffering caused by the crime, not payment of money owed to them):
Essential / Very Important / Important / Of little importance

That the victim of a crime has an opportunity to confront the perpetrator about the harm they caused and that the perpetrator acknowledges and apologises for what they have done:

Essential / Very Important / Important / Of little importance

That the victim of a crime is given the opportunity to support themselves and be economically independent both during and after the justice process (e.g. to be granted work visa even with ongoing legal case or receiving vocational skills training to help prevent re-trafficking):

Essential / Very Important / Important / Of little importance

That the justice system works quickly and is accessible to all:

Essential / Very Important / Important / Of little importance

That policies and laws are changed to help ensure that other people do not experience crimes and harm in the future:

Essential / Very Important / Important / Of little importance

That initiatives are undertaken to raise public awareness about the types of crimes and exploitation that are taking place:

Essential / Very Important / Important / Of little importance

That law enforcement officers are respectful, helpful and patient:

Essential / Very Important / Important / Of little importance

That victims of crime are given the opportunity to talk to other people who have been through similar experiences so that they can support each other and share information about how to address the problems they face:

Essential / Very Important / Important / Of little importance

18. (If they choose more than one of the above as “Essential”): Of those issues that you think are essential parts of a good justice system, which do you think is the most important and why (remind them which ones they choose as “Essential”)?

19. Looking forward, what would help you put the experience of exploitation behind you, recover and move on with your life?

20. Is there anything we have not discussed that you want to talk about?

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- 充分告知所有懷疑被販運者有關法律程序（例如可以申請遙距聆訊）、他們的權利、相關援助轉介。案件事主應能定期得知案件的最新發展。所有裁決都應以書面溝通，並向案主作充分解釋。
- 支持人口販運受害者獲得其他補償形式（例如協助申請工作簽證、幫助重新投入社會、提供教育及培訓、醫療保健或輔導，以及朋輩支援小組）。

預防

- 廢除「兩星期規定」、移民家務工與僱主同住的要求，及針對「跳工」的行動，以減少移民家務工易被販運的弱勢處境。
- 實施提高防範販運意識的措施（例如提醒移民工有關人口販運的風險，以及他們可去哪裡求助）。

協力合作

- 設立轉介機制，加強與公民社會合作，討論如何改善政策及程序，以更有效打擊人口販運和更好地支援受害人。

給香港特區政府的建議

STOP 促請香港特區政府實施以下建議：

受害者識別、調查、執法及檢控

- 加強培訓及監督機制，以提升識別被販運者和調查案件的專業水平。
- 確保所有易受剝削的群體均獲審核，並加強審核機制，以助識別受害人（例如確保有向易受剝削人士清楚解釋審核目的，讓被審核者有機會釐清問題）。
- 簽訂《聯合國打擊跨國有組織犯罪公約關於預防、禁止和懲治販運人口，特別是婦女和兒童的補充議定書》（《巴勒莫議定書》），立法刑事化所有形式的人口販運，包括境內販運及以勞動剝削為目的的販運行為，主動調查可能涉及人口販運的個人及職業介紹所。
- 確保所有傳譯員都符合資格，能夠專業地履行職責，並提供足夠傳譯員，以便及時進行會面。
- 制定能加快處理人口販運案件的機制，包括改善部門之間的協調，以免被販運者要向不同部門多次報案，並確保指定反人口販運聯絡人能夠在所有相關政府部門充分發揮職能。

受害者保護及支援

- 人口販運受害者不應因為向當局舉證而受罰，或因販運期間被逼參與違法行為而受到制裁。
- 人口販運受害者應獲發臨時工作簽證及足夠的福利援助，以便尋求法律補償。

不幸的是，*Maria* 在香港司法制度下的經驗屬於例外，而不是常態。在販運案件中，要找到非法行為的表面證據並不容易，尤其是脅逼方式不涉及肢體暴力，如口頭勒索和情緒虐待，以及罪行是在家中或其他隱蔽場所發生，案發時又沒有目擊證人。受訪者的見證普遍指出，被販運者要在香港獲得司法公義仍是極度困難。前往求助的人都不大機會被官員識別為人口販運受害者，還要冒著被香港當局和販運者懲罰的風險。

調查程序通常經年累月，而在這期間被販運者一般都不被允許工作，要掙扎求存。當案件終獲判決時，販運者都很少要為自己的罪行負責。

以下個案研究闡述很多被販運者目前在香港尋求公義的經驗。

……我們有位受助者擔任控方證人，指證僱主涉嫌違反其逗留條件。這位受助者被招聘詐騙，以為來港任職家務工。然而，於2018年到埗時，受助者被逼在建築地盤進行體力勞動工作，其工作環境非常惡劣，並遭欠薪，及後更於2019年被解僱。

……受助者與入境處調查組保持聯絡，並協助落案起訴僱主。然而，在這段期間，受助者必須留在香港與其他政府部門協調。據我們所知，這位受助者沒有被識別為被販運者，也沒有從政府那裡得到任何（社會）援助，更沒有獲得資訊和

獲轉介到合適的非政府組織服務。受助者還要繳付申請延長逗留期限的簽證費用。這案件歷時三年才完結。然而，販運者最終因為證據不足而脫罪。家傭匡扶中心

這見證顯示了人口販運倖存者從法庭渠道尋求補償時的困難，以及傳統司法制度的限制：目標在於確保能夠成功檢控，而人口販運個案通常難以達致法律所需的舉證要求。

因此，香港政府部門應該採納按人口販運倖存者需要而設的程序，讓倖存者可以循多樣化的途徑獲得公義，這是極為重要的。程序應包括：加強防止未來的販運案件的措施（包括政策改革和提高公眾意識）；向正在尋求法律補償的人批出工作簽證；以及促進其他補償形式（例如提供補償金，和協助他們得到重投社會的支援、就業機會和朋輩支援小組）。

7 結論

Maria是唯一一位因為自己在香港司法制度追求公義的經驗而對制度增加信心和信任的受訪者，她認為公義在她的案件中得到伸張。⁷⁰

警察和官員都很願意幫助我，每個人都為我的案件努力。勞工處的法官真的很公平，他幫助了我很多，這令我振奮。

……香港的司法制度與我本身的期望不同。我以為法律會向本地人傾側，但事實證明這想法錯了。在香港，法律就是法律，我很欣賞這一點。Maria

Maria的情況並不常見，因為她的手提電話錄下了僱主襲擊她的錄影證據，這證據使Movi不須費力說服當局去相信她是嚴重罪行的受害者，亦有助她得到官員的善待。她形容官員體諒她的處境，也為她的經歷感到「抱歉，因為有本地人對我做這樣的事。」

她被襲擊的錄影紀錄亦促使她的訴訟迅速及成功地獲解決。審判在六個月內結案，Movi的僱主被判入獄四週（緩刑六個月），並被領事禁止再聘請移民家務工。

⁷⁰ 只有另外多位受訪者認為在她的案件中公義得彰，她同時也是另一位成功令其僱主繩之於法的受訪者。另有兩位受訪者稱，雖然她們不認為公義在自己的案件中得到伸張，亦未被識別為被販運者，也沒有獲提供任何援助，但她們在處理案件後對香港司法制度多了信心，是因為她們原有的期望低，加上與執法人員接觸時有正面經驗。

對我來說，我不需要再次面對僱主，也不需要求他道歉。但我想知道他的行為有沒有改變。 Maria

在補償方面，八名倖存者認為，儘管金錢難以彌補經已造成的傷害及機會損失，但是讓罪行受害者就傷害獲得賠償仍是至關重要。

我雙親的身體都不好。我犧牲了陪伴他們的時間，長時間留在香港工作來維持家人生活。如果沒有遇上這問題，我現在可以花時間陪伴父母了。 Kayra

協助受剝削虐待的人在身體上、精神上和物質上的復元，應是達致公義的其中一環。這通常需要漫長的時間，即使訴訟已結束或受害者已回國，都不應停止支援。

在這情況下，若補償過程包括在香港及在受害人原居國提供長期支援服務，會對受害人有益。這些服務應包括重投社會的支援、教育、培訓和醫療保健，及為有需要人士提供的輔導。

回想身處香港的日子，我並不願意接受治療，……我需要談論的所有事情都會很觸動情緒。現在我準備好了，在烏干達卻負擔不來。 Afiya

輔導幫助了我很多。我能夠講述自己的問題和解釋一切。我希望能夠繼續，但在菲律賓，我身處的地方沒有這種服務。
Dolores

兩名受訪者亦正面評價從在港的非政府組織接受到的援助，這些組織幫助他們回國後開設小生意。

補償過程中，若能為被識別的人口販運受害人提供工作簽證，這能鼓勵了被剝削者向當局舉證，並支持他們重投社會和復元過程。

我國的人需要更加認識我所遭遇的那類販運……以免墮入類似的陷阱。Ravina

……我希望見到更多資料給予海外勞工，以提高他們的警覺，告知大家可以到哪裡聯繫免費律師，並可以致電哪個緊急電話號碼。Dolores

……我的家務工社群面臨的最大挑戰，是欠缺在港工作和生活條件的正確知識和教育。……到港前，家務工必須更了解風險，以及知道如何處理騷擾及相關法律情況。Esme

6.6 促進朋輩支援

少於一半的受訪者（五名倖存者）認為，罪行受害者必須給予機會與其他有相似經歷的人聯繫，以便互相扶持，共同處理他們所面臨的問題。而有兩位受訪者認為朋輩支援是尋求公義的過程中最重要的部份，希望獲得見此事。

有幾位受訪者亦強調，與其他人口販運倖存者聯繫，對於自身的復元過程有重要的幫助。

我亦覺得「倖存者」聚集一起進行團體治療和互相學習很有用。儘管很多時候，她們會因為感到羞恥或信任不足，而不願（向他人）分享想法——這是人之常情，一旦她們彼此之間產生連結，就能成為倖存者支持系統的一部份。Gloria

曾經，我對於自己的遭遇經常感到憤怒和焦慮，也不想任何人跟我說話。……輔導和福利服務都很有用，能夠與其他有類似經歷的倖存者傾談，對我的復元有莫大幫助。……透過這經驗，我與一些有類似狀況的人連繫，我們可以講述自己的經驗，對照大家正面對的處境，以及表達自己。這讓我接觸到不同機構，也有人陪我說說話，讓我知道無論我勝訴或敗訴，都會有人支持自己。Maria

我也希望當時能夠與一些有類似經歷的人交談。與他們聯繫會讓我感到安心和獲支持。Chaturi

天國兒女亦強調朋輩支援可以為被販運者賦權，鼓勵他們前往當局舉報剝削者。

在相似背景下，在倖存者帶領下討論剝削事件，我覺得這樣能夠向其他受害者／倖存者帶出一個很有力的訊息，就是他們的遭遇不是他們的錯，並可以為他們帶來轉化，開放自己去尋求公義。Chaturi

6.7 其他補償和支援形式

受訪者普遍不視向施害者就傷害對質這一點為司法過程的重要部份（只有三個將其歸類為極重要）。相比起來，他們更在意販運者有否為所作的事承擔責任，確保自己受過的剝削不會在其他人身上升生。

不能夠工作使我在香港無以維生。當我無法工作時，我很無助，活得像個乞丐。我想靠工作養活自己，貢獻經濟。這些限制卻令我們一無是處。Sandra

最大的挑戰是不獲准工作，尤其在到香港生活水平高，又無法從政府當局得到足夠援助。……回鄉、安寧地生活，比留港更好。留在香港無法工作，也無法像個正常人般生活。 Patricia

受訪者亦指出，無法工作就像在懲罰他們，這也可能令他們暴露在被進一步剝削的風險中。

……我不想倚賴善心人士給我錢。……（警察）向我解釋我不能在訴訟期間工作。我覺得這不公平，因為我才是受害者，但我不可以工作。 Maria

不能工作，在這裡生存就是個挑戰……在香港生活很貴。這使他們（被販運者）再回到脆弱狀態。為了生存，他們要再度從事非法工作，例如性工作。我認為……讓人口販運倖存者有權工作，會讓制度運作得更好。 Gloria

6.5 提高意識

超過一半受訪者（七名倖存者）認為，香港特區政府必須採取行動來提升大眾對人口販運罪行的認識，以及正在香港發生的各種剝削。

我認為香港人需要知道人口販運正在香港發生。……香港人以為香港安全，但對被販運到此的人來說並不安全。

Patricia

……告知僱主他們做錯事，讓他們知道做了不當行為的法律責任。如果建立了一定的意識，我相信很多僱主都不會虐待他們的家務工。 Esme

要認真教導僱主公平對待和尊重家務工……有虐待行為的僱主應在法律上予以嚴懲。 Chaturi

雖然《行動計劃》包括提升意識的措施，但受訪者強調有需要做得更多，移民工亦應更了解販運風險、自身權利，以及可以到哪裡求助。

人們被販運到這裡，甚至不知道自己所遭遇的是性販運。像我以前一樣，我以為性販運是把人困進貨櫃中折磨，但現在我知道它可以以多種形式發生。 Gloria

6.3 有效率地處理案件

超過四分之三的受訪者（九名倖存者）認為司法系統需要運作暢順，而且所有人都能使用。受訪者一再強調，長時間等待案件結束使他們經濟上難以維生，並對精神健康造成損害，因為他們無法開展新生活。

這些事件發生在一年半前……等待讓我一直滯留在這裡，我無法回去斯里蘭卡，又不能找新僱主……訴訟使我和其他經歷類似的人精神受壓和繃緊，所以加快調查程序會幫到我們所有人。……司法系統需要有效率地及時帶來公義……如果我的案件處理程序更有效率，我僱主就不會有機會消聲匿跡。Esme

我想，事情已過了兩年了……如果我沒有遇到這機構（天國兒女），我也不知道自己會在哪裡，或許我還在街頭賣淫，或者販毒。Patricia

除非調查能夠更快完成，否則，那些被剝削的人就會繼續被逼接受對他們不利的庭外和解協議，或者一併放棄他們的法律行動，因為他們已沒有資源追究下去。

首次聆訊本應該在2020年12月進行，但被推遲至2021年3月，之後再延至6月。然後，他們告訴我，直到2022年才會有預約會面。我本來在訴訟上佔上風，但我不能繼續下去，因為我必須把我的孩子放在第一位。Sandra

6.4 為進行訴訟的人批出工作簽證

有九名受訪者同時認為，若能在訴訟期間能夠支持自己生活，經濟獨立，會是公平的司法制度的重要部份。受訪者甚至認為，在訴訟期間的經濟獨立，相比因剝削受傷害而獲得賠償，還稍更重要。

雖然香港特區政府可以豁免簽證延期的費用，以便移民工留港訴訟，但這些豁免並非經常提供予人口販運受害者，尤其當很多受害人（如上所述）並沒有進行過識別程序，或不被界定為受害人，因而沒有資格獲得行動計劃中列出的保障。即使簽證延期獲批，申請人在留港期間亦極少有獲准工作或進修。

受訪者強調，能夠在訴訟期間工作、支持自己及其家人生活，是至關重要的，同時亦有效提升他們的精神健康，幫助他們從剝削經驗中復元。

我不能返回斯里蘭卡，直至案件結束。從2019年到2021年，我被困在香港超過三年，只為等候判決……在這期間，即使我完全有能力，卻不被允許工作，這大大損害我的精神健康。我掙扎求存，甚為擔憂……我的房貸久久未能償還，也無法資助女兒上大學讀書。我的精神深受困擾，後來還需接受抑鬱症的治療。我看不到自己的狀況跟囚犯有甚麼分別。Ravima

這曾發生在 Dolores 身上。即使她成功在索償案件中得到勝訴，但僱主只是收到警告就能開脫，並沒有被禁止聘用新的移民家務工。Dolores 前往領事館投訴但不果，領事館只說會記下申訴。

Chatur 亦覺得有需要預防有剝削行為的僱主再聘請家務工上做更多工作。

入境處和勞工處應該要有效限制有虐待行為的僱主聘請新的家務工，這項限制應該以家庭為單位，因為同一家庭可以轉換另一人任僱主，繼續聘請家務工，有可能把創傷禍延到另一位家務工身上。Chatur

可惜的是，有些可以有效防止移民家務工被販運和剝削的關鍵政策，並沒有在《行動計劃》提及：取消移民家務工與僱主強制同住的政策、「兩星期規定」，以及政府針對「跳工」的政策行動。

強制留宿規定所有移民家務工必須「在僱主住址工作及居住」，令有剝削行為的僱主更易於控制和剝削家務工，同時令家務工難以界定工作和閒暇，即使完成一天的工作後亦不能離開僱主的家。如果家務工對惡劣工作環境提出反對，他們的合約或被終止，同時失去工作和住處，也無法還債或支持他們家人的生活。

如果僱主終止合約，根據「兩星期規定」，移民家務工必須在兩星期內找到新工作或離開香港。在這麼短的時間內找到新工作是極為困難的，尤其當他們與前僱主仍在訴訟當中。外籍家務工若決定早於完約前離職，有被視為「跳工」的風險，有機會令入境處以此為由拒絕其以後來港的工作簽證申請，這些限制危害到工人自由離職的權利，逼使工人繼續忍受苛待。香港亞

洲家務工工會聯會於2021年1月至2022年5月期間進行的調查發現，因為擔心被指控「跳工」而令將來工作簽證申請}被拒，成為了移民家務工即使處於剝削處境，仍不敢斷約辭職的最主要原因。⁶⁷

多年來，聯合國人權組織呼籲香港特區政府廢除「兩星期規定」及移民家務工的強制同住規定。最近，於2022年7月，聯合國人權事務委員會再度指出，這些政策會：

……置這些勞工於高風險中，他們受僱主及職業介紹所虐待和剝削的風險，並會令他們因為擔心失業和逼於離開香港，而不舉報剝削他們的工作及虐待。⁶⁸

在新冠肺炎疫情期間，旅遊限制局限了在香港移民家務工的供應，而香港特區政府在那段期間暫緩了「兩星期規定」，容許家務工在合約結束後留港尋找新工作。這些證據表明，政策的暫緩有助減少了對移民家務工的販運和剝削。

有非政府組織表示，暫緩這項規定，以及香港的外籍家務工減少，令家務工向職業介紹所議價的能力提升，這些都讓勞工遭剝削和受債務脅逼的風險降低。非政府組織的一項研究發現，該一年間，職業介紹所向工人濫收非法費用的情況有減少。⁶⁹

⁶⁷ 香港亞洲家務工工會聯會：〈外傭被指控「跳工」惡化剝削狀況，工會要求入境處停止歧視性政策〉，2022年8月7日。[見於 <https://www.facebook.com/HKFADWU/posts/pfbid02Asv3ChB5865bUkSkHT6H7CwBGd73UsQe6BPd0d8QbxyjKHyBGQjNIXTNAMdI>]

⁶⁸ 同註62。

⁶⁹ 同註19。

儘管OJ的僱主最初因兩項猥褻侵犯罪而被定罪，被判入獄30個月，⁶⁶但如果有的販運和／或強逼勞動的罪行，結果很可能會是：警方不會減少他們針對強逼勞動問題的調查；犯人會被判處較長的刑期；以及OJ會獲識別為人口販運受害者，得到適當支援。

此外，有了全面的反人口販運罪行，可以提高執法人員和廣大市民對這問題的意識和認知，並為其他反人口販運措施提供更多誘因，例如跨部門聯合調查程序，及與非政府組織建立轉介機制。

如果他們最終看待人口販運為嚴重而真實存在的問題，就像他們看待販毒一樣，那麼便能建立起處理這個問題的意識，幫助當局做更多事情。 Gloria

6.2 預防人口販運案件

逾四分之三的受訪者（九名倖存者）認為政策和法律必須變改，以確保其他人在未來不會被販運，及受到因此帶來的傷害。

當中有多位受訪者更表示，他們循法律途徑追討，就是為了防止他人遭到相同的剝削。

如果（販運我的人）因為對我做過的事而遭受懲罰，那當然很好。我不想入境處改善他們的工作？當然想啦。不過，提高其他倖存者和易受販運人士的警覺意識，改善保障他們的保障，對我來說也是公義。 Gloria

我依然記得案件及它為我帶來的精神折磨。如果法庭裁定僱主做的是錯事，並要承擔後果，我會覺得公義被成全了。我希望僱主得到教訓，不要再對別人做相同的事。 Kayra

如果我可以把其中一個販運者告上法庭，就能阻止人口販運。……我希望將販運者繩之於法，承擔罪行的後果，但我無法做到。……我也惦念著其他相同處境的人…… Sandra

《行動計劃》所載的措施，主要集中在培訓和提升意識上，雖然它確實承諾會防止有虐待行為的僱主在香港聘用新的移民家務工，但是仍有曾剝削過移民家務工的僱主仍可聘用新的家務工，措施執行成效成疑。

⁶⁶這項定罪在上訴後被成功推翻，原因是案件於審訊時出現程序錯誤，導致上訴法官判斷該項定罪不妥，而有關案件應再次聆訊。請參閱：香港特區政府律政司：香港特別行政區政府訴 Anthonp Brian Drew [2022] HKCFI 1102 在 https://legatref.judiciary.hk/irs/common/search/search_result_detail_frame.jsp?DIS=143835&QS=%2B&IP=JU。

香港特區政府表示，無跡象表明，其反人口販運工作成效受到欠缺專門訂制的反人口販運法例的影響，⁶³而且「多條法例」的模式「能為執法部門和檢控官在調查及檢控販運人口案件時提供更大的彈性」。⁶⁴

可是，現實是，在沒有專門禁止和懲罰販運人口以進行勞動和性剝削的法例，執法人員可以做的事情有限，他們也只能把罪行調查及檢控的重點放在販運過程中可以檢控的組成部份（例如協助非法進入香港，或非法保管他人旅遊證件）。

上文亦提到，欠缺專門法例令販運者被控以較輕的罪行和面臨較輕的懲罰（罰款、社會服務、短期監禁、不獲續牌等），而不足以反映罪行的嚴重程度，也難以起阻嚇作用。這削弱了政府對反人口販運的工作成效，更無法為遭受虐待和剝削的人伸張公義。

如果香港有全面的反人口販運法例，便能讓執法人員針對販運罪行進行檢控，定出與罪行嚴重程度相稱的定罪及刑罰。如此一來，執法人員既能起訴人口販運罪，也不會被限制只以販運過程中牽涉的其他個別罪行代替或額外提出檢控，從而令香港特區政府有更多機會有效懲處販運者。

研究受訪者的見證中表明，官員集中為法例涵蓋的有關罪行搜證以作控告，而不是辨識罪行模式和行為是否可能構成人口販運。這使他們比較難去識別人口販運受害者、為他們提供適當支援，或確保販運者得到與罪行相稱的懲罰。

2022年4月，香港司法機構亦裁定，欠缺法例將所有販運形式定為刑事罪行，會削弱政府反人口販運工作的效能。法庭發現，警方未能查出移民家務工OBB是否人口販運及「或強逼勞動的受害者」，歸咎於欠缺相關法例⁶⁵。在得出這一結論時，法庭指出：

- 專門針對人口販運的刑事罪行能為執法部門的行動提供參考和焦點。OBB的個案顯示，欠缺界定罪行的法例，令警察在調查時都不是直接針對人口販運和「或強逼勞動，而是循猥褻侵犯罪的方向作出調查。這情況反映自警方缺乏任何書面記錄評估或與強逼勞動相關的調查結果；
- 強逼勞動為猥褻侵犯罪提供一個額外角度；
- 案件的證據顯示，針對傳統性罪行的調查，很可能有別於專門針對強逼勞動的調查，因此需要採取稍為不同的方法來看待在案中有關「同意」的問題，及其行為模式的考量；
- 《香港人權法案》第四條（禁止奴隸、奴工及強迫勞役）所施加的調查責任與刑事司法制度不符，即沒有針對強迫勞役的特定刑事罪行。⁶⁵

⁶³ 同註27。

⁶⁴ 同註44。

⁶⁵ 同註41。

當法例未能有效刑事化所有形式的販運罪行，執法機關被迫依賴不同法律領域中超過 60 條條文（例如入境、賣淫、僱傭等），才能起訴涉及販運過程犯下的刑事罪行。這些條例包括但不限於：

- 《侵害人身罪條例》：禁止意圖販賣而將人強行帶走或禁錮；
- 《保護兒童及少年條例》，禁止拐帶兒童或少年；
- 《防止兒童色情物品條例》，禁止印刷、製作、複製、複印、進口、出口，或發布和管有兒童色情物品；
- 《人體器官移植條例》，禁止將人體器官作商業交易；
- 《刑事罪行條例》，禁止某些恐嚇行為及控制他人而目的在於使他與人非法性交或賣淫；
- 《入境條例》，禁止安排未獲授權進境者前來香港的旅程，以及禁止聘用僱用不合法受僱的人；
- 《僱傭條例》，禁止欠薪、短付工資、過期支付工資及不給予僱員休息日和法定假日；以及
- 《盜竊罪條例》，禁止不誠實地挪佔屬於另一人的財產，意圖永久地剝奪該另一人的財產。

此外，多個政府部門負責處理因販運而發生的不同刑事罪行。正如前文所述，這意味事主要多次錄取證人口供，導致延遲處理，並且口供有可能因在不同政府部門錄取而有不一致的情況。

……人口販運的刑事罪行被分成幾個元素……例如，欺詐式招聘、惡劣的工作條件、欠薪，或者不合理的解僱，這些被視為是勞工處負責的問題；而非非法調派家庭傭工工作是由入境處處理；身體或性虐待則由警方主理。家傭匡扶中心

香港特區政府認為，上述一籃子的法例已涵蓋並有效禁止《巴勒莫議定書》所界定的人口販運。⁶⁰然而，這說法並不準確，因為香港現行的法律框架並未如《議定書》所要求般，禁止和懲罰境內人口販運或販運人口進行勞動剝削。

NZ 的個案就是一個例證。終審法庭就 NZ 司法覆核案裁定，香港人權法案第四條表明，任何人不得使充奴隸、奴工，以及不得使服強迫之勞役——「不包括禁止人口販運，不論是為了剝削或強制勞動」。⁶¹

2022 年 7 月，聯合國人權事務委員會呼籲香港特區政府採用全面的反人口販運法例，並刑事化所有形式的人口販運行為。委員會特別指出其關注：

……在人口販運相關的所有法例中，未足以禁止所有形式的人口販運。……很少數受害者在受害者審核程序中被識別出來……（並且）中國香港並沒有意圖將《議定書》的適用範圍擴大（至其司法領域）。⁶²

⁶⁰ 同註 44。

⁶¹ 同註 42。

⁶² 聯合國人權事務委員會：〈關於中國香港第四次定期報告的結論性意見〉，2022 年 7 月 27 日。可於 https://www.ohchr.org/hk/doc/doc/documents/policy_responsibilities_the_rights_of_the_individuals/CPR_C_CHN-HKG_CO_4_49295_C.pdf。

香港特區政府引述以上統計數字，以證明政府履行《行動計劃》中的承諾，採取「嚴厲執法行動」。⁵⁵然而，所採取的行動遠遠不及問題的規模，未有符合到政府承諾：採取嚴厲行動，以減少不良的職業介紹所活動。

若要理解問題的嚴重程度，可參照香港亞洲家務工工會聯盟於2018年的研究。研究發現，大約50間在香港註冊的職業介紹所未有完全遵守《實務守則》，並發現百分之14受訪者所使用的職業介紹所都沒有遵守《實務守則》中至少四項關鍵標準（例如當中發現濫收非法招聘費用和沒收工人文件的情況）。⁵⁶

鑑於這個問題已存在超過十年，而且勞工處職業介紹所事務科（OAA）可以運用其權力吊銷或收回沒有遵守操守的中介的牌照，對此，很難不認為，是政府對違法和不遵從操守的職業介紹所採取執法行動未有予以重視。

每年只有少量人口販運案件被成功定罪，這狀況令人對司法制度失去信心，尤其當人口販運受害者保守估計的數字已達數千人。

他們（販運者）仍在經營同樣的業務，而且他們也不是唯一一家。這就是為甚麼我說政府只治標……而不治本。Ravina

香港特區政府應採取行動來補救這個情況：改善識別人口販運受害者及調查案件的程序、確保移民工不會因向當局舉證而受罰、讓受害者充分了解法律程序及他們的權利，以及提供實質援助予人口販運受害者。

除上述情況，STOP和其他協助被販運者的民間組織認為，制訂專門針對反人口販運的法例可以更加能夠確保正確識別販運者，並將他們繩之於法。

反人口販運法例全面立法的案例

香港目前並無符合《巴勒莫議定書》、將所有人口販運形式刑事化的特定法例，⁵⁷即使香港的檢控守則及其他相關的官方文件⁵⁸均採用了《議定書》對人口販運的定義。⁵⁹

《刑事罪行條例》確實有禁止以賣淫目的而販運他人，但罪行的範圍只限於「進入或離開香港」，因此不適用於境內販運。而香港目前還沒有法例將勞動剝削販運或強逼勞動定罪。

⁵⁵ 同註27。

⁵⁶ 同註30。

⁵⁷ 香港特區政府並未簽訂及應用《聯合國打擊跨國有組織犯罪公約關於預防、禁止和懲治販運人口特別是婦女和兒童的補充議定書》（《巴勒莫議定書》）。中國在2010年將澳門納入《議定書》適用範圍，但表示不適用於香港。

⁵⁸ 同註41。

⁵⁹ 《巴勒莫議定書》將人口販運定義為：「為剝削目的而通過威脅、使用暴力手段或其他形式的脅迫、誘拐、欺詐、欺騙、濫用權力或欺凌弱勢，或給予或收受款項或利益以取得某人的同意（而該人可控制另一人），以招募、運送、轉移、窩藏或接收人口；而剝削應至少包括使人賣淫或其他形式的性剝削、強迫勞動或服務、奴役或類似奴役的做法，以及勞役或摘取器官。」

6.1 使販運者為其罪行承擔責任

所有受訪者都認為，販運者為其犯下的罪行負責並受到懲罰，是至關重要的。對於很多受訪者來說，這關乎確保其他人不會面臨類似的剝削，亦是他們復元過程的基本部份。

如果讓這人逃之夭夭，他們就會傷害其他人。所有人都應得到公義。 Patricia

（我會覺得我得到公義，）如果我的販運者要為其罪行負責，或者如果我有辦法逃離（被販運的）處境……我認為預防措施也非常重要。 Aliya

如果能夠讓那些販運者認罪，那就能治癒我的傷疤。 Sandra

香港特區政府在《行動計劃》中表示，會確保有效檢控販運者。儘管已採取行動嘗試促進這項工作，⁴⁹向販運者進行調查及檢控的數字依然極低。

在2020年及2021年間，只有四宗涉及勞動剝削的人口販運案件進行調查，在此期間亦沒有就勞動販運提出檢控。⁵⁰至於性販運剝削方面，香港特區政府報稱於2020年及2021年間，就性販運相關的罪行（包括違反《刑事罪行條例》第130及137條），拘捕了47名疑犯。⁵¹然而，期間只有五名人士因與性剝削相關的罪行被定罪，而以上罪行並不包括「販運他人進入或離開香港」（刑事條例第129章）。⁵²

此外，即使成功入罪，所判決的刑罰一般都不足以反映罪行的嚴重程度。例如，在2020至21年度因販運人口進行性剝削而被定罪的五宗案件中，有兩宗被判監禁四個月和八個月。⁵³

至於涉及職業介紹所的罪行，《行動計劃》指出，香港特區政府會對無牌經營或濫收求職者費用的中介加以懲罰。但在2020至21年間，勞工處只檢控了共109間向勞工濫收費用、無牌經營或干犯其他罪行的中介（當中並沒有報告被定罪的人數）。同一時間，另有11間職業介紹所因沒有遵守《職業介紹所實務守則》而遭撤銷牌照或不獲續期。⁵⁴

⁴⁹ 香港特區政府於2019年3月檢討和更新《跨部門合作處理懷疑販運人口案件指引》，律政司亦致力提高檢控官對人口販運和強逼勞動情況的認知。同註44。

⁵⁰ 另外有些人可能因販運相關的罪行被檢控。例如，在2021年，8名僱主因協助和教唆移民家務工違反逗留條件而被檢控，而另有20名僱主因襲擊和刑事恐嚇等罪行而被起訴。見註19及註27。

⁵¹ 《刑事罪行條例》把販運他人作性剝削時可能牽涉的活動刑事化，包括：窩藏、控制或指示他人賣淫（第120條）；促使他人從事性交易（第121條）；以及倚靠他人性交易的收入為生（第137條）。

⁵² 香港特區政府在回應美國國務院報告的聲明中指出，當局於2021年拘捕了278名涉嫌與賣淫相關罪行的人。可是，這些逮捕似乎與販運活動無關。見同註19及註27。

⁵³ 同註19。

⁵⁴ 同上。

6 改善司法制度的措施

司法制度通常集中以刑事定罪的數量，及判刑的嚴重程度，作為量度成功的基準，這種衡量是有限制的，這種方法未必對人口販運倖存者最有利（如逼使倖存者進入辯論式訴訟的司法制度，會加重創傷），也可能與他們對案件正面結果的看法不一致。

一個充分考慮人口販運倖存者需要和渴望的司法制度，應更能鼓勵被剝削者參與更多，為所有持份者帶來更好的結果。⁴⁷

在這個背景下，受訪者於訪談中被問到：對他們而言一個良好的司法制度應具備哪些主要部份；如何令香港的司法程序更公平有效地運作；以及有沒有其他途徑令公義得以彰顯。以下將會詳細探討受訪者普遍認為最關鍵的問題。⁴⁸

⁴⁷ 有關這個問題的更詳細討論，請參閱：Urban Institute, Hussesmann et al., 《Bending Towards Justice: Perceptions of Justice among Human Trafficking Survivor X 走向公義：人口販運倖存者對正義知覺》，2018年4月，可取於<https://www.ojp.gov/pdffiles1/nij/grants/251631.pdf> 及 Porticus：Dalberg, 《Making justice more survivor-centric: Applying alternative justice models to human trafficking in South East Asia》（以倖存者為中心的公義：採用不同公義模式打擊東南亞人口販運活動），2021年4月。可取於<https://api.cofraholding.com/media/2161/applying-alternative-justice-models-to-human-trafficking-in-south-east-asia.pdf>。

⁴⁸ 受訪者被要求以「必要」、「很重要」、「重要」和「不重要」表明他們認為尋求公義的九個方面的重要性。

……創傷的其中一個關鍵影響是，它可能會影響一個人尋索回憶的能力……如果執法者沒有留意到創傷對記憶的影響，就有可能不理解這些供詞不一致或影響記憶的情況，以此推斷他們缺乏誠信。天國兒女

跨部門協調得以改善，會對被販運者尋求公義更加有利。在理想情況下，一旦販運情況被舉報，接獲案件的部門就要負責與其他相關部門就證人供詞和個案相關詳情作出溝通，以便各部門採取必要行動（例如防止僱主聘請另一位移民家務工，調查職業介紹所，豁免簽證延期費用等）。

我希望整個過程在同一地方進行。我通常要為我的案件到處奔波。這是個難題。 Kayra

在一些特定情況，跨部門協調確實已在運作。例如，在涉及嚴重勞動剝削和身體暴力的個案中，警員一般會發出正式備忘予入境處，通知他們即將進行的法律程序，及需要批准簽證費用的豁免，讓事主留港。然而，這種跨部門的協調，在不涉及身體暴力的個案，或者個別人士在被販運的過程中違法的情況下，則未有發生。

此外，與相應的領事館和大使館的合作亦應該加強，以便其原籍國家與所有香港相關部門都知道有人或中介正在接受調查或被任何相應機關制裁。正如其中一位受訪者所述，改善與其原籍國的聯繫可能也有助於識別和檢控販運者。

……如果香港政府能夠與烏干達政府聯繫，或許有助正義得到伸張……當地政府或許就能夠核實資料，增加找到販運者的機會。 Sandra

根據《行動計劃》，香港特區政府致力成立指定的聯絡人和調查隊，以處理打擊人口販運的工作。雖然警方在六個警區中設立了專責調查隊伍，但本研究訪問的公民社會組織並沒有勞工處或入境處的專責小隊或個人的聯絡。

如果所有相關政府部門的指定聯絡人及專責隊伍能夠完全發揮職能，就能提升跨部門的協調，簡化被販運者的報案流程。

5.9 處理人口販運案件的協調工作

在《行動計劃》中，香港特區政府有概述如何改善處理人口販運案件的協調工作，包括：改善處理個案時的跨部門合作；與非政府組織合作，就案件轉介和受害人支援上交流意見；以及與勞工主要來源國政府合作等。

有些公民社會組織稱，就個別被販運個案，他們跟官員建立了良好的工作關係。

不同部門的負責人員當與我們及受助者溝通時都頗為主動，一般而言我們有良好的合作關係。他們會致電向我們索取受助者的詳細情況，並與非政府組織職員緊密聯繫，以傳達資料或訊息給移民家務工。家傭匡扶中心

……很高興看到香港政府接納我們的受惠者接受外間支援。天國兒女

在與民間組織建立和發展合作關係上，政府仍有改善空間。例如，自2018年推行《行動計劃》以來，香港公民社會及人口販運工作小組（HK SAR Civil Society Anti-Trafficking Task Force）只跟政府代表進行了一次圓桌會議（2021年10月5日）。在會議上，工作小組建議改善審核問題，並為前線工作人員提供培訓。政府代表歡迎這些建議，但沒有跟進會議來改善這些或其他問題。

在政府部門之間的聯繫和合作方面，香港保安局指出，於2018年8月制定了跨部門聯合調查議定書，在有需要的情況下，有關部門會聯合會見潛在受害者，以免他們要向不同官員重覆相同的故事。保安局更指出：「在適當情況下，法律代表或非政府組織可以出席支援受訪者。」⁴⁶

可是，合作的情況不常發生，人口販運受害人經常要向不同政府部門多次報案和錄取幾次口供（例如向勞工處申請索償，向警方舉報身體或性侵犯，以及向入境處辦理簽證延期）。

這使得被販運者尋求公義的過程變得更加困難，尤其因為他們每次都要錄取新口供時，都被逼重溫創傷經歷。有些被販運者患有創傷後遺症（PTSD），不斷重覆經歷對他們的精神健康和復元過程帶來非常負面的影響。

此外，由於創傷會令人記不清事件的細節，甚至是完全忘記事件，也會影響被販運者追究販運者為剝削行為承擔責任的能力。當受創的人口販運受害者被多次要求回憶傷痛事件的細節，加上那些情節可能發生在多月或多年前，他們的陳述有可能出現不一致，導至被販運者的誠信受質疑，他們陳述的事件不獲重視，因而令他們的案件被執法人員、法庭或審裁處駁回。

5.8 及時了解案件進展

除了要等待較長時間才能結案，近三分之一的受訪者（七名倖存者）說他們沒有獲悉自己案件的進展。

……最大的壓力來自於不知道接下來會發生甚麼事……他們（執法人員）不會告訴我們案件會在甚麼日子上庭……下一步是怎樣，或者他們是否仍在調查我的案件……我有時覺得自己像在坐監，（我）雖然可以吃自己想吃的，可以與人溝通，也可以到處走動，但我不能離開這國家。Patricia

……他們沒有告訴我案情的最新發展如何。Sandra

（向警方舉報僱主的虐待行為後）沒有跟進會面。……我經常是致電律師查詢跟進的那一位。Dolores

此外，即使當局對案件作出決定，通常也不會向受影響的人作出適當溝通或解釋，包括識別機制是否有把事主識別為被販運者。

我從律師那裡聽說，警察沒有識別我（為人口販運受害者）。但至今，我沒有從警方那裡直接收過任何文件或口頭通知。

Ravina

他們問了我很多問題，問及一些證據，又為我的疤痕拍照記錄。但他們依然拒絕受理我的案件。他們沒有給予我們任何拒絕的原因。Dolo

……我收到的只是一封信，信上說調查已因為證據不足而告終，大概在2020年初吧。Esme

……官員沒有通知我是否被識別為人口販運倖存者。Maria

與STOP的經驗類同，販運案件報案人通常不會收到與案件有關的重要文件，如醫療報告和人口販運審核報告的副本。香港保安局指出，「如果當事人沒有被識別為人口販運受害者，一般都不會獲供審核結果，但可透過查詢索取相關資料」。⁴⁵ 通常當局會在收到申請時發出這些文件的副本，但情況並非總是如此。

例如，STOP在2019年幫助了一位婦女，她沒有被識別為人口販運受害者，她在年多前提出要求索取這項資料，但她仍然沒有收到任何書面確認或對於結果的解釋。

如上所述，Gemma指，找另一位傳譯員需時，即使找到了，安排會面時間也有難度，因為她只在星期六有空。因為傳譯員的問題，導致她的案件拖延甚久。民間組織亦注意到，在香港甚難找到某些語言或方言的傳譯員（例如阿姆哈拉語），令會面延遲，案件的調查工作亦被延誤。

5.7 調查上的延誤

任何在調查上的延遲都可能妨礙調查成效，尤其是錯失蒐集證據的時機，或容讓被告有時間逃離法網（例如離開香港）。

這一點可以Esme的案例佐證。她於2019年9月向警方落案投訴她的僱主，這案件至今仍在處理當中，但在調查開始之前，案件耽擱已久，僱主亦已在這期間搬家，令警察現在無法找到他們。Esme在舉報剝削行為的一年後，才獲勞工處職員接見會面，但那時她身體的受傷程度亦已減少，職員也沒有進一步調查創傷經歷對其精神健康所造成的影響。

官員在虐待事件一年後才調查身體損傷。臨床報告於檢查後兩星期發出，提到身體傷害程度只有僅為百分之一。Esme

其他受訪者亦指出，他們的案件拖延了很久才開始調查，而且進展緩慢。

我（於2017年12月）抵達香港的三個月後，前往入境處求助……我告訴他們，我被逼賣淫。一直到2018年6月他們才展開（人口販運受害人）識別審核程序。……及後再花了一年時間才完成所有面談……到今天，我的販運人口識別仍未有結果。Gloria

我在2016年11月舉報我的第一位僱主。……案件終於在2021年12月15日結束。……至於和第二位僱主的案件，我們在庭外和解。Dolores

對於被販運者而言，尋求法律補救是件極其困難之事，大部份人在案件調查期間都無法維持生計。因為他們的狀況大多是不容許工作（沒有有效簽證）、無法找到工作（潛在僱主或不願意聘請曾在法庭提告前僱主的人），或者無能力工作（基於受傷或創傷緣故）。

在等候司法程序終結時，他們亦難以完全放下經歷，開展新生活。對於一些被販運者來說，等待的過程就好比他們遭受的剝削一樣難熬。

運者時，有機會導致受害人不被轉介進行識別審核，又或在初步審核時被草草帶過，以致錯過識別出口販運指標，而未有採取行動。

5.6 傳譯服務

除了一位受訪者外，幾乎所有受訪者都需要傳譯員，而受訪者均對傳譯員的培訓及專業水平提出疑問。大部份受訪者在接觸當局時都獲派傳譯員協助，但一位女士指她轉換傳譯員的要求不獲受理，另一位則說她要親自要求才有傳譯員協助。

我要求更換另一位傳譯員，但他們（警察）沒有提供。 Sandra

我起初不知道我可以要求傳譯服務。之後是我在二審時要求傳譯員協助。 Dolores

一般而言，傳譯員都會在收到要求後及時到達，但受訪者對傳譯服務質素評價好壞不一。多位受訪者對於獲提供的傳譯員大致評價正面：

我認為他們表現專業，正確傳達到我想說的話。 Esme

以我說的語言，政府通常預約的傳譯員有三位——兩位女士和一位男士。男傳譯員和其中一位女傳譯員的態度都非常好。

至於另一位女傳譯員，她的傳譯不錯，但我感到她的態度不是很尊重。我記得，當我向入境處解釋自身情況時，她在暗啗地笑。 Gloria

然而，有少數個案的傳譯員有水平欠佳或舉止不當的情況，使倖存者難以傳達被販運的情況。

那位傳譯員並不是真的在幫助我……傳譯員叫我只管回答法官的問題。當我請求傳譯員幫忙解釋我怎樣被僱主強逼寫下終止合約通知書時，卻遭他拒絕。有好幾次傳譯員都沒有傳譯我所說的話。亦試過我請傳譯員解釋一封呈上法庭的信，他也拒絕我……我不知道可以要求更換另一位傳譯員。在接下來的訴訟仍是同一位傳譯員協助我。 Dolores

我被告知我可以選擇回答問題或保持緘默。有些問題我不想回答，但官員重覆提問，女傳譯員亦逼我回答。她告訴我，我必須回答，否則我便會有麻煩，不得不上法庭並被驅逐回到斯里蘭卡。……至於在警署會面時的傳譯員，他用谷歌（Google）翻譯來翻譯文件，譯得不準確。……我從來沒有提出要求（換另一位傳譯員），因為我不清楚我應不應該，或可不可以要求這樣做。 Ravina

我獲派的傳譯員是個華人，他不懂說我的語言。我有問過可否找 STOP 的同工陪伴，他們說我只能一個人前去。Sandra 我獲派過兩位傳譯員，體驗有好有壞。我的第一位傳譯員不太專業，她的翻譯做得一塌糊塗，再加上本來就有語言障礙。要求更換傳譯員後，新來的傳譯員表現專業，翻譯準確。她做得好多。 Chaturi

在調查潛在販運個案上的這些限制和缺失，明確解釋了人口販運受害人識別數字偏低的原因。確實，香港法庭亦認為，即使被販運者前往當局舉證遭受的剝削行為，官員亦無法識別他們為人口販運受害者。

以CB的個案為例，她是一名移民家務工，於2018年9月至2019年4月期間遭到僱主剝削和性虐待。她於2019年12月向警方報案，但在進行過識別審核後，她並沒有被識別為人口販運或強逼勞動的受害者。

法庭於2022年4月推翻了這項判決，並發現警方沒有徹查CB是否有被販運。法庭鑒定出調查過程涉及多項基本程序的錯誤，當中很多都與本研究受訪者提及的狀況重疊。其中，法庭指，負責進行評估的警員：

- 沒有考慮相關證據，包括CB僱主與前家務工進行性行為的錄影證據；
- 沒有跟進僱主聘請的前移民家務工；
- 代表僱主接納表面證據；
- 沒有就發現強逼勞動而作出的記錄；以及
- 根據不相關或無關重要的事件斷定CB並沒有遭到人口販運。⁴¹

2020年，有另一宗牽涉到來自巴基斯坦、男性移民家務工ZZ的司法覆核案件，亦與人口販運／強逼勞動有關，他被僱主欺騙，受到毆打和羞辱待遇，行動自由亦受到限制，並有四年沒有獲得工資。香港特區政府對案情並無爭議，事實顯示ZZ是

強逼勞動的受害者，他亦有向有關當局提供足夠證據去證明他是強逼勞動受害人。可是，當局並沒有針對人口販運案而採取適當行動。

法庭形容，香港政府對ZZ受虐案的回應「極其無效」和「可恥」。香港特區政府接納ZZ曾被販運作強逼勞動，指警察未能履行職責徹查其投訴。⁴²

法庭認為政府調查上的失職，是由於「相關政府部門人員缺乏培訓」，以及「在調查和打擊此等違規行為方面，完全欠缺中央監督和協調」。⁴³

《行動計劃》目標是透過提高前線人員的意識和培訓，加強對人口販運受害人的識別。但顯然在這些方面仍有待處理。

香港特區政府多次公開聲明，沒有任何迹象顯示販運人口在香港「普遍或常見」⁴⁴，卻與此同時推行意識提升措施和相關培訓，這樣的矛盾不一削弱打擊問題的力度。執法人員與高級官員未必會在政府認為不重要的議題上投放時間及資源，當面對被販

⁴¹ 香港特區政府律政司：CB 訴警務處處長及律政司 [2022] HKCFI 1046，司法裁決摘要。[見於 https://www.doi.gov.hk/rc/notable_judgments/pdf/HCAL_466_21_HCAL_617_21c.pdf。]

⁴² 香港特區政府律政司：ZN 訴律政司及其他人 [2019] HKCFI 53。[見於 https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=126569。]

⁴³ 同上。

⁴⁴ 香港特區政府保安局：〈販運人口〉。[見於 <https://www.sb.gov.hk/dh/special/bound/imm.html>（擷取於2022年12月1日）。

其他受訪者亦強調，官員沒有充分調查販運證據，也看輕了一些與販運指控相關的資訊。就如 Dolores 指出，她接觸過的所有官員都告訴她，她沒有案件可以提出申訴，因為她主動終止僱傭合約，但他們無視她在僱主強逼下簽署解僱信的事實。

……我覺得入境處職員沒有聚焦於關鍵問題，就是如何被不公平地解僱。Dolores

此外，二位受訪者當中，只有四位曾被官員問及有否其他人同在受剝削地點一起工作。這是查問有否其他潛在人口販運受害者的關鍵問題，若那些一同工作的人也受到剝削，他們可能需要援助，又或可以為官員提供證據。⁴⁰

他們只問及我在其他僱主的工作時的處境和經驗，而沒有問過是否有其他人跟我同處受剝削的情況。……法律要求我們提供指控僱主的證據，但他們不明白，絕大部份家務工都沒有創傷經歷的證據在手，因為我們的電話、護照和其他重要文件都被僱主沒收。Esme

此等程序漏洞在本研究受訪者的見證中並不罕見。在 Chatur 的個案中，出現多次官員不跟從基本調查程序的情況。舉例說，Chatur 告知官員她曾被僱主毆打，她的身份證明文件被沒收，以及被禁止聯絡斯里蘭卡的親友，但她仍沒有被視為潛在受害人而進入人口販運審核程序。她亦指出，當她報案時，警察沒有記錄她身體傷痕作為證據，沒有給她醫院記錄的副本。

……（報案當時）被襲擊的瘀傷和指甲痕跡清晰可見，但警察沒有拍下任何照片，而那些痕跡亦隨著時間過去而變淡，我再沒有證據證明我在工作期間身體遭到傷害。

（在醫院）他們有替我的傷口拍照，但我沒有收過照片的副本，亦從沒有收到任何臨床醫療報告。Chatur

Chatur 在警署落口供，又把額外證據交予警方，但全都遺失了。她律師認為證據可能被錯放，因為案件在過去一段長時間裡由多位官員跟進處理。

我的案件被拖了四年半，不是因為證據不足，而是因為……他們遺失了我提供的重要證據……保護像我這樣的受害者所提供的證據，才能確保正義得以伸張。警察本應該更專業，尊重我因信任他們才交託到他們手上的敏感證據。Chatur

Chatur 強調，對於警察在調查上的失誤，她感到難以接受，尤其當初她排除萬難才決定舉報及為案件作追訴。

（對於整個法律過程）我沒感到絲毫的控制權，我害怕……面對要找工作，怎樣在沒有任何收入來源下支持自己的經濟，我感到無比壓力……

剝削的工作狀況……持續地困擾著我——虐待、食物不足、一舉一動受控制和監視，這份恐懼至今仍令我對類似工作卻步。……這些創傷，仍然令我難以入睡，不能放鬆，不能與周圍的人維持基本對話。我不希望與身邊任何人見面和聊天。我的情緒總是低落，我再也不是離鄉來香港前的那個我。Chatur

⁴⁰ 出於這個原因，這問題已包含在執法人員在全面查問時用以識別販運人口的標準問題。

據SIO的經驗，他們很難獲得法律援助，也需要專業協助才能成功申請（例如透過律師或非政府組織協助）。就算有了協助，很多人都在首次申請時被拒，因而嚴重拖慢案件的開案和調查進度。

我的律師於2020年8月幫我申請法援，以索取人身受傷的賠償。至2020年11月，因為證據不足，法援拒絕受理我的案件。最終在2021年才批准申請。 Kayra

我要強調，當法援開始受理我的案件時，接續的過程便變得順利。在此之前，事情推展得很慢。 Dolores

5.5 在調查過程中的問題

如前文所述，有些人有明顯的人口販運指標，但官員未就他們的販運遭遇進行識別審核，亦沒有徹查他們的個案。本研究指出，這情況的原因是很多執法人員都沒有全面細察哪些活動構成販運。

受訪者分享指，有些官員難以理解為甚麼會有人「選擇承受剝削」而不逃跑。他們亦分享說，有位女士被告知她不獲識別為人口販運受害者的原因是她自願與僱主簽下僱傭合約。

協助被販運者的民間組織指出，官員通常對於符合人口販運定義的剝削種類認知狹窄。他們所認知的通常是受到嚴重勞動剝削和身體暴力的情況，但通常不包括那些受到其他類型脅逼形式，也不管被販運者所犯下違法行為或入境條例罪行是否被販運及脅逼下的結果。

……我們也觀察到，當一些人口販運受害者因違法而被捕（例如涉及非法工作或販毒），或者當受害者與一般普遍受剝削的女性移民家務工的受害者形象不符，當局就傾向不視之為人口販運個案，也沒有轉向人口販運相關的方向調查。反之，受害者通常會被視為被告般對待。 家傭匡扶中心

以下是 Ravima 的經歷：她向入境處職員提供了欺詐式招募的詳情，以及如何被安排一份已由他人簽署的僱傭合約，但職員沒有進一步向這方面查問，反而控告她逾期居留和偽造文件，因為她以僱主名義簽署離職信。

入境處只問他們感興趣的問題。他們很積極找出誰人牽涉在內，包括我的中介、帶我來這裡的人、我的住處詳情等等。但當一提到我的離職信，他們就忽略了我提供的額外資訊，例如說簽署那封信的經過，和為什麼我以為那封信是沒問題的原因。……我在無意違法的情況下，被牽扯進刑事案件。但是最後，他們沒有檢控販運我的人，卻檢控了我。

Ravima

我們希望這會有所轉變，簡單如提供資訊，讓處於弱勢的勞工知道可以從哪裡得到援助，或者提供非政府組織的聯絡，讓勞工可以接觸他們。家務工進步工會聯盟

很多人口販運受害者都需要轉介接受醫療服務，幫助他們從身體和心理傷害中復元過來。超過一半受訪者特別提到，輔導對於他們的復元的重要性，能幫助她們走出被剝削的陰霾，重建生活。然而，在非政府組織提供的所有個案中，沒有受訪者獲政府官員轉介到輔導服務。

他們（天國兒女）聽我說話，給我找了一位輔導員。輔導服務幫助到我。Patricia

……我開始時討厭它（輔導）。我不知道為甚麼自己需要它，但漸漸地，我感到被治癒和有自信。輔導幫助我看到自己不僅僅是個曾經歷性販運的人，也可以是個有正常工作的人。Gloria

輔導和醫療在克服創傷上對我的幫助很大。……創傷依然在影響我……我嘗試藉著幫助其他像我這樣受困於相同處境的人，來克服那經驗。Esme

輔導和參與不同活動對我有幫助，讓我每日都有不同事做。有支援網絡十分重要。Patricia

因為被強逼下的不安全性行為，我想要身體檢查。Tisha

如果當初他們至少能提供我需要的醫療文件作證據就好了。臨時庇護、心理支援和輔導，以及其他基本援助也都重要。
Dolores

5.4 香港特區政府提供的支援服務

根據《行動計劃》，在適當情況下，香港特區政府會向人口販運受害者適時提供援助（例如臨時庇護、醫療服務、心理支援等）。但根據上述受訪者的見證，這種情況實際上很少發生，人口販運受害者通常倚賴非政府組織提供的經濟援助及其他支援。2021年，香港特區政府沒有提到他們曾向任何人口販運受害者提供支援服務，或為他們安排轉介到所需要的服務。³⁹

這個問題有可能是由於缺乏正式的轉介程序及清晰指引，令執法人員未能按指引告知被販運者應有的權利，和提供援助的機構資料。

此外，法律援助對於協助人口販運倖存者尋求司法公義亦至關重要。沒有法援，他們便難以進行民事訴訟和索償。然而，根

5.3 支援服務的資訊

沒有受訪者被告知有哪些非政府組織可提供援助，只有一名婦女說她獲得有關福利援助的資訊。

提供這些資訊是協助被販運者舉報剝削者的重要支持，因為大多數人在申訴期間都不准工作，以致他們要倚賴其他人提供生活津貼（例如住處、食物和交通）過活。

此外，如果官員能花多點時間協助被販運者取得所需支援，這會有助申訴人與執法人員建立信任。大多數受訪者都強調獲得支援服務的重要性。

……受侵犯後，我沒有薪水，沒有錢……庇護所提供免費晚餐，我也從樂餉社得到食物。我從聯合國國際移民組織得到每月資助，教會也在我有需要時給我錢，職員亦會提供輔導和藥物。我為所得到的一切幫助感恩。Maria

……第一年（進行訴訟）時沒有人告訴我有關STOP的服務包括住宿交通和基本需要支援。我靠著朋友的援助生活。後來，當朋友再也不能支持我時，我們一起到我律師的辦公室，然後我才認識到STOP。Ravima

如果不是有非政府組織，我早就睡在街頭了。我找過領事館幫助，但他們告訴我庇護所沒有空位。香港政府應該為有需要的移民家務工提供庇護。Dolores

在Tisha的個案中，她告訴警察，販運者知道她住哪裡，因此她不敢回到住所，但警察沒有告知她可以從哪裡獲得援助。

報案室的警察說：「你已經報案了。你還想向我們要甚麼？要不去你朋友家吧。」……我再找天國兒女。終於他們幫我找了暫時住宿。Tisha

有些受訪者因官員未能就其基本生存需要提供協助，而感到不被支持，認為官員不關心自己的福祉。

……（那些官員）並不關心我的生計，或者我如何面對現時的處境。好像他們只願意知道我申訴的大概狀況，而從來不管我的處境。……在我接觸STOP的團隊前，我並不清楚自己的權利，亦沒有官員告訴過我相關事宜……（沒有STOP的話）我在經濟上、精神和法律上都難以維持。Esme

他們沒有關心過我如何生存，只查問案件到底發生了甚麼事，他們只對那些有興趣。我的生活、健康、經濟狀況、如何維生，他們從來都沒有過問。Kayra

家務工進步工會聯盟亦指出，官員甚少顧及前來求助的人如何在香港生存，亦沒有問及他們的福祉。

入境處職員聆聽時不加批判，至於警察，當我和同伴在街上或警局裡遇到他們時，他們表現得不尊重，沒有認真對待我們。Atiya

其他受訪者指出，當有代表律師或非政府組織的工作員陪伴時，他們的待遇會好一點。

我知道當有律師在側，與當局交涉的事情會好辦一點。Ravima

（官員以專業的態度對待我）……但只有當我律師也在場的時候。沒有律師，他們就不予尊重。Dolores

STOP 對於官員如何應對被販運者求助的經驗也是好壞參半。當陪同受助者出席警方或勞工處的會面時，普遍官員都會有耐性和願意提供協助，並表現專業（例如給予足夠小休、確保有女警跟遭受性暴力的受助者會面）。有一次，警察跟受助者額外約多一次見面，以解釋何謂「自簽擔保守行為」，以及選擇「守行為」會有甚麼影響。

另一方面，STOP 亦遇過一些不良的做法。一位受助者前往警方舉報她遭受過的剝削行為，但警察忽視她遭遇的嚴重性，並以以下問題試圖阻止她落案：「你僱主只是第一次這樣做嗎？你肯定這個事件嚴重得足以讓你向警方落案？」

當有官員向求助的倖存者表現得不專業或帶有惡意，會嚴重損害到他們對香港司法制度的看法。再者，若受影響的人與其他入分享那些負面經驗，也會令其他被販運者不敢向當局舉報施虐者，這樣會削弱打擊人口販運的廣泛努力。

5.2 法律權益資訊

在接受本研究訪問的二十位倖存者中，只有三位表示官員曾向他們妥善解釋法律程序。對於一些倖存者而言，法律程序對他們及家庭成員的生活都有深遠影響。

……沒有向我清楚解釋我可以有的不同選擇，無人告訴我案件會如何處理，我也不知道在香港有刑事記錄（涉及我被販運後所犯的罪行）便不能在外國工作。……最近，我在外地找到工作，很想接受它，但當我嘗試取得……無犯罪紀錄證明書……時，就遇到了問題。無法去外國工作，又加上自己國家的失業情況嚴重，我孩子的教育暫停了，我們的生活條件也惡化了。Ravima

那些官員沒有花時間和努力向我解釋，在我逃離苛刻的工作條件後會有甚麼選擇。因為我對法律程序一無所知，亦沒有人向我解說過，我感到自己對在面對的情況沒有控制權。Esme

沒有人告訴過我不能在審訊期間的六個月工作。Maria

同樣地，所有受訪者無一獲告知有保護證人計劃，只有三名受訪者被通知，在法律程序進行期間，證人可申請簽證延期的費用豁免。

另一位受訪者稱，她向警方尋求保護時，他們沒有進行基本諮詢，嘗試識別她是否被販運。

（警察）……沒有調查。沒有落口供。Tisha

其他受訪者亦有曾遇到表現不專業或沒有同情心的官員的類似經歷。

我的合約被終止後，我前往入境處申請（旅客）簽證續期，然後那些官員質疑我的決定，說我應該就此回國。Dolores

……他們根本不在意我所受到的壓力。……他們亦告訴我，我不能留在香港，也不能工作。這讓我感到很不安和擔心，害怕有一天我醒來就被遞解出境。……有時，他們提醒我本不應留在香港，這讓我感到有壓力。Patricia

在Ravina的情況，在她感到不適時，官員依然繼續盤問，直至她倒下才停止筆錄口供及送她到醫院。

那天，我在入境處被捕了……我感到困惑和驚惶。我要回答很多問題，口供紙差不多有50頁長。我嘗試回答每條問題，但真的很疲累，我告訴官員我的腦袋不清晰了。他們沒有讓我休息，但有給我暖水和食物作午餐。……縱使他們告訴我，我可以選擇不作答，但官員沒有真的讓我跳過任何問題。當時的氣氛凝重，我覺得不舒服，呼吸困難，但他們也不在乎……最後，我因血壓飆高而暈倒。於凌晨1時我被立即送去醫院，醫生建議我留院觀察。官員就叫我出院時打電話給他們。Ravina

有些受訪者則表示，她們在與警察互動中感覺良好，那些警察聆聽她們的擔憂，並尊重和覺察到他們的需求。

我認為警察在行為上有尊重我……我向他們解釋自身處境時也感到安心。Esme

我覺得警察、入境處及勞工處的職員都有讓我說出自己的故事，回應時亦似乎是不加批判的。……黃大仙警署的警察亦盡力配合，在我狀態不適合會面及回答問題時，他們會跟我改期會面。Chaturi

根據我接觸當局的經驗，他們真的有嘗試聆聽。誠然，他們未必能夠體會被販運者的處境，但他們表現出同理心。在我與他們交談期間，他們不時關心我，詢問我是否可以繼續，需不需要休息。Gloria

大多數官員都有聆聽我遇到的問題。他們與我的溝通清晰。只有一位警察令我感到不舒服。……有位更高級的警察便介入。Kayra

以上見證均表明，被販運者與執法人員接觸的經驗感受不一，取決於處理他們案件的個別人員。的確，有些受訪者與不同部門內部或跨部門聯繫時，都有正反兩面的經驗。例如，上述大部分正面評價都關於警方，至於入境處，有兩位曾被性販運的女士則表示，她們獲得較好的待遇。

他們（警察）對我的狀況完全不留神……入境處有兩位女職員，她們對我的經歷深表同情。Sandra

5 被販運者與 當局接觸的經驗

5.1 官員的專業程度

當外地來的被販運者接觸香港官員，官員如何對待他們、能否營造一個安全環境、取得他們的信任、讓他們克服已有的擔心，都是識別受害人的關鍵。

不幸是，接近三分之二的受訪者（七名倖存者）表示，他們曾經歷執法人員不專業或惡劣的對待，又或是對他們的困難或創傷經歷敏感度不足。

Sandra 因為希望起訴販運者，以及幫助其他有類似遭遇的女性，所以向警方求助。但是，她遭遇到表現不專業的警察，更以遞解出境來恐嚇她銷案。

我與警察會面時沒有女警在場，只有我和三個男人（兩名男警員及一位男傳譯員）。即使他們知道案件與性工作相關，而調查是關於以性剝削為目的的人口販運。……警察反過來問我他們可以如何幫助我，因為販運者不在港，我亦沒有他們的聯絡。然後他們就叫我銷案……警察根本沒有在聽。……會面只有20分鐘。之後我被恐嚇會被遞解出境，我就銷案了。他們告訴我，性工作是禁止的，即是我在香港非法工作，違反了法例。……與警察周旋過後，我就不再有信心和信任警察了。Sandra

審核)。然而，這二位中有超過一半受訪者來自易受剝削人士的群體，並有至少一個人口販運指標，他們都曾就自己面臨的問題向當局報案，理應接受全面查問（例如他們的身份證明文件是否被取去，或者有否受僱主恐嚇）。

他們沒有問及販運人口審核「指引」中的任何問題，亦從沒告訴我是否被識別為被販運者。 Patricia

上述全部狀況均指出，審核程序經常不在應啟動時啟動，因而錯過識別出被販運者的機會。

此外，審核所進行的方式不容易識別出被販運者。舉例來說，有近日接觸過勞工處的STOP受助者收到一份表格，其中包括一些與人口販運初步審核問卷相似的問題，但「人口販運」和「現代奴役」等字眼並沒有在問卷中出現，表格的用途亦未向填寫人士清楚解釋。

未能妥善表達問卷所想要索取的資料，這解釋了為什麼沒有一位填寫過此表格的STOP受助人能夠被勞工處邀請進行全面查問。

其他民間組織都觀察到，審核面談中的一些用語相當拘泥於法律條文（例如，處境是否屬於「非自願」以及甚麼構成「強逼」），加上有可能再翻譯為其他語言，在沒有充份解釋下，更容易會令人誤解。

上述種種情況，加上對官員信任度不足，或對販運事件感到羞恥等因素下，會影響被販運者如何回答問題。當問卷只要求受訪者回答「是」或「不是」，這都會令一些人口販運指標被忽略。針對這一點，家傭匡扶中心指出：

我們認為在任何階段下進行質性訪談都是一個較好的方式去進行人口販運受害者識別審核，因為這容許受害者和官員澄清問題，減少溝通不當。家傭匡扶中心

如至少一個答案為「是」，執法人員便須進行全面查問，當中有22條標準問題，以確定受調查人士是否被販運。這些問題問及他們受招募來港的過程、債務問題、承諾的工作性質、遭受暴力或威脅、賺取的金額、是否獨力工作，以及所需的協助。

按照《行動計劃》擴大審核程序的措施，無疑令當局進行初步審核的數字急升，由2017年的4,710宗增至2020年的6,912宗，再達至2021年的7,678宗。³⁰

但是，儘管進行全面查問的門檻很低，只有很少被審核過的人接受過全面查問。在2021年，香港當局只進行過222次全面查問，意味接受過審核的人中，不到百分之三被確定有任何販運指標。³¹在2020年和2021年對易受剝削人士進行的14,590次初步審核中，兩年間只有四名人士被香港官方識別為人口販運受害者。³²

香港特區政府強調，只有少數人經審核識別為人口販運受害者，證明人口販運「在香港不是普遍存在的問題」。政府再進一步表示，「僅僅因為我們識別到的受害人數目少，而質疑我們的審核質素和詆毀我們的審核程序，是毫無理據和不公平的」。³³

然而，有強而有力的證據一致顯示，有大量人口被販運到香港並遭到剝削。例如，香港亞洲家務工工會聯會於2018年發表了一項深入研究，發現受訪移民家務工當中，多於一半（450名中有253名）支付了非法佣金，近四分之一（451名中有108名）被職業介紹所或僱主扣押其護照或其他身份證明文件。³⁴

在2016年，Justice Centre Hong Kong 發布的研究發現，多達六分之一的移民家務工是勞動剝削受害者。³⁵ 假設這些個案中，只有十分之一人因剝削目的而被欺騙和/或被脅逼下移動，這已經相當於約6,000名人口販運受害者。當然，這未包括那些被販運進行性剝削或家務工作以外的勞動剝削的被販運者。在這種情況下，我們可以合理假設審核過程無法識別大量被販運者。

³⁰ 同註18及註19。

³¹ 香港特區政府保安局於2023年1月10日向STOP提供預STOP-2023年1月10日的資料。

³² 於2021年被識別的被販運者，是由入境處的外傭專責調查組所初步識別的，該專責調查組於2019年成立。同註27。

³³ 同註27。

³⁴ 香港亞洲家務工工會聯會：《推動變革的中介：對香港傭僱中心依循〈職業介紹所實務守則〉之評估》，2018年。可於https://issuu.com/fradwuhk/docs/agents_of_change_report_v2_final_cn。

³⁵ 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》(Coming Clean: 香港外籍家庭傭工遭受強迫勞動以及強迫勞動目的的人口販運情況研究)，2016年3月。可於<https://www.justicecentre.org.hk/framework/uploads/2016/03/Coming-Clean-The-prevalence-of-forced-labour-and-human-trafficking-for-the-purpose-of-forced-labour-amongst-migrant-domestic-workers-in-Hong-Kong.pdf>。

4 當局為識別被販運者 所採取的措施

基於上述種種原因，被販運者可能不願意或無法向當局自我識別其受害人身份。有見及此，《行動計劃》囊括一系列措施，目的是在加快識別被販運來港的人士。香港特區政府證實《行動計劃》中的受害人識別機制「已於2019年全面落实」。²⁷

- 向各部門官員提供有關人口販運問題的培訓。2021年，已培訓1,700位公務人員（增自2020年的880位）；²⁸
- 委任相關執法部門的專責小組及聯絡人處理人口販運個案，包括在六個警區和勞工處勞資關係科各分處處理販運個案；
- 於2018年7月，識別人口販運受害人機制推展至全港24個警區；²⁹ 以及
- 把識別程序延至其他相關部門，包括入境處、勞工工作及海關。

4.1 難以透露自身遭遇

為確定人口販運受害者身份而設的審核程序分兩個階段：初步審核及全面查問。初步審核會由執法人員進行，以七個問題評估有關人士有否任何販運指標，例如身份證明文件被他人保管、薪金被扣減、受訪者被逼工作、曾被毆打或被威脅，或在聯絡親友方面被限制等。

²⁷ 政府新聞網：〈美販運人口報告對香港評估不公〉，2022年7月20日。https://www.news.gov.hk/chi/2022/07/20220720/20220720_105112_663.html。

²⁸ 同註19。

²⁹ 同註18。

另外，一位受訪者亦提到，因為羞恥感，她們不會完全透露經歷過的事。

警察建議我，告訴我如果感到有任何恐懼，可以跟他們分享。他們說：警察是你的朋友。但因為羞恥感，我覺得當時對著警員，沒有如我今天對你一樣坦白。Gloria

3.5 對販運者的恐懼

對販運者的恐懼，以及他們及其家人可能要承擔的後果，都令一些受訪者對求助卻步。

不，時至今日，我仍感到害怕。我去到哪裡都會環顧四周。我不會邀請任何人到我家，甚至不告訴他人我住在哪裡。

……我感到害怕，這是為何我沒有提出訴訟的原因。Tisha

我完全沒有談論我被販運的經歷。我想過，但其他女孩告訴我這並不明智……如果我作出舉報，就不能工作，債務便無法償還，我的家人也會繼續身處險境，我們會失去土地。求助於香港當局並不能解決任何問題。Afya

此外，勞工處亦設有專題網站和24小時熱線，提供七種語言的傳譯服務，以解答移民家務工可能會遇到的問題，協助他們作出投訴。²⁵自熱線投入服務以來，接到的電話數目由2019年的3,836個增加至2021年的12,287個。²⁶

儘管採取了這些措施，仍有多位受訪者表示，因為他們不懂如何落案，所以沒有聯絡當局，舉報受剝削的情況。

我不知道如何作出申訴，不知道我可以向誰求助，亦不知道有沒有人會相信我。那無力感強烈得讓我想過跳樓。

Dolores

最大的困難是我真的很害怕，不知道往哪裡求助。 Maria

我對香港的司法制度一無所知。 Kayra

有些人口販運受害者因為沒有司法程序的正確資訊，而沒有作出投訴。例如，大多數倖存者不知道可以要求遙距聆訊，讓他們在無法留港的情況下都能作出追討。其他則以為要有身份證明文件才可以作出投訴。

自新冠肺炎疫情爆發以來，香港政府部門對遙距聆訊的思維方式一直在變。由於旅遊和檢疫要求不斷更改，法院更願意向身處海外的訴訟人批准該等申請。然而，跨境訴訟的障礙可能早在提出申索之前就已經開始——前線官員可能會以家務工不在港為由而隨時拒絕接案……無論如何，選擇跨境訴訟的倖存者人數有限，因為他們可能沒有收到相關資訊，不知道有這個選擇。 Justice Without Borders

他們（移民家務工）當中有些人的護照被僱主沒收了，也有些誤以為沒有護照就不能報案。家務工進步勞工工會

3.4 難以透露自身遭遇

幾位受訪者指出，向警方求助並解釋自身遭遇，對他們來說非常困難，因為這使他們重溫受剝削和虐待的創傷經歷。

……我幾乎每天都在惶恐和淚水中醒來……回憶和談論那些經歷仍然對我的身心有影響，所以我不想再提起它。

Chauri

我沒有告訴他們有關性虐待的事情，因為我不想這樣做。我只想感到安全。 Tisha

警察要求我展示如何受虐。我感到難以啟齒。……我不想回想那些經歷。 Kayra

²⁵ 香港特區政府新聞公報：〈外籍家庭傭工24小時電話熱線投入服務〉，2018年12月19日。可見於<https://www.info.gov.hk/gia/general/201812/19/P2018121700557.htm?fontSize=1>。

²⁶ 勞工處未就熱線的來電性質作統計。香港特區政府勞工處於2023年1月9日向STOP提供的資料。

對於手持簽證並可轉換工作的人來說，他們也會擔心因曾斷約、仍有法律訴訟，或曾上庭控告前僱主，而不被聘請。

若合約終止，找另一份工作就極為困難。問題不只在於要找工作機會，也在於擔心新僱主會因這過去而對我們有偏見。因為留在家鄉的丈夫不能工作，我必須在經濟上支持他和三個孩子。 Esme

害怕受罰和無法繼續在香港工作，很多被販運者寧願啞忍，也不願舉報他們所受到的剝削。

……不值得冒險。他們不肯定站出來的話，最終會否是自己身陷囹圄，而不是販運他們的人。天國兒女不是他們不想求助，而是因為承擔不起求助的後果。家務工進步勞工工會

3.2 對當局缺乏信心

多位受訪者表示，他們因為不信任香港當局願意或能夠解決問題，所以沒有舉報販運者。

我沒有信心他們會幫助我……從一開始，我就不對香港政府抱有希望。 Patricia

香港特區政府公開聲稱，人口販運在香港「不是普遍存在的問題」，這說法有可能減低了被販運者對制度的信心，他們或認為，即使求助於當局，當局也不會相信他們。

對香港執法人員的不信任，對一些個案來說，是源自他們在自己國家對警察的經驗。

在非洲，如果我們向警察求助，他們會對你為所欲為。 Sandra

其他受訪者認為不必向警方舉報販運者，是因為他們不大可能會被捕或受罰。

我的介紹人——即在我國家的工作中介，和接待我的媽媽桑（性工作經理人）都不是完全以香港為基地。……我想我即使舉報了她，在當局開始調查之前，她也可以回到自己國家，輕鬆逃脫。根本起不了什麼作用。 Gloria

3.3 不清楚尋求法律補救的方法

政府的《行動計劃》旨在提高移民工對法律權利及求助渠道的認識。這些措施包括：向公眾發放移民家務工權益和僱主責任的資料、以菲律賓語和印尼語刊登廣告、與菲律賓及印尼領事館合作向新來港家務工提供簡介，以及以二種語言印製標準僱傭合約。

我在不知情下犯法受罰。他們（警察）應該要願意聽我的故事，……現在我不能離開自己的國家到外地工作……這是支撐我和我家人的唯一途徑……我想回到香港或到其他國家工作。我希望能夠賺錢養活家人。 Ravina

原則上，若犯罪行為是被販運過程的一部份，香港有法例規定不對此作出檢控，但實際上，這情況很少發生。於2021年，僅有兩名人士因被販運而獲豁免起訴。²³

STOP的一名受助者曾就遭到販運、被逼賣淫，而向警方求助，但受害人卻遭到警誡，指責淫在香港是違法行為，而她有被定罪的風險。天國兒女留意到，有被販運者因為違反了入境條例（如逾期居留）而受罰。另外，家務工進步勞工工會亦稱，有移民家務工因為被逼在僱傭合約訂定的地點外工作而被捕。

對剝削的僱主提出質疑，同樣會為移民工帶來負面的法律後果。例如，家務工進步勞工工會提到一宗案件，一名移民家務工的僱主在沒有通知家務工的情況下，向入境處職員稱家務工的合約已被終止。這名家務工在不知情下逾期居留超過14天（1987年頒佈的新逗留條件，或「兩星期規定」），因而被罰款港幣230元，並被送回菲律賓。

如移民工嘗試透過司法制度結束受虐情況，他們的僱傭合約通常會被終止，有機會被反申索，其中一位受訪者就有這樣的經歷。

僱主入稟勞資審裁處，說我違約，反向我索償。 Kayra

沒有向警方或其他官員求助的受訪者強調，如果他們和其他被販運者有信心相信自己在求助時會獲得支持，而不是被當局懲罰，他們會更願意站出來舉報施虐者。

應該要有措施，容讓被販運者向當局講述事件時得到保護及感到安全。受害者不應為被逼做的事而受罰。 Atiya

當應對犯了法的被販運者時，應以開放的態度、不偏不倚地聆聽我們。……如果他們（執法人員）夠友善和願意提供協助，受害者就會安心求助。即使我做了錯事，也會願意挺身舉報。 Ravina

妨礙移民工舉報剝削和虐待的另一個問題，是對於無法繼續工作的恐懼，因為舉報及指證販運者的人沒有工作權利，他們不能同時供應家人所需。

若移民家務工被提早解約，而有證據顯示他們有被虐待或剝削，他們仍然可以申請更換僱主。雖然如此，根據香港特區政府勞工處提供的資料顯示，很少人受惠於這項規例。於2020年1月至2020年12月期間，只有38名移民家務工因受虐或剝削而獲批准更換僱主。²⁴

²³ 同註19。
²⁴ 香港特區政府勞工處於2023年1月9日回STOP提供的資料。

3 被販運者不願意 向當局舉證的原因

本研究的受訪者中，接近三分之二的被販運者（七名受訪者）未曾向香港當局舉報剝削他們的人，或在接觸官員後，沒有向官員透露他們的案件可能涉及人口販運。

以下是受訪者不願意就其販運經歷向當局透露或全面與當局合作的主要原因：²²

3.1 害怕被當局懲罰

受訪者不向警方或其他官員求助，最常見的原因是由於他們害怕會面臨法律懲處，和不能繼續在香港工作。

即使遇到麻煩，我也從不求助（不論醫院或警方），因為我本來就不該工作……如果我去醫院，那些人會問我一大堆問題，所以我不去醫院治理傷口。我會去買藥自行治理傷口。 Patricia

這些擔心是合理的。因為香港當局經常遣返、逮捕和起訴違法者，當中包括被強逼從事性工作的人、擔任毒驟或違反入境條件的人。其中一位受訪者就有這樣的經歷，因而留下犯罪紀錄，令她無法在外地工作，也無法支持她的家人。

²² 留意大多數倖存者提供多於一個原因來解釋為甚麼他們不向當局舉證。

訪問問題（請見附錄C）針對受訪者接觸香港政府部門和更廣泛的司法制度的經驗。有些問題則從受訪者角度，探討對他們來說怎樣才是成功的司法程序面貌，以及了解如何能更好地支援他們的復元，幫助他們走出被販運的經歷。

為保護受訪者身份，他們的名字在本報告中都使用化名。

本研究亦與四個公民社會組織的代表進行訪問。這些組織為在港的被販運者提供服務。訪問收集了這些組織對《行動計劃》實施成效的見解，以及他們對司法制度的效率的看法。這些非政府組織包括：天國兒女（Sons and Daughters）、香港家務工進步勞工工會（PLU）、家傭匡扶中心（HELP for Domestic Workers），以及 Justice Without Borders。

2022年10月至12月期間進行的資料搜集會用作補充研究訪問收集得來的資訊。

研究結果分成四大章節，包括：被販運者不願意向當局舉證的原因；香港當局為識別被販運者所採取的措施；被販運者與當局接觸的經驗；以及改善司法制度的措施。

2 研究方法

STOP 對曾在香港經歷人口販運的移民工進行了質性的半結構性訪問。於 2022 年 10 月 23 日至 12 月 10 日期間，共有二位來自海外的人口販運倖存者接受訪問，作為研究的一部份。

STOP 向潛在的受訪者進行了篩查，以確保他們是：(1) 年滿 18 歲；(2) 清晰符合曾被販運和遭受勞動和／或性剝削的指標；²⁰ 及 (3) 在 2018 年 3 月頒佈《行動計劃》後，向當局、本國領事或民間組織求助。²¹

共有五名受訪者曾遭到性販運剝削，另外六名則涉及勞動剝削，從事家務工作。被性剝削的受害人主要來自烏干達，一位來自肯亞，另一位則不願透露其國籍。被販運及勞動剝削的受訪者則來自斯里蘭卡（四人）和菲律賓（二人）。所有受訪的倖存者皆是女性，年齡介乎 29 至 48 歲之間。

²⁰ 所有接受本研究訪問的倖存者至少符合以下兩項人口販運指標：在求職時在工作條件上受欺騙；不容許離職；被拐帶或綁架；遭短付／遲付／拖欠工資；遭到罰款或抵償勞動；惡劣的工作條件（如休息時間不足）；旅遊／身份證明文件被沒收；遭恐嚇／實質地遭受身體／性／言語暴力；限制行動自由；被威脅／實質地向當局告發；以及被威脅／實質地剝奪食物／住所 其他必需品。本研究採用的人口販運指標，與香港當局及國際勞工組織所用的一致。參見香港特區政府保安局：〈販運人口〉。可見於 https://www.jlo.org/womensps/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf

²¹ 參與本研究的受訪者並不需要先經過香港特區政府和／或聯合國移民署 (IOM) 進行的人口販運識別程序來參與本研究。若受訪者沒被識別為人口販運受害者，只要符合其他研究條件（包括顯示最少兩項被販運的指標），則不會被排除在外。

1 研究背景 及目的

聽我說，因為沒有人比我們更清楚。沒有人比經歷過販運的人更了解。 Afya

香港特別行政區（「香港特區」）政府於2018年3月成立了一個跨部門的高層次督導委員會，就打擊人口販運方面作出策略性指導。督導委員會的職責在於推行《香港打擊販運人口及加強保障外籍家庭傭工行動計劃》（以下簡稱《行動計劃》）。¹⁸

《行動計劃》包含了一系列措施，涵蓋香港特區政府打擊人口販運的策略，包括預防工作、保護受害者、檢控販運者，和建立合作伙伴關係。於2020及2021年，特區政府分別撥款港幣\$6223萬年度預算，以確保《行動計劃》得以有效推行。

然而，美國國務院出版的《販運人口報告》於2022年已連續第三年將香港列入第二級別監察名單，指出香港「雖未完全符合消除人口販運的最低標準，但正盡力達標」。¹⁹

本研究旨在探討《行動計劃》的實施成效，尤其是檢討該計劃是否有助被販運者在香港尋求司法公義。本報告深入研究被販運者透過司法制度尋求公義的經驗，並探討如何改善現有程序，以更切合倖存者的需要。

¹⁸ 香港特區政府保安局：《香港打擊販運人口及加強保障外籍家庭傭工行動計劃》，2018年3月。可見於 <https://www.sb.gov.hk/chi/special/pdfs/Action%20Plan%20to%20Tackle%20TIP%20and%20to%20Protect%20DHS.pdf>。

¹⁹ 美國國務院：《Trafficking in persons report - Hong Kong: Tier 2 watch list》2022年美國販運人口報告 - 香港：第二級別監察名單，2022年7月。可見於 <https://www.state.gov/wp-content/uploads/2022/04/337308-2022-TIP-REPORT-inaccessible.pdf>。

- 確保所有傳譯員都符合資格，能夠專業地履行職責，並有足夠傳譯員，以便及時與求助人進行會面。
- 制訂能加快處理人口販運案件的機制，包括改善部門之間的協調，以免被販運者要向不同部門多次報案，並確保指定反人口販運聯絡人能夠在所有相關政府部門充分發揮職能。

受害者保護及支援

- 人口販運受害者不應因為向當局舉證而受罰，或因販運期間被迫參與違法行為而受到制裁。
- 人口販運受害者應獲發臨時工作簽證及足夠的福利援助，以便尋求法律補償。
- 充分向所有懷疑被販運者告知相關法律程序（例如可以申請遙距聆訊）、他們的權利，及相關援助轉介。案件當事人應能定期得知案件的最新發展。所有裁決都應以書面溝通，並向當事人作充分解釋。
- 支持人口販運受害者獲得其他補償形式（例如協助申請工作簽證、幫助重新投入社會、提供教育及培訓、醫療保健及／或輔導，以及朋輩支援小組）。

預防

- 廢除「兩星期規定」及對移民家務工與僱主同住的要求，並停止處罰「跳工」，以減少移民家務工易被販運的弱勢處境。
- 進行教育工作以提高意識，例如提醒移民工有關人口販運的風險，以及他們可去哪裡求助等。

伙伴合作

- 加強與公民社會合作，設立轉介機制，商討如何改善政策及程序，以更有效打擊人口販運和更好地支援受害人。

首次聆訊本應該在2020年12月進行，但被推遲至2021年3月，之後再延至6月。然後，他們告訴我，直到2022年才會有機會進行聆訊。我本來在訴訟上佔上風，但我不能繼續下去，因為我要把我的孩子放在第一位。

Sandra

為正在進行訴訟的人批出工作簽證

受訪者一直強調，訴訟期間能夠支持自己生活並保持經濟獨立是至關重要的，讓他們可以維持自己和家人的生活，亦有助他們復元。

我被困在香港超過三年，只為等候（我案件的）裁決……在這期間，即使我完全有能力，卻不被允許工作，這大大損害了我的精神健康。我掙扎求生……精神深受困擾，後來還得須接受抑鬱症的治療。我看不到自己的狀況跟囚犯有甚麼分別。Ravima

在香港不能夠工作擊垮了我。Sandra

其他補償和支援形式

尋求公義應可助受害人放下創傷。在這種背景下，若於香港及其本國能夠提供長期支援服務，成為復元過程的一部份，可以令受害人得益。這些服務應包括重新投入社會的支援、教育、培訓、持續醫療保健，及為有需要者提供輔導服務。

數名受訪者強調，與其他人口販運倖存者連繫，對於自身的復元有重要的幫助，並且應向所有被販運者開放提供朋輩支援小組。

……能夠與其他有類似經歷的倖存者傾談，對我的復元有莫大幫助。……有人陪我說說話，讓我知道無論我的案件勝訴或敗訴，都有人支持自己。Maria

復元過程的另一部份還可以包括提供長期工作簽證予已識別的人口販運受害者，這會鼓勵被剝削者向當局求助，有助他們重建人生。

給香港特區政府的建議

識別受害者、調查、執法及檢控

- 加強培訓及監督機制，以提升識別被販運者和調查其案件的專業水平。
- 確保所有易受剝削的群體均獲審核，並加強審核機制，以助識別受害人（例如確保審核的目的有向易受剝削人士清楚解釋，讓被審核者有機會釐清問題）。
- 簽訂《聯合國打擊跨國有組織犯罪公約關於預防、禁止和懲治販運人口特別是婦女和兒童的補充議定書》（《巴勒莫議定書》），為刑事化所有人口販運形式而立法，包括境內販運及以勞動剝削為目的的販運行為，對可能涉及人口販運的個人及職業介紹所作主動調查。

受訪者亦認為，仍須採取更多措施，讓僱主知悉他們對僱員的法律責任，及提醒移民工注意人口販運的風險，以及可以向誰求助。

我國的人們需要更加認識我所遭遇的那類販運……以免墮入類似的陷阱。 Ravima

可惜的是，有兩項關鍵、可以有效防止移民家務工被販運和剝削的政策改變，並沒有在《行動計劃》提及：取消移民家務工與僱主強制同住的政策、「兩星期規定」及政府針對「跳工」的政策行動。強制留宿規定所有移民家務工必須「在僱主住址工作及居住」，令有剝削行為的僱主更易於控制和剝削家務工。如果家務工對惡劣工作環境提出投訴，他們的合約或會被終止，同時失去工作和住處，也無法還債和支持他們家人的生活。

此外，如果僱傭合約終止，根據「兩星期規定」，移民家務工必須在兩星期內找到新工作或離開香港。在這麼短的時間內找到新工作是極為困難的，尤其當他們與前僱主仍在訴訟當中。外籍家務工若決定早於完約前離職，有被視為「跳工」的風險，有機會令入境處以此為由拒絕其以後來港的工作簽證申請，這些限制危害到工人自由離職的權利，逼使工人繼續忍受苛待。香港亞洲家務工工會聯會於2021年二月至2022年5月期間進行的調查發現，因為擔心被指控「跳工」而令將來工作簽證申請被拒，成為了移民家務工即使處於剝削處境，仍不敢斷約辭職的最主要原因。¹⁵

多年來，聯合國人權組織呼籲香港特區政府廢除移民家務工的「兩星期規定」及強制同住規定。最近，於2022年7月，聯國人權事務委員會再度指出，這些政策會：

置這些勞工於高風險中，提高他們受僱主及職業介紹所虐待和剝削的風險，並會令他們因為擔心失業和逼於離開香港，而不舉報剝削他們的工作及虐待。¹⁶

有效率地處理案件

當被販運者通過民事或刑事訴訟程序來尋求補償，過程可能歷時數年才能完成，而案件處理得越久，他們在香港的處境就越艱難。受訪者多次強調，長時間等候案件判決令他們經濟拮据，無以維生，精神也飽受折磨，使他們難以開展新生活。新冠肺炎疫情下法院更一度暫停運作，拖延判決時間。¹⁷對於一些被販運者來說，等待的過程就好比他們遭受的剝削一樣難熬。

因為沒有資源繼續追討，逼使很多被販運者銷案，或為能達致庭外和解而同意大幅度讓步。如此一來，延誤了的司法程序往往導致被販運者得到不公義的結果。香港特區政府應該採取更多措施，以加快調查和為販運案件結案。

¹⁵ 香港亞洲家務工工會聯會：〈外傭被指控「跳工」惡化剝削狀況，工會要求入境處停止歧視性政策〉，2022年8月7日。可見於 <https://www.facebook.com/HKFAADWU/posts/pfbid02Asv3QHb5865bUxskHTt6H7CwBgdtZ3UsQe6BPdodD8QbxyjKtHyBGQjNkxTNAMdt>。

¹⁶ 聯合國人權事務委員會：〈關於中國南海第四次定期報告的結論性意見〉，2022年7月20日。可見於 https://www.ohchr.org/hk/doc/cr/documents/policy_responsibilities/the_rights_of_the_individuals/CCPR_C_CHN-HKG_CO_4_49295_C.pdf。

¹⁷ 請參閱：香港特區政府新聞公報：〈三月十七日至四月十一日期間所有法律程序一般延期〉，2022年3月4日。可見於 <https://www.info.gov.hk/gia/general/202203/04/P2022030400480.htm?ontSize=1>。

縱使有少數涉及人口販運的個人或職業介紹所受到制裁，但數量未足以起阻嚇作用（例如被撤銷牌照的中介改名繼續營運，因販運人口作性剝削而被定罪的人士只被判處少於四個月的監禁）。¹¹

每年只有少量人口販運案件被成功定罪，有可能令人對司法制度失去信心。香港特區政府應採取行動來補救這種情況，包括：改善識別人口販運受害者及調查案件的程序、確保移民工不會因向當局舉證而受罰、讓受害者充分了解法律程序及他們的權利，以及提供實質援助予被販運者。

再者，實施全面的反人口販運法例亦有助確保更多販運者為其罪行負上刑責。雖然香港特區政府堅稱，現行法例已全面涵蓋並有效禁止《巴勒莫議定書》所界定的販運人口行為，¹²但這說法並不準確，因為香港現行的法律框架並沒有禁止和懲罰境內販運或販運人口進行勞動剝削。

欠缺全面的反人口販運法例限制了執法人員的行動選擇，推使他們聚焦於販運活動中可以以現時法例起訴的部份（例如協助非法入境或非法扣押他人旅行證件），而不是探究罪行及行為的模式是否可能已構成人口販運。

如上文所述，欠缺全面反人口販運法例通常導致販運者被控以較輕微的罪行和刑罰（如罰款、社會服務、短期監禁、不獲續牌等），但這並不足以反映罪行的嚴重性。

2022年4月，香港法院裁定，欠缺將所有販運形式定為刑事罪行的法例，會削弱政府打擊人口販運的工作，歸咎於「欠缺相關法例」，亦令警方未能查出移民家務工是否人口販運及／或強逼勞動的受害者。¹³

預防人口販運案件

幾位受訪者強調有必要改變政策，以防止日後再有其他人受到被販運或被剝削的傷害。

如果（販運我的人）因為對我做過的事而遭受懲罰，那當然很好。我不想入境處改善他們的工作？當然想。不過，提高其他倖存者和易受販運人士的警覺意識，改善給他們的保障，對我來說也是公義。 Gloria

《行動計劃》中大部份的預防措施都是針對提高防範人口販運的意識。然而，香港特區政府公開聲明無任何證據顯示人口販運「在港普遍或常見」¹⁴，這說法不但削弱打擊販運的工作，可能令一些執法人員誤認為人口販運不是個重要問題，不值得投放資源及時間。

¹¹ 同註2。

¹² 同註3。

¹³ 香港特區政府律政司：CB 訴警務處處長及律政司 [2022] HKCFI 1046，司法裁決摘要。可見於 https://www.doj.gov.hk/cr/notable_judgments/pdf/HCAL_466_21_HCAL_617_21c.pdf。

¹⁴ 同註3。

……（那些官員）並不關心我的生計，或者我會如何面對現時的處境。好像他們只願意知道我申訴的大概狀況，從來不管我的處境。Esme

根據《行動計劃》，在適當情況下，應向人口販運受害人提供及時援助（例如臨時住宿、醫療服務、心理支援等），但這種情況實際上很少發生。2021年，香港特區政府並沒有報告他們曾向任何人口販運受害者提供服務或轉介他們到所需服務。⁷

過半受訪者明確提到輔導對他們的復元十分重要，幫助他們走出剝削的陰霾，繼續生活。但是，在所有受訪者的個案中，這些輔導服務均由非政府組織提供，而都不是由政府官員轉介過去。

輔導幫助我看到自己不僅僅是個曾經歷性販運的人，我也可以是個有正常工作的人。Gloria

這個問題有可能是由於缺乏正式的轉介程序及清晰指引，令執法人員未能按指引，告知被販運者應有的權利和提供援助的機構。

改善司法制度的措施

使販運者為其罪行承擔責任

即使香港特區政府致力確保有效檢控販運者，亦有採取相應行動，但在2020年及2021年間，只有5人因涉及性或勞動剝削而被定罪。⁸

至於職業介紹所，在2020至2021年間，有16間因濫收費用、無牌經營或其他罪行而被檢控，另有14間被撤銷或拒絕續發牌照。⁹然而，香港亞洲家務工工會聯盟（FADWU）指出，約有150間已註冊的香港職業介紹所並未完全跟從《職業介紹所實務守則》（仍有例如濫收佣金、扣押家務工文件的違法行為）¹⁰，由此可見，這些執法行動遠遠追不上問題的規模。

⁷ 同註2。

⁸ 香港特區政府在回應美國國務院報告的聲明中指出當局於2021年拘捕了278名涉嫌與賣淫相關罪行人士。可是這些逮捕似乎與販運活動無關。請見註2及註4。相關個案沒有公開的定罪數字。同註2。

¹⁰ 香港亞洲家務工工會聯合會：《推動變革的中介：對香港傭僱中心依循〈職業介紹所實務守則〉之評估》，2018年。可見於https://issuu.com/fadwuhk/docs/agents_of_change_report_v2_final_cn。

(在落口供時)氣氛很凝重，我感到不適，呼吸困難，但他們不在乎……最後，我因血壓飆高而暈倒。我於凌晨一點被急送醫院，醫生建議我留院觀察。官員就叫我出院時打電話給他們。Ravina

少數受訪者亦指出，他們的傳譯員有水平欠佳，或舉止不當的情況，使他們難以傳達被販運的情況。

傳譯員叫我只管回答法官的問題。當我請求傳譯員解釋我如何被僱主強逼寫下終止合約通知書時，卻遭他拒絕。有好幾次傳譯員都沒有傳譯我所說的話。Dolores

另外，從受訪者的回應中，亦觀察到案件調查的程序上存在漏洞。警方沒有充分調查有關人口販運的證據，也往往忽略遭受到稍為不同脅逼形式的被販運者情況。

執法人員經常沒有採取適當步驟搜證。例如，少於一半的受訪者(四名倖存者)有被警員問到有沒有其他人同在受剝削的地點一起工作，從而錯失機會向其他證人問話以搜羅佐證。在受訪者提及的一宗案件中，更有警員漏記虐待事件的物證，並遺失了提供給他們的額外證據：

……被襲擊的瘀傷和指甲痕跡清晰可見，但警察沒有拍下任何照片，而那些痕跡隨著時間過去而變淡，我再沒有證據證明我在工作期間身體遭到傷害。Chaturi

執法部門之間應在查問被販運者和處理案件方面進行協調，但多位受訪者都須向不同政府部門多次報案(例如向勞工處申請索償、向警方舉報襲擊事件，以及向入境處辦理簽證延期)。

由於許多被販運者患上創傷後遺症，三番四次被要求憶述受虐經歷可能會對他們的精神健康造成負面影響。另外，創傷會導致回憶事件的能力受損，以致多份口供之間可能出現不一致。這些不一致會令被販運者的誠信受損，常常令其案件被駁回。以上種種情形說明了為甚麼甚少被販運者被識別出來，並且只有少數販運者被起訴。

相關資訊提供不足

所有受訪者無一獲告知有保護證人計劃，亦只有大約四分之一(三名倖存者)表示，官員曾向他們完整地解釋法律程序。近三分之二的受訪者(七名倖存者)則對沒有獲通知任何有關案件的進展表示不滿。

……最大的壓力來自於不知道接下來會發生甚麼事……他們(執法人員)從不會告訴我們案件會在甚麼日子上庭……下一步是甚麼，或者他們是否仍在調查我的案件。Patricia

同樣值得關注的是，沒有受訪者被告知哪些非政府組織可提供協助，只有一位女士說她獲得福利援助的相關資訊。提供這些資訊是幫助被販運者進行法律補償的重要部份，因為大多數人在案件調查期間都不准工作，令他們無法支持自己生活。

儘管被審核人數有所增加（2021年達7,678人），這數字仍只代表一小撮香港特區政府認為較易被販運、應該接受審核的人。再者，即使進行了審核，人口販運受害人依然鮮有被識別。香港官員於2020年及2021年一共進行了14,590次初步審核，但只識別到四名被販運者。⁴

香港特區政府認為，這是因為人口販運「在香港從來不是普遍存在的問題」。⁵不過，有強而有力的證據一致顯示，有不少人被販運來港並遭受剝削。

近期研究顯示，香港每六名移民家務工中，就有一名是勞動剝削的受害者。⁶即使只有十分之一個案是以剝削的目的而受騙及／或被脅逼來港，便已牽涉大約9,000名人口販運受害者，當中尚未包括因性剝削而被販運和在家務工作以外被勞動剝削的人。

是次訪問的三位受訪者中，只有三位確認自己曾接受審核。然而，有超過一半受訪者過去曾就他們所面臨的問題向當局報案，他們全部來自當局列出的易受剝削群體，並有至少符合一項人口販運指標（例如他們的身份證明文件被沒收，或者受僱主恐嚇），理應接受人口販運受害人識別的全面查問。

他們沒有問及任何有關販運人口審核指標的問題，亦從沒告訴我是否被識別為被販運者。 Patricia

上述的列舉均明顯指出，識別機制經常沒有在應啟動時啟動，而進行時也無法有效識別被販運者。

部份官員的專業水平有待提升

受訪者對於接觸執法人員的經驗感受不一，這取決於處理他們案件的個別人員。有部分受訪者覺得執法人員表現尊重及了解他們的需要，但亦有近三分之二的受訪者（七名倖存者）表示，他們所遇過的執法人員態度惡劣，有欠專業，又或對他們經歷過的困難或創傷經歷缺乏敏感度。

我與警察會面時沒有女警在場，只有我和三個男人（兩名男警員及一位男傳譯員）。即使他們知道案件與性工作相關，調查是關於以性剝削為目的的人口販運。……警察根本沒有在聽。……會面只有20分鐘。之後我遭恐嚇會被遞解出境，我就銷案了。 Sandra

⁴ 政府新聞網：〈美販運人口報告對香港評估不公〉，2022年7月20日。 https://www.news.gov.hk/chi/2022/07/20220720/20220720_105112_663.html。

⁵ 同註4。

⁶ 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》(Coming clean: 香港外籍家庭傭工遭強迫勞動以及強迫勞動為目的的人口販運普遍程度)，2016年3月。可見於 <https://www.justicecentre.org.hk/frame/work/uploads/2016/03/Coming-Clean-The-prevalence-of-forced-labour-and-human-trafficking-for-the-purpose-of-forced-labour-amongst-migrant-domestic-workers-in-Hong-Kong.pdf>

這些擔心是合理的，因為香港當局經常遣返、逮捕和起訴違法者（例如從事性工作、擔任毒騾，或違反入境條件），即使當中有些人是在販運者的脅逼下犯案。於2021年，只有兩名人士因為被販運而獲豁免檢控。²

受訪者表示對香港當局缺乏信心，認為當局不能解決他們所面對的問題。有些受訪者則認為警方不願意調查，以及販運者不大可能被捕。

**我沒有信心他們（警方）會幫助我……
從一開始，我就不對香港政府抱有希望。** Patricia

有些受訪者不清楚如何報案，或者不願意談論他們遭遇的創傷經歷，以致他們無法向當局舉報販運者。

我不知道如何作出申訴，不知道我可以向誰求助，亦不知道有沒有人會相信我。那無力感強烈得讓我想過跳樓。 Dolores

……我幾乎每天都在惶恐和淚水中醒來……回憶和談論那些經歷仍然對我的身心有影響，所以我不想再提起它。 Chaturi

對販運者的恐懼，以及他們和其家人可能要承擔的後果，都令一些受訪者對求助卻步。

我感到害怕，這就是為何我沒有提出訴訟的原因。 Tisha

上述問題交織下，大多數受訪者都因此而陷入啞忍剝削而不作舉報的困境。

如果我作出舉報，就不能工作，債務便無法償還，我的家人也會繼續身處險境，我們會失去土地。求助於香港當局並不能解決任何問題。 Atiya

受害人識別程序無法有效運作

了解到被販運者未必願意或無法向當局自行識別其受害人身份，《行動計劃》把識別人口販運受害人的審核機制擴展至所有警區及其他相關部門。³該計劃亦擴大應予審核的易受剝削人士組別，包括：移民家務工、性工作者、非法移民，以及當局注意到的其他內地及外籍勞工。

² 美國國務院：《Trafficking in Persons Report - Hong Kong: Tier 2 Watch List》(2022年美國販運人口報告 - 香港：第二級別監察名單)，2022年7月，<https://www.state.gov/wp-content/uploads/2022/04/337308-2022-TIP-REPORT-inaccessible.pdf>。

³ 香港特區政府保安處：〈販運人口〉。回訪於 <https://www.sb.gov.hk/chil/special/bound/fimm.html> (擷取於2022年12月1日)。

報告撮要

本報告研究《香港打擊販運人口及加強保障外籍家庭傭工行動計劃》（下稱《行動計劃》）¹的實施成效，特別是該行動計劃是否有助被販運者在香港尋求公義。

為蒐集研究資料，希望枝子停止人口販運項目（STOP）向三位曾在香港經歷性販運或勞動販運的移民工進行了深入訪問，亦與三個支援被販運者的公民社會組織進行訪問，探討被販運者透過司法制度尋求公義的經驗，以及現有程序可作出的改善，以更滿足倖存者的需要。

研究結果

被販運者不願意向當局舉證的原因

接近三分之二受訪的被販運者（七名倖存者）未曾向香港當局舉報剝削他們的人，或者在接觸政府部門時，沒有向官員透露他們個案的相關資料。受訪者不向警方或其他官員求助的最常見原因，是他們害怕被當局懲罰，及不能繼續在香港工作。

¹ 香港特區政府保安局：《香港打擊販運人口及加強保障外籍家庭傭工行動計劃》2018年3月。可見於 <https://www.sb.gov.hk/chi/special/pdfs/Action%20Plan%20to%20Tackle%20TIP%20and%20io%20Protection%20FDHs.pdf>。



- 預防人口販運案件



- 為進行訴訟的人批出工作簽證



- 促進朋輩支援



- 使販運者為其罪行承擔責任



- 及時並有效率地處理案件



- 提高防範販運的意識

通往公義的建議路徑



尋求公義的路障



對販運者的檢控

- 欠缺全面專門的反人口販運法例
- 缺乏向受害人定期更新案件進程，延誤調查及司法程序
- 案件搜證困難
- 即時傳譯質素參差
- 受害人在等候案件處理時被限制工作權利
- 未能充份提供有關福利服務及司法程序的資訊
- 在處理販運個案上缺乏跨部門協調

保護受害人服務

- 官員對人口販運的專業水平和知識參差不齊
- 受害人識別程序有欠透明，阻礙受害人尋求保護
- 欠缺正式的個案轉介機制

受害人識別

- 對易受剝削群體的審核不足
- 被販運者識別機制有欠效率

尋求協助

- 懼怕生計不保
- 懼怕被當局懲處
- 對當局的信心不足
- 不懂得如何尋求補助
- 對自身經歷難於啟齒
- 懼怕遭販運者報復

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請見英文版報告第 106-111 頁

關於機構

希望枝子是一間香港註冊慈善機構，創立於 2012 年。旗下的「停止人口販運」(STOP) 項目以終止出現在香港的人口販運情況為使命，為被剝削群體提供支援、為弱勢群體提供教育，以及透過政策研究提升社會回應人口販運的能力。

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- 家傭匡扶中心
- Justice Without Borders
- 香港家務工進步勞工工會
- Rights Exposure
- 天國兒女
- Piliaka Venkata Kamala Priyadarsini
- 謝慧心

窮途義路

被販運移民工在
香港尋求公義的經驗

希望枝子「停止人口販運」項目
2023年5月

窮途義路

被販運移民工在
香港尋求公義的經驗



STOP.

STOP TRAFFICKING OF PEOPLE

