

Branches of Hope – STOP Welcomes the Latest Decision of the Court of First Instance’s Judgement of the CB Case

(Hong Kong, 29 April 2022) Stop Trafficking of People (STOP), an initiative under Branches of Hope, welcomes the latest decision of the Court of First Instance (CFI) in *CB v Commissioner of Police & Secretary for Justice* [2022] HKCFI 1046 (hereinafter, “**the CB case**”).

The High Court has ruled that authorities have not fulfilled its constitutional duty to provide practical and effective protection to victims of forced labour under Article 4 of Cap 383 Hong Kong Bill of Rights Ordinance in the case of CB; and has quashed and remitted the Commissioner of Police’s decision to not investigate the claimant’s case under trafficking in persons (TIP) and forced labour for renewed consideration. This landmark judgement is a heartening outcome for human trafficking victims in Hong Kong and local organizations that support the cause. It also sets the stage for reforms in TIP laws and policies in Hong Kong.

Between 2018-2019, CB was employed to work as a migrant domestic worker (MDW) in Hong Kong by Z. She was routinely assaulted and exploited sexually by Z, her former employer, for six months before she managed to escape and seek help. In June 2020, Z was finally convicted and jailed for indecent assault for 30 months. Despite overwhelming evidence pointing to the possible existence of a forced labour case, the Police did not recognize CB as a victim of TIP or forced labour, and failed to satisfactorily explain the reasons for CB’s negative identification in the TIP screening. Accordingly, they also failed to thoroughly investigate her case under TIP or forced labour.

Enact a comprehensive anti-human trafficking law

As stated in the judgement, there is a causal link between the Police’s inadequate investigation into the components of TIP or forced labour in the case of CB, and Hong Kong’s absence of a specific offence that criminalises all forms of exploitation under its current legal framework. The Court also determines that forced labour is a separate, additional dimension to the criminal offence of indecent assault, which goes to demonstrate how gravely lacking the existing “patchwork of offences” approach is, as it leaves the prosecutor with no choice but to pursue a lesser charge that cannot adequately reflect the criminality of the alleged conducts of TIP or forced labour. STOP, a frontline anti-human trafficking program of the NGO Branches of Hope in Hong Kong, has handled plenty of cases with multiple “possible” forced labour indicators present, where survivor reports and complaints of TIP were frequently neglected or cold shouldered by various government departments.

It was also held that the bespoke legislation for forced labour should not be narrowly restricted to the context of FDH employment. We echo the Court’s view that only with a comprehensive anti-human trafficking law in place, might law enforcement agencies face reports of forced labour squarely, and in

turn conduct effective TIP investigations. We hope the Government will safeguard the right to freedom from slavery of residents and migrants in Hong Kong, through enacting a specific law against TIP that is in line with the Palermo Protocol, and which comprehensively criminalises all forms of slavery, for instance, cybersex trafficking, forced marriage and forced criminality etc.

Implement an effective victim identification mechanism

The Court found that the Officer-in-charge of the CB case had fallen short in deciding against CB's TIP and forced labour victim identification, as well as that the Police's oversight to produce any written record of the screening results, pointed to a systemic failure in Hong Kong's anti-trafficking mechanism. Based on our first-hand observation, CB's TIP screening experience very much aligns with that of our clients', where the negative result of their TIP screening was verbally notified, with no written record of the screening analysis and conclusion ever made available, let alone the option to appeal. The decision of the CB case once again affirms the need for law enforcement agencies to review and modify its existing victim identification mechanism, to strengthen frontline officers' knowledge and skills in recognising the signs of TIP and forced labour, achieve effective identification, and provide protection as suitable.

The CB case is a significant victory for trafficking survivors in Hong Kong and organisations involved in the anti-human trafficking movement. Yet, lest we forget this is not the end of CB and other TIP survivor's uphill battle in seeking justice and recovery, but merely the beginning. Justice is not served until their perpetrators are convicted with the appropriate charge(s) and fairly penalised; and not until victims and vulnerable individuals are duly identified, sufficiently protected and redressed, and treated with dignity. STOP vows to continue to walk alongside victims of exploitation and human trafficking, and call on the Government to take immediate actions to establish a bespoke human trafficking legislation, and enhance its victim identification mechanism as well as protection policies to better respond to the needs of survivors of TIP.

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Helpful links

Link to the CFI Judgement (English Only):

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=143688&QS=%28%5B2022%5D%7CHKCFI%7C1046%29&TP=JU

Link to the Summary of Judicial Decision (English Only):

https://www.doj.gov.hk/en/notable_judgments/pdf/HCAL_466_21_HCAL_617_21.pdf