

Centre for Comparative and Public Law
Round Table on Trafficking
28 February 2001

Introduction

1. The Centre for Comparative and Public Law hosted a *Round Table on Trafficking of Women into Hong Kong for the Purpose of Prostitution* on 28 February 2001, in the setting of the library of the Centre for Asia Studies. We would like to thank everyone who attended for sharing their views and experiences so openly. The event was very successful, fostering links between different groups and individuals working in the area, and providing impetus for further research and action, including the setting up of a working group to develop strategies to help protect and assist women who have been trafficked, and to press for the investigation and punishment of those who have trafficked them.

2. Some 35 participants attended from a wide range of backgrounds, including representatives from the Home Affairs Bureau, the Department of Justice, the Philippine and Thai consulates, the Asian Human Rights Commission, Action for Reach Out, Oxfam and Human Rights in China, colleagues from a number of faculties and departments at Hong Kong University and Lingnan University, and others with an interest in the issue.

3. The Round Table started with a short presentation by Robyn Emerton on the law and practice in Hong Kong and recent developments in the international arena, in particular the new United Nations Convention against Transnational Organised Crime and its Protocol on Trafficking, which opened for signature on 20 December 2000 (noting that the PRC has signed the Convention, but not the Protocol). Robyn then presented a list of *Initial Recommendations* in relation to further research needs and policy needs, based on her preliminary research findings (as detailed in an *Occasional Paper on Trafficking of Women into Hong Kong for the purposes of Prostitution: Preliminary Research Findings*, available on the website of the CCPL at <http://www.hku.hk/ccpl>). These Initial Recommendations are attached as an Appendix to this paper.

4. Carole Petersen then chaired the open discussion, during which participants shared their own experiences and thoughts on the issue of trafficking, and also on related issues, such as the issue of sex work generally in Hong Kong. Areas which were covered are summarized below.

Amendment of Hong Kong Legislation

5. There was some discussion of the meaning of trafficking. The general feeling was that a good starting point would be for the offence of trafficking in section 129 of the Hong Kong Crimes Ordinance to be brought into line with the more modern understanding of trafficking, as reflected in the definition of trafficking used in the new UN Protocol on Trafficking.

6. Briefly, section 129 of the Crimes Ordinance limits the concept of trafficking to trafficking for the purposes of prostitution, and does not apply to trafficking for other purposes. It also defined trafficking very broadly, covering situations where women consented to their situation, as well as situations where they did not. There was a general consensus that it would be better to focus the offence on non-consensual situations to best advance the human rights of women.

7. In comparison, the UN Protocol on Trafficking defines trafficking more narrowly, as a situation where the recruitment, transportation, harbouring or receipt of persons involves force, coercion, deception or abuse of power for the purpose of exploitation (which is defined to include prostitution, but is not limited to prostitution). Further details on the UN Convention and the Protocol can be found at: <http://www.odccp.org/paerlmo/theconvention.html>.

8. Some of the weaknesses of the UN Protocol were also discussed, in particular the fact that it had not been drafted in a human rights context, and that the provisions relating to protection and assistance of women were discretionary, unlike the provisions relating to law enforcement in the Convention itself, which were mandatory. Further, the UN Protocol only provides for situations in which women have agreed to give evidence for the prosecution (and as the consulates later pointed out, most women who are victims of trafficking would rather be repatriated as soon as possible than assist in the prosecution of their trafficker). For further discussion of the weaknesses of the Protocol, see the

statement by the Global Alliance Against Traffic in Women at:
<http://www.inet.co.th/org.gaatw/SolidatriyAction/HRSLetter.htm>.

Need for further research of situation in Hong Kong

9. It was understood to be the case that many of the Mainland women who are charged and imprisoned for breach of condition of stay for working as a prostitute claim that they had been forced into working in prostitution, having been offered work in karaoke bars or as waitresses, but that in most cases, they had not been believed by the police. There was a concern that Mainland women had no consulate to approach for assistance as had nationals of other countries.

10. This led to a discussion of the proposal in the *Initial Recommendations* to request permission from the Correctional Services Department to interview women who had been detained for breach of condition of stay or illegal entry, so as to find out more about their experiences and whether they had been victims of trafficking. It was pointed out that whilst some women might be persuaded to assist in research which would help others in their position in the future, most would need some sort of incentive to co-operate which would assist their own position.

11. Some participants felt that it was necessary for future research to extend to the situation of trafficking within the Mainland, rather than being limited to trafficking into Hong Kong. It was also suggested that future research be extended to cover trafficking into other types of exploitative situations in Hong Kong, for example exploitative domestic work or factory work.

Experiences of Thai and Philippine Consulates

12. The Thai and Philippine consulates were both very open about their experiences relating to the trafficking of their nationals into Hong Kong. We were delighted that both consulates offered to help the Centre further its research in this area.

13. The Thai consulate explained that it attached great importance to the issue of trafficking and emphasized that women should not be treated as culprits but rather as victims. To date it has received good co-operation from the authorities concerned, such as the police and the Department of Correctional Services. There were many cases in

which Thai women had been charged for working in prostitution in breach of their conditions of stay (the authorities are required to inform the relevant consulate if one of its nationals is charged). The sentence for such an offence is usually two months' imprisonment. Once the women have completed their sentence, they are repatriated to Thailand by the authorities.

14. Whilst the Thai consulate was not aware of any cases in which women had been forced into prostitution or detained against their will, it had received complaints from women who had agreed before they came to Hong Kong to provide sexual services to a particular number of clients per day, to then discover that they were expected to provide sexual services to a far greater number per day, and of cases where women had contacted the consulate for assistance where their passports had been confiscated by the agents who brought them into Hong Kong. In such cases, the Thai Consulate assists the women by repatriating them back to Thailand. It was explained that, depending on the particular circumstances, these situations could also amount to trafficking even though the women concerned had knowingly and willingly agreed to come to Hong Kong for the purposes of sex work. Under the definition in the UN Protocol, trafficking was not only limited to cases where women had been forced or deceived into prostitution, but it also extended to cases where the receipt of women involved an abuse of power for the purpose of exploitation, including prostitution.

15. [The Philippine consulate expressed the view that trafficking of Filipinos into Hong Kong for prostitution was probably a lesser problem than that of trafficking of Thai women. In 1999, a few cases had been reported to the consulate where Filipino women had escaped from villas having been held there against their will, but in 2000 no such cases had been reported. The consulate had yet to encounter a Filipino national in jail for breach of condition of stay for working as a prostitute - usually its nationals were working in Hong Kong on legitimate work visas. *Philippine consulate to confirm*]

16. [In cases where women had reported that they were victims of trafficking, the Philippine consulate usually found that the women wanted to be repatriated as soon as possible. The consulate was somewhat cautious about providing information to the media and NGOs, as in some previous cases they felt that the information had been

misused or the privacy of the women involved had not been properly respected. However, it was keen to work and share information with NGOs and academics who were sensitive to these concerns. The consulate offered to work with Robyn Emerton at the Centre to help further research in this area. They suggested that interviews might be conducted directly by the consulate itself or by social workers, who the women usually trusted and were comfortable speaking to. Robyn described the process by which the interviews of women working in nightclubs had been conducted for the purposes of her initial study. In particular, she explained that the interviews had been conducted by representatives from Action for Reach Out (who had already gained the trust of the women) and that she was not present herself. The identities of the women involved were also not revealed, rather they were simply identified by letters of the alphabet. A similar arrangement could be reached with the consulates. *Philippine Consulate to confirm]*

Statistical Information

17. On the issue of compiling relevant statistics (see the *Initial Recommendations* in the Appendix), it was suggested that it would be useful to lobby the Legislative Council. A Legislative Council member has since offered to assist in this regard. One participant believed that the relevant government bodies might not know which statistics might be useful and that they would be open to re-deploying their resources if so directed.

Education in Home Countries

18. Another recommendation was that women should be educated in their home countries as to the risks of being trafficked into Hong Kong, and the ways in which they might minimise those risks. The Home Affairs Bureau was particularly interested in this proposal. The government already has a campaign to advise women of their rights as domestic helpers in Hong Kong, and sends copies of its handbook to countries of origin, as well as making it widely available in Hong Kong. The Home Affairs Bureau explained that there might be funds available for a similar type of project in relation to trafficking under its budget for community-based projects. Action for Reach Out was encouraged to make a further application for funding for a proposal to write educational materials in the context of trafficking (two previous applications having been unsuccessful in this regard). However, the Home Affairs Bureau noted that they should

be aware that their application would be considered in competition with many others and that the Home Affairs Bureau was just one member of the vetting committee for applications. Other participants mentioned how important it was to share information and co-operate with NGOs in the home country.

Working Group

Many of the participants (and others who were not able to attend the Round Table) offered to sit on a working group to further work on these issues.

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13 March 2001

## APPENDIX

### Initial Recommendations

#### RESEARCH NEEDS

- Interviews with women who have been imprisoned for breach of conditions of stay and illegal entry [*Correctional Services Dept*]
- Co-operation with consulates and NGOs on cases reported directly to them, interviews with women, follow-up in home countries [*Consulates, NGOs*]
- Special notification of trafficking cases coming before the courts [*Justice Dept*]
- Improving statistical data – see policy needs below [*Crime Wing Statistician/Justice Dept*]
- Longer term – research on situations in sending countries – what education women receive in home country (and improving the level of this education), what happens to women when returned home [*NGOs, Government funding?*]

#### POLICY NEEDS

##### Legislation

- Amendment of section 29 Crimes Ordinance in the context of the modern international understanding of trafficking, as reflected in UN Protocol on Trafficking – focusing on abusive and exploitative situations (and extended to other forms of exploitation, not just prostitution).

##### General Policies

- Encourage PRC government to sign the UN Protocol on Trafficking (PRC has only signed the UN Convention itself). [*General lobbying*]
- Develop comprehensive policy on trafficking, in particular involving better co-ordination between immigration and law enforcement [*Government*]

- Increase emphasis on actively investigating and pursuing traffickers [*Police*]
- Further training on dealing with victims of trafficking and respecting rights of women in the sex industry in general [*Police*]
- Financial support to return victims of trafficking home [*Government*]
- Specialised NGOs to be notified by police and consulates of new cases, to offer support, counseling etc. [*Consulates, Police, NGOs*]

### **Statistical Data**

- Maintain statistical data on trafficking [*Crime Wing Statistician/Dept of Justice justice/Immigration Dept*], in particular:
  - Data on numbers of prosecutions and convictions for trafficking (not just number of reported cases and arrests made, as currently) and sentences handed down.
  - Data on number and nationalities of women convicted and sentenced for:
    - Breach of condition of stay – for working as a prostitute
    - Illegal immigration – when found working as a prostitute
    - Soliciting (as well as statistics on men)

### **Education**

- Increase public awareness in Hong Kong of human rights abuses of trafficked women.
- Set up and advertise confidential hot-line to encourage reports of suspected cases of trafficking and other abuses of women in sex industry.
- Educate women in major sending countries of risks of trafficking/how to minimize risks of becoming a victim of trafficking.

### **Criminal Justice System**

- Immunity from prosecution for women who are victims of trafficking.

- Accommodation, protection, financial and other support for women who agree to act as witness for prosecution of traffickers (temporary work visa?).
- Higher penalties for traffickers and use of confiscation orders under Organised and Serious Crimes Ordinance to recover proceeds of trafficking – greater deterrence.