

**Trafficking of Women into Hong Kong for the  
Purpose of Prostitution:  
Preliminary Research Findings**

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**Occasional Paper No. 3**

**February 2001**



**Centre for Comparative and Public Law**  
**Faculty of Law**  
**University of Hong Kong**

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This Occasional Paper was written by Robyn Emerton. It is a revised version of a dissertation submitted as part of the LLM (Human Rights) programme at the University of Hong Kong.

The author would particularly like to thank Action for Reach Out both for prompting the research, and for assisting in numerous ways in the collation of information on the situations of non-local women working in prostitution in Hong Kong.

The information contained in the paper is as at 30 May 2000, unless otherwise stated. Since the time of writing, the *United Nations Convention on Transnational Organised Crime* and supplementary optional *Protocol to Prevent, Suppress and Punish Trafficking in persons, especially Women and Children* have both been adopted by the General Assembly of the United Nations (November 2000). The Trafficking Protocol is the first modern international instrument on trafficking and also contains the first ever international definition of trafficking. The Convention and its protocols were opened for signature on 15 December 2000. As at 31 January 2001, the Convention had been signed by every country and the Trafficking Protocol by 80 countries. Each instrument will enter into force once it has been both signed and ratified by 40 countries (see further *infra* notes 5 and 33).

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**Published by:**

Centre for Comparative and Public Law  
Faculty of Law  
The University of Hong Kong  
Pokfulam Road  
HONG KONG

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# Trafficking of Women into Hong Kong

## for the purpose of Prostitution

### I. INTRODUCTION

The issue of trafficking of women for the purpose of prostitution<sup>1</sup> has been a matter of international concern since the turn of the 19<sup>th</sup> century, when several international conventions on “white slavery” were adopted. Recently there have been renewed efforts to address the issue of trafficking in women at the international and regional level, largely prompted by the work of non-governmental organisations, which have brought to light the huge numbers of women involved and the extent of the human rights abuses they suffer.

The trafficking of women for the purposes of prostitution into certain parts of Asia, in particular into Thailand, India and Japan, is now relatively well-documented. However, there is very little information available on the trafficking of women into Hong Kong. This study is an attempt to correct that, although, given the “hidden” nature of the problem and the time and difficulties involved in obtaining primary information, it must be regarded very much as a preliminary study, but one which is intended to provide the foundation for further work in the future<sup>2</sup>.

The study first considers some of the definitional problems which continue to plague the discussion of trafficking in women, in particular within the context of international law developments (Part II). It then turns to Hong Kong’s domestic law and Hong Kong’s international and regional obligations (Part III). On the basis of information available, the various situations of non-local<sup>3</sup> women who have been recruited to work in the Hong Kong sex industry are described. The report considers whether these women are, or might be, victims of trafficking, both under Hong Kong law, which is based on a traditional concept of trafficking, and under a more modern definition of trafficking (Part IV). This is followed by a review of the approach taken by the Hong Kong authorities to the issue of trafficking (Part V).

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<sup>1</sup> It should be noted that children (both girls and boys) can also be trafficked and that trafficking can also occur for purposes other than prostitution, such as forced marriage, begging and factory work. However, this report focuses specifically on the trafficking of women for the purpose of prostitution.

<sup>2</sup> The information contained in this report is as at 30 May 2000, unless otherwise indicated.

<sup>3</sup> Covering both Mainland Chinese women and foreign women. I have not found any evidence of trafficking in women *from* Hong Kong *to* other countries.

Finally, the report makes some observations and recommendations in relation to the position in Hong Kong (Part VI)<sup>4</sup>.

## **II. DEFINITION OF TRAFFICKING**

### **II.A. Introduction**

Unfortunately, despite a number of international instruments on the subject, there is no internationally agreed definition of the term “trafficking”,<sup>5</sup> nor has a general consensus emerged as to the meaning of the term.

One of the major causes of confusion is that the term “trafficking” is often used interchangeably with smuggling. However, these concepts are not the same. Whilst both smuggling and trafficking involve facilitated migration (i.e. migration facilitated by a third party), smuggling always involves illegal migration, whereas trafficking can involve either legal or illegal migration. What the central characteristic of trafficking is (or in my view, should be), is a lack of consent on the part of the trafficked person. It should therefore be addressed as a human rights issue, rather than a question of migration control.

Another major cause of confusion in the particular context of trafficking for the purpose of prostitution arises from the fact that, whilst women’s groups agree that trafficking is non-consensual, they are deeply divided on what constitutes actually constitutes, due to their different stances on the issue of prostitution itself. Thus the Coalition Against Trafficking in Women (*CATW*)<sup>6</sup> believes that a woman can never make a rational decision to enter the sex industry and therefore takes the view that all prostitution, and all migration for prostitution, is non-consensual. The Global Alliance Against Traffic in Women (*GAATW*)<sup>7</sup>, on the other hand, recognises a woman’s right to choose to work in the sex industry and to migrate for this purpose. The key issue from GAATW’s point of view is whether the woman’s choice was free and fully informed. However, this sparks further debate on whether a woman’s choice is “free” when it is based on economic necessity, that is, a need to escape extreme poverty.

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<sup>4</sup> My methodology in obtaining information and data for the purposes of this report is set out in Appendix 1.

<sup>5</sup> *Author’s note*: since the time of writing, the United Nations Convention on Transnational Organised Crime and its supplementary Protocol on Trafficking have been adopted. The Protocol contains the first ever international definition of trafficking. The text of the Convention and the Trafficking Protocol, background information and commentaries are available at the United Nations Office for Drug Control and Crime Prevention at: <http://www.odccp.org.palermo/theconvention.html> (site visited 31 January 2001).

<sup>6</sup> CATW’s website is at: <http://www.uri.edu/artsci/wms/hughes/catw/> (site visited 31 January 2001).

<sup>7</sup> GAATW’s website is at: <http://www.inet.co.th/org/gaatw> (site visited 31 January 2001).

Fortunately, it is increasingly being recognised that a consensus must be sought, or at least the common ground pursued, in order to best protect the human rights of women.<sup>8</sup>

## **II.B. Historical Developments in International Law Relating to Trafficking**

### **II.B.1. Introduction**

A brief review of the historical developments in the international law relating to trafficking is helpful for a further understanding of the issues that still plague the debate.<sup>9</sup> It also provides a backdrop against which Hong Kong's domestic legislation and international obligations can be reviewed in Part III.

### **II.B.2. The Early Treaties**

Four international treaties were adopted on trafficking before World War II, although none defines the concept of trafficking. The first international treaty which addressed trafficking in women and girls was the *International Agreement for the Suppression of the White Slave Traffic* (1904).<sup>10</sup> This aimed to combat the "compulsive", i.e. forced or abusive, recruitment of women for immoral purposes (as well as any recruitment of girls). However, it was of limited value in that it did not actually oblige states to punish perpetrators. Its scope was also limited to trafficking which occurred across international borders, and did not include trafficking within national borders.

This was followed by the *International Convention for the Suppression of the White Slave Traffic* (1910),<sup>11</sup> which was broader, both obliging states to punish perpetrators and extending to trafficking which occurred within national borders. Again, this treaty related only to the forced or abusive recruitment of women, obliging states to punish "any person who, to gratify the passions of others, has by fraud or by the use of violence, threats, abuse of authority, or

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<sup>8</sup> See for example GAATW, *Handbook for Human Rights Action in the Context of the Traffic in Women* (GAATW, Bangkok, 1997), 1; and Ms Radhika Coomaraswamy, Special Rapporteur on Violence against Women, its causes and consequences, *Report on Trafficking in Women, Women's Migration and Violence Against Women*, 29 February 2000, UN Doc. E/CN.4/2000/68 (the *Special Rapporteur's Report*), para 34, available at the website of the United Nations High Commissioner for Human Rights at: <http://www.unhcr.ch/html/menu2/7/b/mwom.htm> (under "Documents", then "Reports").

<sup>9</sup> For historical developments to 1996, see in particular the concise description in Wijers and Lap-Chew, *Trafficking in Women and Forced Labour and Slavery-Like Practices in Marriage, Domestic Labour and Prostitution* (Foundation against Trafficking in Women, Utrecht, 1997), at 20ff.

<sup>10</sup> 92 UNTS 19, available (by subscription only) at the *United Nations Treaty Series*, United Nations Treaty Collection, at: <http://untreaty.un.org> (site visited 31 January 2001).

<sup>11</sup> 98 UNTS 101, available (by subscription only), at the *United Nations Treaty Series*, United Nations Treaty Collection, at: <http://untreaty.un.org> (site visited 31 January 2001).

any other means of constraint, hired, abducted or enticed a woman of full age for immoral purposes”.<sup>12</sup>

The *International Convention for the Suppression of the Traffic in Women and Children* (1921)<sup>13</sup> recognised for the first time that boys, as well as women and girls, were victims of trafficking.

The *International Convention for the Suppression of the Traffic in Women of Full Age* (1933)<sup>14</sup> marked a shift in the concept of trafficking to include women recruited consensually (i.e. not forcefully or abusively), although at this stage only where the trafficking occurred across international borders.

### **II.B.3. The 1949 Convention**

In 1949, the four earlier treaties were consolidated by the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*.<sup>15</sup> The 1949 Convention remains the most recent internationally binding treaty specifically relating to trafficking. It obliges states to punish any persons who, “to gratify the passions of another, procures, entices or leads away, for the purposes of prostitution, another person, even with the consent of that person”.<sup>16</sup> Thus, following on from the 1933 Convention, the 1949 Convention makes trafficking punishable even where the woman is recruited consensually (as in the 1933 Convention), whether she is trafficked across international borders (as in the 1933 Convention) or within national borders (the new addition). However, the 1949 Convention expressly limits the concept of trafficking to trafficking for the purpose of prostitution, whereas the earlier treaties prohibited trafficking more generally for “immoral purposes”. Further, as with the early treaties, the 1949 Convention focuses only on the recruitment of women, and not on the conditions of their end situations.

The 1949 Convention also calls on states to punish anyone involved in the “exploitation of prostitution”,<sup>17</sup> again regardless of whether this is with the consent of the woman involved.

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<sup>12</sup> Wijers and Lap-Chew, *Trafficking in Women and Forced Labour and Slavery-Like Practices in Marriage, Domestic Labour and Prostitution*, *supra* note 8, at 20.

<sup>13</sup> 53 UNTS 39, available (by subscription only) at the *United Nations Treaty Series*, United Nations Treaty Collection, at: <http://untreaty.un.org> (site visited 31 January 2001).

<sup>14</sup> 53 UNTS 49, available (by subscription only) at the *United Nations Treaty Series*, United Nations Treaty Collection, at: <http://untreaty.un.org> (site visited 31 January 2001).

<sup>15</sup> 96 UNTS 271, available at the University of Minnesota Human Rights Library website, at: <http://www1.umn.edu/humanrts/instrtree/traffickingperson.htm> ) (site visited 31 January 2001).

<sup>16</sup> 1949 Convention, *supra* note 15, article 1(1).

<sup>17</sup> 1949 Convention, *supra* note 15, article 1(2).

Despite some comments in the literature on its ambiguity, the 1949 Convention clearly does not call for the criminalisation of prostitution itself. Rather, it adopts a “prohibitionist” approach, aimed at ultimately expunging “the evils of prostitution”<sup>18</sup> through the criminalisation of all third party acts relating to prostitution and the adoption of other measures, including rehabilitation. The extension of the 1949 Convention to the exploitation of prostitution, previously considered a purely domestic matter, as well as its underlying assumptions, are often cited as the reasons why a number of states which were party to the earlier conventions did not accede to the 1949 Convention.<sup>19</sup> Indeed, as of 1 February 2001, only 73 states were party to it.<sup>20</sup>

There is no specific treaty body to supervise implementation and enforcement of the 1949 Convention by states party to it. Although the 1949 Convention requires states party to it to report to the Secretary General each year, less than half do so.<sup>21</sup>

#### **II.B.4. *The Convention on the Elimination of all forms of Discrimination Against Women***

The *Convention on the Elimination of All Forms of Discrimination Against Women* (the *CEDAW Convention*)<sup>22</sup> was adopted in 1979 and, as of 31 January 2001, had been ratified by 166 states.<sup>23</sup> Article 6 of the CEDAW Convention obliges states party to it to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”. However, the CEDAW Convention does not define either concept, nor does it expand on the measures that states party should take to suppress them. Nevertheless, in relation to the exploitation of prostitution, it is clear from the *travaux préparatoires* (the working history of the treaty) that the CEDAW Convention was not intended to call for the prohibition of prostitution itself, as Morocco’s proposal to prohibit prostitution was rejected.<sup>24</sup> The Committee on the Elimination of Discrimination against

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<sup>18</sup> 1949 Convention, *supra* note 15, preamble.

<sup>19</sup> See for example Wijers and Lap-Chew, *Trafficking in Women, Forced Labour and Slavery-Like Practices in Marriage, Domestic Labour and Prostitution*, *supra* note 9, 21; and *Special Rapporteur’s Report*, *supra* note 8, para 22.

<sup>20</sup> *Status of Multilateral Treaties deposited with the Secretary General*, United Nations Treaty Collection, at: <http://untreaty.un.org/> (available by subscription only) (site visited 31 January 2001).

<sup>21</sup> *Special Rapporteur’s Report*, *supra* note 8, para 26.

<sup>22</sup> 1249 UNTS 13, available at the website of the University of Minnesota Human Rights Library at: <http://www1.umn.edu/humanrts/instree/e1cedaw.htm> and at the website of the United Nations High Commissioner for Human Rights at: <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm> (sites visited 31 January 2001).

<sup>23</sup> *Status of Multilateral Treaties deposited with the Secretary General*, United Nations Treaty Collection, at: <http://untreaty.un.org/> (available by subscription only) (site visited 31 January 2001).

<sup>24</sup> *Special Rapporteur’s Report*, *supra* note 8, para 28.



Women (the *CEDAW Committee*) has also made clear its position in the state reporting process, calling for the de-criminalisation of prostitution.

The implementation and enforcement of the principles of the CEDAW Convention by states at a national level is supervised by the CEDAW Committee, to which states party are required to report every four years. The CEDAW Committee, like the other treaty bodies, has to rely on publicity given to its written observations on state reports to instigate change. However, it is now losing its previous reputation as a “light-weight” treaty body, as awareness of both the CEDAW Convention and the role of the CEDAW Committee continues to expand, and particularly as non-governmental organisations become increasingly involved in the state reporting process. In addition, the CEDAW Convention’s enforcement mechanisms have been greatly strengthened with the adoption of the Optional Protocol to the CEDAW Convention<sup>25</sup>, which came into force on 22 December 2000, although it has not been signed by the People’s Republic of China (and therefore does not apply to Hong Kong). The Optional Protocol provides for women who have suffered violations of the CEDAW Convention to bring complaints to the CEDAW Committee against states who are party to the Optional Protocol, once they have exhausted domestic remedies. It remains to be seen to what extent the Optional Protocol will be used in the context of trafficking.

## **II.C. Recent Developments within the United Nations**

### **II.C.1. Introduction**

Whilst the 1949 Treaty remains the most recent binding international instrument specifically relating to trafficking, it is generally recognised as both outdated and ineffective. A number of initiatives have been taken by the United Nations in the last ten years to correct this, with the issue of trafficking being addressed in the documentation relating to various world conferences, in reports, resolutions and draft instruments. In general, they indicate a shift back to an understanding of trafficking as being non-consensual (and now in relation to both recruitment and/or end conditions), and also recognise the fact that trafficking does not only occur for the purposes of prostitution. A full review is beyond the scope of this paper, but the following are three particularly interesting developments, and different contexts, in which the issue of trafficking of women is currently being addressed.

### **II.C.2. Contemporary Forms of Slavery**

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<sup>25</sup> UN Doc.A/Res/54/4, available at the website of the University of Minnesota Human Rights Library at: <http://www1.umn.edu/humanrts/instree/cedawopprot-2000.html> and at the website of the United Nations High Commissioner for Human Rights at [http://www.unhchr.ch/html/menu3/b/opt\\_cedaw.htm](http://www.unhchr.ch/html/menu3/b/opt_cedaw.htm) (sites visited 31 January 2001).

In 1991, the Working Group on Contemporary Forms of Slavery took up the issue of trafficking as a modern form of slavery and developed a *Draft Programme of Action on the Traffic in Persons and the Exploitation of the Prostitution of Others*.<sup>26</sup> After the Programme of Action was reformulated on the basis of comments submitted by states, it was adopted by the Human Rights Commission in 1996.<sup>27</sup>

Dealing with trafficking as a form of slavery has the advantage of “mainstreaming” the issue, in addition to it being dealt with as a separate specialist, and predominantly gendered, issue. In particular, as slavery is dealt with in the *Universal Declaration of Human Rights* (1948) (*UDHR*)<sup>28</sup> and the *International Covenant on Civil and Political Rights* (1966) (*ICCPR*),<sup>29</sup> this puts trafficking within the domain of the recognised “heavy-weight” human rights bodies of the Commission on Human Rights and the Human Rights Committee, respectively. The issue of slavery is also dealt with in a number of specialist slavery conventions, which have been widely ratified.

This relatively new approach of linking trafficking to slavery and slavery-like practices is also reflected in the *Rome Statute for the International Criminal Court*,<sup>30</sup> which was adopted on 18 July 1999 and will come into force once it is ratified by 60 states. The International Criminal Court will have jurisdiction to try individuals *inter alia* for crimes of humanity, including widespread and systematic “enslavement”.<sup>31</sup> This is defined to include “the exercise of ... power attaching to the right of ownership over a person ... in the course of trafficking in persons, in particular women and children”.<sup>32</sup>

### **II.C.3. Transnational Organised Crime**

In December 1998, the General Assembly established an Ad Hoc Committee to elaborate a *Draft International Convention against Transnational Organised Crime*, including a *Protocol*

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<sup>26</sup> UN Doc. E/CN.4/Sub.2/1995/28/Add.1, available at the website of the United Nations High Commissioner for Human Rights, at: <http://www.unhchr.ch/> (search ‘charter-based bodies database’ by UN document reference) (site visited 31 January 2001).

<sup>27</sup> UN Doc. E/CN.4/RES/1996/61, available at the website of the United Nations High Commissioner for Human Rights, at: <http://www.unhchr.ch/> (search ‘charter-based bodies database’ by UN document reference) (site visited 31 January 2001).

<sup>28</sup> UN Doc. A/810 at 71, available at the website of the University of Minnesota Human Rights Library, at: <http://www1.umn.edu/humanrts/instree/b1udhr.htm> (site visited 31 January 2001).

<sup>29</sup> 999 UNTS 171 and 1057 UNTS 407, available at the website of the University of Minnesota Human Rights Library, at: <http://www1.umn.edu/humanrts/instree/b3ccpr.htm> (site visited 31 January 2001).

<sup>30</sup> UN Doc. A/CONF.183/9 (1998), available at the website of the University of Minnesota Human Rights Library, at: [http://www1.umn.edu/humanrts/instree/Rome\\_Statute\\_ICC/Rome\\_ICC\\_toc.html](http://www1.umn.edu/humanrts/instree/Rome_Statute_ICC/Rome_ICC_toc.html) (site visited 31 January 2001).

<sup>31</sup> Rome Statute, *supra* note 30, article 7(1)(c).

<sup>32</sup> Rome Statute, *supra* note 30, article 7(2)(c).

to Prevent, Suppress and Punish Trafficking in Women and Children<sup>33</sup>. This will be the first modern international instrument on trafficking. Whilst it is important that the involvement of organised crime in trafficking is addressed, there is a concern that the Protocol (being, as mentioned, the first modern international instrument on trafficking) has been developed in the context of crime control, rather than with a focus on the human rights of trafficked persons. The Special Rapporteur on Violence Against Women, emphasising the “inextricable link between the prevention and eradication of trafficking and the protection of the human rights of trafficked persons”, viewed this as “a failure of the international human rights community to fulfil its commitment to protect the human rights of women”.<sup>34</sup>

#### **II.C.4. Violence Against Women/ Human Rights of Women**

In February 2000, the Special Rapporteur on Violence against Women presented her report on trafficking in women to the Commission on Human Rights (the *Special Rapporteur’s Report*).<sup>35</sup> Finding that the historical characteristics of trafficking were “out-dated, ill-defined and non-responsive” to the current realities of trafficking,<sup>36</sup> the Special Rapporteur strongly asserted the need for new definitions of trafficking to be specifically tailored to protect and promote the human rights of trafficked persons, in particular women,<sup>37</sup> and adopted the following definition of “trafficking” for the purposes of her report:

“the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons: (i) by threat or use of violence, abduction, force, fraud, deception or coercion (including abuse of authority), or debt bondage; [and] (ii) for the purpose of placing or holding such person, whether for pay or not, in forced labour or slavery-like practices,

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<sup>33</sup> *Author’s note*. Since the time of writing, the Convention and the Protocol were adopted by the General Assembly of the United Nations in November 2000 and were opened for signature on 12 December 2000. The Convention was signed by every country and the Trafficking Protocol by 80 countries. Each instrument will enter into force once they have been both signed and ratified by 40 countries. The text of the Convention and the Trafficking Protocol, background information and commentaries are available at the United Nations Office for Drug Control and Crime Prevention at: <http://www.odccp.org.palermo/theconvention.html> (site visited 31 January 2001).

<sup>34</sup> *Special Rapporteur’s Report*, *supra* note 8, para 7.

<sup>35</sup> The Special Rapporteur also addressed the issue of trafficking in her report on violence in the community, dated 12 February 1997 (UN Doc. E/CN.4/1997/47), Section IV, and in her report on her mission to Poland on the issue of trafficking and forced prostitution, dated 10 December 1996 (UN Doc. E/CN.4/1997/47/Add.1), both available at the website of the United Nations High Commissioner for Human Rights, at <http://www.unhchr.ch/huridocda/huridoca.nsf/FramePage/SRwomen+En?OpenDocument>. However, the most recent report demonstrates a much more sophisticated understanding of the theoretical issues than the earlier reports, as the Special Rapporteur notes herself, *Special Rapporteur’s Report*, *supra* note 8, para 5.

<sup>36</sup> *Special Rapporteur’s Report*, *supra* note 8, para 10.

<sup>37</sup> *Special Rapporteur’s Report*, *supra* note 8, at para 11.

in a community other than the one in which such person lived at the time of the original act described in (i)”.<sup>38</sup>

The central element of the definition is the non-consensual nature of trafficking, both in the recruitment (and transport etc.) of the women and in its end purpose. Thus the Special Rapporteur stated that “although numerous separate abuses are committed during the course of trafficking which themselves violate both national and international law, it is the *combination of coerced transport and coerced end practice* which makes trafficking a distinct violation from its component parts”<sup>39</sup> (emphasis added).

Some of the other key elements of the offence which are (unfortunately) not defined in the Special Rapporteur’s Report may require further explanation:

- (a) “debt bondage” means a situation in which a debtor pledges her personal services against a debt she owes, but the person to whom she owes it fails to deduct the value of her services from the debt, or the length and nature of those services are not respectively limited and defined,<sup>40</sup>
- (b) “forced labour” clearly covers situations of forced prostitution, where a woman has not consented to working as a prostitute at all,
- (c) “slavery-like practices” are generally understood to involve exploitative and coercive situations which violate a woman’s right to control her life, body and mind,<sup>41</sup> and importantly can arise even in a situation where a woman consented to working as a prostitute. Thus a combination of the following might amount to slavery-like practices: confiscation of identity documents, confined movements, physical abuse, psychological abuse, a requirement to meet a particular quota of clients each day, not being able to refuse certain clients, not being able to insist on using a condom, not

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<sup>38</sup> Id, at para 13.

<sup>39</sup> Id, at para 16.

<sup>40</sup> As simplified from the definition contained in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery (1957), article 1(a), available at the website of the University of Minnesota Human Rights Library, at: <http://www1.umn.edu/humanrts/instreetree/f3scas.htm>.

<sup>41</sup> Wijers and Lap-Chew, *Trafficking in Women Forced Labour and Slavery-Like Practices in Marriage, Domestic Labour and Prostitution*, *supra* note 9, 38. Note also that the Slavery Convention (1926), article 1(1), defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” (Slavery Convention (1926) 60 LNTS 253, available at the website of the University of Minnesota Human Rights Library, at: <http://www1.umn.edu/humanrts/instreetree/f1sc.htm>). This definition is repeated in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery (1957), *supra* note 40, article 7(a).

being paid regularly or not being paid at all, having no time off, no access to health care, no bed or no regular food.<sup>42</sup>

### **II.C.5. Conclusion**

There is an urgent need for a modern definition of trafficking to be adopted by the General Assembly<sup>43</sup> so that it will be applied uniformly across the United Nations. This is particularly important given that the issue of trafficking is currently being dealt with in a number of different contexts, by different United Nations bodies. It is hoped that Special Rapporteur's Report will prompt and influence such a development. The Special Rapporteur's definition seems appropriate to today's context of migration and trafficking, and for the purposes of this report will be adopted as a "best practice" modern international definition (see further Part IV.A.3 below).

## **III. HONG KONG'S DOMESTIC LAW, INTERNATIONAL OBLIGATIONS AND REGIONAL COMMITMENTS**

### **III.A. Domestic Law**

Hong Kong's domestic law expressly prohibits trafficking for the purposes of prostitution (although not for any other purpose). Section 129(1) of the Crimes Ordinance (Cap 200 of the Laws of Hong Kong) makes it an offence for a person to take part in "bringing another person into, or taking another person out of, Hong Kong for the purposes of prostitution". Section 129(2) provides that it is no defence "to prove that the other person consented to being brought into or taken out of Hong Kong, whether or not she or he knew it was for the purposes of prostitution or that she or he received any advantage therefor."<sup>44</sup> Thus trafficking is a criminal offence in Hong Kong, even where the person consented to being brought into Hong Kong, knew it was for the purposes of prostitution, and is paid. Trafficking is punishable by up to 10 years' imprisonment.

In relation to prostitution and exploitation of prostitution, prostitution itself is not an offence in Hong Kong. However, section 147 of the Crimes Ordinance, which makes it an offence to

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<sup>42</sup> On the abusive working and living conditions reported in various countries, see Wijers and Lap-Chew, *Trafficking in Women Forced Labour and Slavery-Like Practices in Marriage, Domestic Labour and Prostitution*, *supra* note 9, at 90ff.

<sup>43</sup> Although the General Assembly has previously adopted resolutions on trafficking, these have not included a definition of trafficking. See resolution of 23 December 1994 (UN Doc. A/Res/49/166), and resolution of 22 December 1995 (UN Doc. A/Res/50/167), available at the website of the United Nations Commissioner for Human Rights, at: <http://www.unhchr.ch/> (search 'charter bodies database' by UN Document reference) (site visited 31 January 2001).

<sup>44</sup> For the full text of article 129 of the Crimes Ordinance, see Appendix 2.

solicit for an immoral purpose or loiter for the purpose of soliciting,<sup>45</sup> is currently being used to effectively criminalise prostitution. Soliciting is punishable by a fine of up to HK\$10,000 and 6 months' imprisonment. In addition, a wide range of provisions under the Crimes Ordinance target the exploitation of prostitution. Offences include living off the earnings of prostitution of others, keeping a vice establishment, letting premises for use as a vice establishment, permitting premises to be used for prostitution (as another tenant of the same premises), and putting up signs advertising prostitution.<sup>46</sup>

As to immigration, it is an offence under section 7 of the Immigration Ordinance (Cap 115 of the Laws of Hong Kong) to enter Hong Kong illegally. It is also an offence under section 41 of the Immigration Ordinance to breach one's conditions of stay, whether through overstaying or working illegally (which includes working as a prostitute). It should be noted that neither a two-way permit from Mainland China, nor a tourist visa from abroad, allows the holder to work whilst in Hong Kong. However, a dependant's visa (as a wife of a permanent resident) allows the holder to work in Hong Kong.

### **III.B. International Obligations**

As Hong Kong is not a state, it does not have international legal obligations in its own right. Rather, its international obligations arise through the People's Republic of China (the *PRC*), of which it is a special administrative region. Most of the international treaties which were previously extended to Hong Kong as a colony of the United Kingdom (the *UK*) have continued to apply to it since the change of sovereignty to the PRC on 1 July 1997, by agreement between the UK and the PRC.<sup>47</sup> Thus three of the early international treaties on trafficking, the 1904, 1910 and 1921 Conventions, continue to apply to Hong Kong, even though they do not apply to the PRC. The 1933 and 1949 Conventions have never applied to Hong Kong (as they were not ratified by the UK<sup>48</sup>), even though interestingly Hong Kong's (and the UK's) domestic law is actually based on the same premises as the 1949 Convention, making trafficking for the purposes of prostitution an offence and prohibiting the exploitation of prostitution, in both cases even with the woman's consent. The CEDAW Convention has

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<sup>45</sup> For the full text of article 147 of the Crimes Ordinance, see Appendix 2. See further Part V.C.

<sup>46</sup> Crimes Ordinance, sections 137, 139, 143, 145 and 147A respectively.

<sup>47</sup> For international human rights treaties applicable to Hong Kong, including whether they are also applicable to the PRC, see the website of the Hong Kong Department of Justice, at: <http://www.justice.gov.hk/interlaw.htm> (site visited 31 January 2001).

<sup>48</sup> *Status of Multilateral Treaties deposited with the Secretary General*, United Nations Treaty Collection, at: <http://untreaty.un.org/English/access.asp> (site visited 31 January 2001).

applied to Hong Kong since October 1996 (and also applies to the PRC). The Hong Kong SAR Government submitted its initial report to the CEDAW Committee in October 1998<sup>49</sup>.

Of the general human rights instruments which prohibit slavery, Hong Kong is party in particular to the ICCPR. The *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* (1957),<sup>50</sup> which in particular prohibits debt bondage, also applies to Hong Kong.

### III.C. Regional Commitments

There is no regional human rights body in the Asian or Asia-Pacific region, nor any pan-Asian legally binding human rights instrument. However, Hong Kong has recently made two particular commitments at a regional level in relation to the issue of trafficking.

First, Hong Kong was one of the 18 Asian-Pacific countries (or in Hong Kong's case, a special administrative region) which signed the *Bangkok Declaration on Irregular Migration* on 23 April 1999.<sup>51</sup> The Bangkok Declaration expresses the signatories' concerns in relation to trafficking in women, in particular trafficking by organised criminal groups. However, it does so within the context of irregular migration, and not within the context of human rights. Secondly, and more recently (29 - 31 March 2000), Hong Kong was a participant in the Asian Regional Initiative against Trafficking in Women and Children (*ARIAT*) in Manila, the Philippines. This brought together governments, international organisations and non-governmental organisations to discuss and develop an "*Action Plan Against Trafficking in Persons, Especially Women and Children*" for the Asian-Pacific Region (the *ARIAT Action Plan*)<sup>52</sup>. The *ARIAT Action Plan* is expressed to follow on from the Bangkok Declaration,<sup>53</sup> this time addressing the human rights aspects of trafficking. The five strategic areas of the *ARIAT Action Plan* are stated as prevention, protection, prosecution, repatriation and reintegration.<sup>54</sup> In particular, the *ARIAT Action Plan* makes numerous practical proposals, from setting up a data bank to improve information sharing within the region, to adopting ways in which to encourage trafficking victims to file complaints, ensure their safety and

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<sup>49</sup> Home Affairs Bureau, Government Printing Department, 1998.

<sup>50</sup> 226 UNTS 3, available at the website of the Minnesota Human Rights Library at: <http://www1.umn.edu/humanrts/instree/f3scas.htm> (site visited 31 January 2001).

<sup>51</sup> *Bangkok Declaration on Irregular Migration*, International Symposium on Migration "Towards Regional Cooperation on Irregular/Undocumented Migration", 21 - 23 April 1999, available at the website of the Royal Thai Embassy, Washington DC, at: <http://thaiembdc.org/info/bdim.html> (site visited 31 January 2001).

<sup>52</sup> A copy of the Chairperson's Statement and *ARIAT Action Plan* is attached for further reference at Appendix 4.

<sup>53</sup> *Id.*, Chairperson's Statement, introductory paragraph.

<sup>54</sup> *Id.*, at para 4.

provide them with accommodation and other assistance. The ARIAT Action Plan is an extremely positive development both at the regional level, and for Hong Kong (provided of course, that concerted efforts are made to put it into practice).

#### **IV. HONG KONG PRACTICE**

##### **IV.A. Introduction**

Before considering the various categories of women recruited to work in the Hong Kong sex industry, some general background information, both on female migration to Hong Kong and on the Hong Kong sex industry, may be useful.

##### **IV.A.1. Background on Female Migration to Hong Kong**

Hong Kong has experienced rapid economic growth in the last 20 years. As its own population has moved into better paid jobs, this has created a demand for people willing to perform unskilled and low status jobs, in particular domestic work. This demand has been met largely by the migration of women from economically poorer countries in Asia, with Hong Kong being particularly attractive to those who can speak Chinese or English. The main sending country is the Philippines, with migration being encouraged both by the Hong Kong government (including through a compulsory standard form contract for domestic helpers) and by the Philippine government, which sees migration as a solution to high local unemployment and as a crucial source of foreign currency.<sup>55</sup>

##### **IV.A.2. Background on the Hong Kong Sex Industry**

The number of sex workers in Hong Kong was estimated at 20,000 in 1993.<sup>56</sup> However, it is not clear on what basis this estimate was reached, nor do any other estimates seem to be available. Hong Kong's sex industry predominantly serves the local community. It is not a sex tourist destination and even the number of ships from the UK and Australian marines docking in Hong Kong for "rest and relaxation" has decreased since the 1997 change in sovereignty. In May 1999, it was estimated that one in seven local men in Hong Kong (approximately 276,000 men) had visited a prostitute in the previous six months, with over half those visits taking place in Hong Kong.<sup>57</sup> The Hong Kong sex industry seems to demand

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<sup>55</sup> When the Philippines government allowed its nationals to work overseas in 1974, this was considered a temporary solution to the country's problems. Now, the Philippines is the second largest exporter of labour in the world (second only to Mexico), Adam Graycar, *Human Smuggling*, paper presented at a *Symposium on Human Smuggling* at the University of Hong Kong, 19 February 2000, 6.

<sup>56</sup> "2,000 Housewives in the Sex Industry", *South China Morning Post*, 3 May 1993.

<sup>57</sup> "One in Seven Makes Visits to Prostitutes", *South China Morning Post*, 26 May 1999.



a high turn-over of women, which might explain the fact that, taking a rough estimate, about two-thirds of the sex workers in Hong Kong are non-local.<sup>58</sup> Most women who come to Hong Kong for the purpose of working in the sex industry are from Mainland China. In 1997, it was reported that 80-110 Mainland women were arrested each week in the Mongkok district alone for working as a prostitute in breach of conditions of stay.<sup>59</sup> Thai, Filipino and Malaysian women represent the next largest “tranche” of non-local sex workers. There are also reports of women coming from other parts of Asia, including Korea,<sup>60</sup> Nepal<sup>61</sup> and Vietnam,<sup>62</sup> and from Central and South America, including Columbia, Bolivia and Panama,<sup>63</sup> as well as from various Western countries. The large majority of women appear to be assisted in their arrangements to come to Hong Kong and are recruited either through an informal network of friends and family, or through an agent. There are large profits to be made. In 1996, police estimated that triads in the Mongkok district were making as much as HK\$14 million profit each month from foreign prostitutes alone.<sup>64</sup>

#### **IV.A.3. Categories of Non-local Women Recruited to Work in the Hong Kong Sex Industry**

For the purposes of this report, non-local women who have been recruited to work in the Hong Kong sex industry/prostitution<sup>65</sup> have been classified into the following four different categories:

1. women who are recruited to work as prostitutes on the streets,
2. women who are recruited to work as prostitutes in or from “villas” (brothels),

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<sup>58</sup> The South China Morning Post estimated in 1993 (“2,000 Housewives in the Sex Industry”, *South China Morning Post*, 3 May 1993) that about half of the sex workers in Hong Kong were non-local. Action for Reach Out believes the proportion of non-local sex workers would probably be higher than this now, based on its own observations through its work.

<sup>59</sup> “Sex Crosses the Border”, *South China Morning Post*, 10 March 1997.

<sup>60</sup> CATW, *Trafficking in Women and Prostitution in the Asia Pacific*, available at CATW’s website, at: <http://www.uri.edu/artsci/wms/hughes/catw/asiapr3.htm> (site visited 31 January 2001).

<sup>61</sup> Id.

<sup>62</sup> GAATW, *Trafficking in Women in the Asia-Pacific Region, A Regional Report* (GAATW, Bangkok 1997), 5.

<sup>63</sup> “Police Probe World Prostitution Racket”, *South China Morning Post*, 23 December 1993. For a (journalistic-style) case history of a young Columbian woman brought to Hong Kong by her pimp/boyfriend, see Kate Whitehead, “Columbian Teen” in *Sex in South China: After Suzy* (Chameleon, Hong Kong, 1977), at 93 – 98.

<sup>64</sup> “Standing Up for Fair Play”, *South China Morning Post*, 26 May 1996.

<sup>65</sup> Whilst I would prefer to use the term “sex worker” and “sex industry” in respect of women who are voluntarily working in the sex industry, and “prostitute” and “prostitution” for those who are forced into it (not including being “forced” through economic circumstances), the very nature of this report makes such a distinction difficult and potentially confusing. The terms are therefore used interchangeably.

3. women who are recruited to work in other jobs, and are forced into prostitution on their arrival in Hong Kong,
4. women who are recruited to work in night clubs in Hong Kong and provide “escort services”.

I have not found any reports of women being abducted or forcefully taken from their homes and brought to Hong Kong for the purposes of prostitution.

The main purpose of this report is to attempt to document the experiences of women in each of the four situations set out above. It will then be considered whether they are, or may be, victims of trafficking, both under current Hong Kong law, and under the more modern definition of trafficking adopted in the Special Rapporteur’s Report (the *modern international definition*). The review is not intended to be too strictly confined. By taking the different types of experience of women as a starting point, rather than a particular definition, it is hoped that a broader understanding of their situations will emerge, for whilst they may not be victims of trafficking under the particular definition adopted, the women may suffer other human rights abuses or intolerable living and working conditions in respect of which they require protection and assistance.

#### **IV.B. Women Recruited to Work on the Streets**

##### **IV.B.1. Recruitment**

Women from Mainland China who work on the streets generally seem to be recruited through an informal network of friends or relatives who have previously worked in the Hong Kong sex industry, or to be encouraged by their boyfriend/pimp (who, however, does not usually accompany them to Hong Kong).<sup>66</sup> Through this informal network, the women may be assisted in applying for documentation and making travel arrangements, and advised on accommodation and places to work in Hong Kong. They may accompany an experienced friend or relative on their next trip to Hong Kong. This assistance will be for free, although if the woman has been encouraged by a boyfriend/pimp, he is likely to obtain some financial benefit out of the arrangement in one way or another.<sup>67</sup> Women who have been to Hong Kong before may make their arrangements independently on later visits.

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<sup>66</sup> Zi Teng, a non-government organisation providing assistance and support to sex workers in Hong Kong, has produced a *Research Report on Mainland Chinese Sex Workers* (Zi Teng, February 2000), based on interviews with 11 Mainland women working independently on the streets in Hong Kong, which is of particular interest in this area.

<sup>67</sup> *Id.*, at 22 and 23.

Thai women are also known to work on the streets. They seem to know which areas to go to for work, which suggests that either an informal network or an agency is involved in making their arrangements to come to Hong Kong. Action for Reach Out, a non-governmental organisation providing assistance and support to sex workers, has seen Thai women being dropped off in vans in the Sham Shui Po area, which would suggest the involvement of an agency in the recruitment process in some cases.

No Filipino women are known to work on the streets. I do not have any information on women of other nationalities working on the streets, such as Malaysians.

#### **IV.B.2. Entry into Hong Kong**

Most women from Mainland China enter Hong Kong legally. This may be on a two-way permit, granted for the purpose of visiting relatives in Hong Kong. Two-way permits are usually granted for three months, although they may be granted for a shorter period if Hong Kong Immigration is suspicious of the purpose of entry.<sup>68</sup> Women who do not have any Hong Kong relatives may enter on a Chinese passport with a visa to another South East Asian country, which allows them 7 days in Hong Kong in transit each way.<sup>69</sup> Some Mainland women enter Hong Kong illegally. However, it is assumed that those who have arranged illegal documentation and/or transport through an agent are more likely to work in villas than on the streets (see Part IV.C.3. below, *infra* p 20).

Women from Thailand enter on 7-day tourist visas.

#### **IV.B.3. Work Conditions**

Mainland Chinese women usually work independently on the streets, and not through a third party. They take their clients to hotels to provide sexual services, and may have an arrangement with a particular hotel. In 1998, it was reported that Mainland Chinese women worked out of about 16 short-term hotels in Yuen Long. Clients were charged between HK\$300 and HK\$400, of which the hotel operator received about HK\$150 for the room.<sup>70</sup>

Thai women also work independently on the streets. However, one author writing in 1995 observed that some Thai women were being guarded on the streets, which indicates that those

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<sup>68</sup> See Part V.D. below, *infra* 38.

<sup>69</sup> Zi Teng, *Research Report on Mainland Chinese Sex Workers*, *supra* note 66, 20-21.

<sup>70</sup> "Mainland Tourist Offer Sex", *South China Morning Post*, 5 August 1998.

women were not working independently.<sup>71</sup> Perhaps these women were in fact working as “running girls” (see Part IV.C.3 below, *infra* p 20).

#### **IV.B.4. Trafficking under Hong Kong Law**

As mentioned above (see Part III.A, *infra* p10), section 129 of the Crimes Ordinance makes it an offence to take part in “bringing another person into Hong Kong for the purposes of prostitution”, whether or not the person consented to being brought into Hong Kong, knew it was for the purposes of prostitution or received any payment. This section appears to be interpreted to include only those women who are brought into Hong Kong for the purposes of prostitution by a third party *and who remain subject to the control of a third party after their arrival*. This does not seem to be the typical case of women working on the streets; thus women who have been brought into Hong Kong by friends or an agent who then work independently on the street are unlikely to have been trafficked within the meaning of Hong Kong law.

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<sup>71</sup> Veronica Pearson, “*Business and Pleasure: Aspects of the Commercial Sex Industry*”, Chapter 9 in Veronica Pearson and Benjamin KP Leung (eds) *Women in Hong Kong* (Oxford University Press, Hong Kong, 1995), 244, at 256.

#### **IV.B.5. *Trafficking under the Modern International Definition***

Assuming that women working on the streets have been recruited freely, without the threat or use of violence, force or deception, and are working independently, they are also not victims of trafficking under the modern international definition. Rather, they have (voluntarily) migrated to (voluntarily) work in the Hong Kong sex industry. Whilst unfortunately this may in some circumstances be out of economic necessity – and as a long-term goal, economic factors must be addressed to obviate the need for such migration – in my view, this does not render a woman’s choice to work in the sex industry, rather than for example in a factory, non-consensual for the purposes of trafficking.

#### **IV.C. Women recruited to work in or from Villas (Brothels)**

##### **IV.C.1. *Recruitment***

Many women seem to be recruited by an agent to work as prostitutes in “villas” (brothels) in Hong Kong, although little is known about how they are recruited or how much they know about their living and working conditions before they come to Hong Kong. In particular, since they are always “under protection”, Action for Reach Out and Zi Teng have not been able to speak to these women to find out about their experiences. Reports in the Hong Kong press suggest a high level of organised crime involvement in this type of recruitment, often with triad connections. One of the particular techniques used by organised crime syndicates and triad societies is to set the woman up in a sham marriage with a Hong Kong local, so that she can obtain a dependant’s visa, allowing her to work legally and usually long-term in Hong Kong. The local man may be someone in debt to the particular syndicate or triad society. The following are a few examples of cases involving syndicates and triad societies which have been reported in the Hong Kong press in the last 10 years:

- In 1993, a multi-million dollar prostitution syndicate covering four countries and run by a Hong Kong born man, Cheung Thai Kwok, was uncovered (the *1993 Syndicate*). Agents in Malaysia, Thailand and the Philippines had recruited women to work in prostitution in Hong Kong. The syndicate, which was later found to have triad connections, arranged for the women to be married to Hong Kong residents, the marriage usually taking place in the home country of the woman, with the man being flown there especially for the purpose. The women worked from villas in Hong Kong, having to provide sexual services to 1,000 men to pay off their debts to the syndicate.<sup>72</sup>

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<sup>72</sup> “Police Hunt Asia’s Biggest Pimp”, *South China Morning Post*, 19 September 1993.

- In 1994, it was reported that the Hong Kong Vice Squad was investigating links – so-called “Chiu Chow connections” – between two Hong Kong triad societies, the Fuk Yee Hing and Sun Yee On triad societies, and their counterparts in Thailand and the Philippines, in bringing women into Hong Kong on two-week tourist visas<sup>73</sup> to work from villas as “running girls”.
- In 1997, it was reported how a member of a Hong Kong triad in Yuen Long personally travelled to the Mainland to recruit women, as he was able to make more profit by recruiting particularly young and pretty women.<sup>74</sup> This seems to be a common tactic.
- In 1999, it was reported that Mainland prostitutes worked at an estimated 15 villas operated by triads in Yuen Long.<sup>75</sup>

#### **IV.C.2. Entry into Hong Kong**

The mode of entry of women being recruited to work in villas in Hong Kong varies, depending on where the women come from.

Most Mainland Chinese women enter legally on a two-way permit. However, in 1997, it was estimated that about 20% of women from the Mainland working as prostitutes entered Hong Kong on a false two-way permit, obtained through a syndicate at a cost of between HK\$500 to HK1,500.<sup>76</sup> This seems extremely low, with current reports of forged documentation costing between HK\$10,000 and HK\$50,000. There are also reports of women being smuggled in by speedboat from the Mainland, and dropped off on the East Coast of Hong Kong, at Sai Kung, Deep Bay or Tolo Harbour. These trips are reportedly operated jointly by Mainland Chinese and Hong Kong triads, not necessarily of the same triad fraternity, at a cost of around HK\$20,000.<sup>77</sup> Action for Reach Out has also heard of cases where women were smuggled in by speedboat from Mainland China to work for a day at a time.

Women from other countries tend to enter on a tourist visa. As mentioned above, sham marriages also seem to be a relatively common mode of entry, or a means to convert a tourist visa into a dependant’s visa once in Hong Kong.

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<sup>73</sup> “Gang’s Prostitution Links Investigated”, *South China Morning Post*, 10 March 1994.

<sup>74</sup> “Sex Crosses the Border”, *South China Morning Post*, 10 March 1997.

<sup>75</sup> “War on One Women Brothels”, *South China Morning Post*, 12 December 1999.

<sup>76</sup> “Police Team Up against Influx of Prostitutes”, *South China Morning Post*, 22 September 1995.

<sup>77</sup> “Sex Crosses the Border”, *South China Morning Post*, 10 March 1997.

### IV.C.3. *Living and Working Conditions*

Most women both live and work, i.e. receive clients, at the villas. In particular, those who have entered Hong Kong illegally are likely to work at the villas, as they are less likely to be picked up by the police. Many villas seem to be operated by triads. As mentioned above, in December 1999, it was estimated that there were about 15 villas operated by triads in Yuen Long alone.<sup>78</sup> Clients are arranged through a *mamasan* or pimp, or, in the case of triad-run villas, through a *mafu* (a young triad member). There are also a few reports of women working in massage parlours.

Those women who have entered Hong Kong legally may be required to work as “running girls”. This seems to be an arrangement used only by triads. Whilst the women live at a villa, they work off the premises, always accompanied by a mafu. The mafu’s contacts at hotels and massage parlours call or page him when someone has requested sexual services and he escorts the women to and from the clients.

The pattern in both cases seems to be that the women provide sexual services to the first 100 or 150 clients without pay, to cover the cost of the arrangements to bring them into Hong Kong.<sup>79</sup> It is not clear whether this quota applies to all women, or whether the quota is higher for women brought in illegally, considering the “going-rates” for false documentation and smuggling mentioned above.<sup>80</sup> After that, the women are paid for further clients. There are varying reports of how much they are paid for further clients - out of the HK\$290 to HK\$450 charged to the client (often depending on the woman’s nationality), they may receive anything from HK\$30 to HK\$100. In the case of women working in villas, the remainder is split between the *mamasan*, the villa keeper and the syndicate.<sup>81</sup> In the case of running girls, the mafu and hotel or massage parlour get a cut. Where women have been married to local men, their “debt” is much higher. In the case of the 1993 Syndicate mentioned above, the women involved had to provide sexual services to 1,000 customers for free to pay back their debt to the syndicate. This reportedly took them about two months.<sup>82</sup> Some cases are reported of women who never receive the money owed to them. In a case involving Thai women in 1994, the women had been recruited in Thailand and had paid a HK\$2,000 introduction fee, which included a one-way ticket to Hong Kong. They were supposed to receive HK\$30 for each

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<sup>78</sup> “*War on One Woman Brothels*”, *South China Morning Post*, 12 December 1999.

<sup>79</sup> For example, “*Police Team Up Against Influx of Prostitutes*”, *South China Morning Post*, 22 September 1995.

<sup>80</sup> See Part IV.C.2 above, *infra* p 19.

<sup>81</sup> “*Sex Crosses the Border*”, *South China Morning Post*, 10 March 1997.

<sup>82</sup> “*Police Hunt Asia’s Biggest Pimp*”, *South China Morning Post*, 19 September 1993.

client (who was charged HK\$300), but this was never paid to them as promised when they returned home.<sup>83</sup>

The women are usually guarded in the villas, and there are reports of their identity documents being confiscated to prevent them from running away, particularly whilst they are paying off their original debt. For example, in the case of the 1993 Syndicate, the women were guarded in the villa to prevent them from escaping, but after they had reached their 1,000 quota, security was relaxed a little. Nevertheless, they always had to be accompanied by a mafu.<sup>84</sup>

#### ***IV.C.4. Trafficking under Hong Kong Law***

Trafficking under section 29 of the Hong Kong Crimes Ordinance clearly encompasses all cases where women are brought into Hong Kong for the purposes of working as prostitutes in villas, including those whose recruitment and working and living conditions are entirely consensual (what is in my view, more correctly termed *migration* for prostitution/sex work).

#### ***IV.C.5. Trafficking under the Modern International Definition***

The modern international definition defines trafficking more narrowly than Hong Kong law, by reference to the non-consensual circumstances of the recruitment and end conditions. However, a woman who is voluntarily recruited for the purposes of prostitution can still be a victim of trafficking under the modern international definition, if (taking the most relevant alternatives within the definition): (a) she is recruited for the purposes of being placed or held in a forced labour or slavery-like situation; **and** (b) she is either deceived as to the conditions in which she will be living and working or is in debt bondage.<sup>85</sup>

In relation to (a), some of the following conditions have been reported in Hong Kong, which, in combination with other factors, might amount to a slavery-like situation: illegal confinement (not being allowed to leave the villa or only being allowed out under supervision), identity documents being confiscated, not being paid or paid less than agreed. In relation to (b), there is no information on the extent to which women consent to such living and working conditions. However, there is evidence of some women being in a situation of debt bondage, as in the case mentioned of the Thai women in 1994. Thus some women working in or from villas might be trafficked within the modern international definition.

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<sup>83</sup> “Gang’s Prostitution Links Investigated”, *South China Morning Post*, 10 March 1994.

<sup>84</sup> “Police Hunt Asia’s Biggest Pimp”, *South China Morning Post*, 19 September 1993.

<sup>85</sup> For definitions, see Part II.C.4 above, *infra* p 8.



## **IV.D. Women Forced into Prostitution**

### **IV.D.1. Introduction**

There is no research, nor are there any statistics available, on the number of women forced into prostitution in Hong Kong. I have only been able to identify 16 cases, involving 39 women, in the last ten years, through discussions with various non-governmental organisations and articles in the Hong Kong press (see further Appendix 1 (“Methodology”). Brief details of these cases, and the alphabetical letters by which they will be identified, are set out on the next page.

These cases probably represent the tip of the iceberg. Many victims might not report the case to anyone in the first place, for example if they are too traumatised or fear reprisal against their families. Some might be aided by their consulate without any support organisations or the press being aware of the case. Finally, whilst one woman may escape, she is likely to leave others behind in the same predicament, who might be moved on before the police are able to locate the premises (if they are able to do so at all – see Part V.C below, *infra* p 34).

*~ please see next page ~*

## Identified Cases of Trafficking for Forced Prostitution between 1990 and 2000

Year	Case	Total	Nationality	Entry	Discovered	Source(s)
1990		-				
1991	A	6	5 Filipinos	Illegal (fp & fm).	Escaped	AHRC Newsletter; CDPCF, AFRO Mission
	B		1 Filipino	Illegal (fp)		
1992	C	4	2 Filipinos	? (fm)	Escaped	CDPCF
	D		2 Columbian	Legal (tv)	?	CDPCF
1993	E	8	5 Filipino	Legal (tv)	?	SCMP
	F		1 Filipino	Legal (tv)	?	AFRO/Mission
	G		2 Mainland	Illegal (smgld)	?	SCMP
1994	H	8	1 Thai	?	Police raid	SCMP
	I		7 Filipinos	? 1 illegal (fp).		SCMP
1995	J	4	1 Filipino	Legal (dhc)	Police raid	Mission
	K		3 Mainland	Illegal (smgld)		SCMP
1996		-				
1997	L	1	1 Filipino	?	Escaped	Mission
1998		-				
1999	M	1	1 Filipino	Illegal (fp)	Escaped	AFRO, Bagwis, SCMP
2000	N	1	1 Mainland	?	Dropped note out of window	SCMP
?	O	1	1 Filipino	Legal (tv)	Escaped	AFRO
Early 1990s?	P	5	5 Columbians	Legal (tv)	Police Raid	AFRO

### Definitions

*dch:* domestic helper contract  
*fp:* false passport  
*fm:* false marriage  
*smgld:* smuggled  
*tv:* tourist visa

*AFRO:* Action for Reach Out  
*Bagwis:* Filipino free newspaper  
*CDPCF:* Catholic Diocesan Pastoral Centre for Filipinos  
*Mission:* Mission for Filipino Migrant Workers  
*SCMP:* South China Morning Post

Of the 39 women identified as having been recruited for the purposes of being forced into prostitution, 25 were from the Philippines, 7 from Columbia, 6 from the Mainland and 1 from Thailand. All the women were lured to Hong Kong by the promise of legitimate work. Before the situations of these women are discussed more generally, a better understanding

may be gained by considering two particular cases in detail.

#### **IV.D.2. Two Case Histories**

The following two cases below were reported in 1999 and 1991 respectively. Case M was originally reported in the Philippine press.<sup>86</sup> Action for Reach Out read of the case and visited the Philippine consulate to offer their assistance, but were not allowed to speak to the woman involved, nor were they subsequently provided with information on the case, as promised. Once the case went to trial, it was reported in the Hong Kong press.<sup>87</sup> Case B was not reported in the press. The Mission for Filipino Migrant Workers (the *Mission*) learnt of it directly from the woman involved.

##### **Case M**

Juliet Ochada, a Filipino woman aged 19 on her passport (but reportedly 16), was recruited in Cebu City, the Philippines, by a Filipino man, for unspecified work in February 1999. When she arrived in Manila in March 1999, she was held in a hotel and told the work in Hong Kong involved prostitution. Whilst there, she signed false marriage papers with a Hong Kong resident and then flew to Hong Kong on a false passport with her husband and her agent. She was taken to a flat in Mei Foo Sun Chuen and told she would have to work in a Mongkok villa, providing sex to 20 men a day, once she had obtained a dependant's visa and identity card. She was taken to the Immigration Department to change her visa status on the basis of her marriage and was told by the agent that she owed HK\$20,000 for the arrangement. She was threatened that her family would be killed if she told anyone about what had happened. She managed to escape and reported the case to the police on 1 July 1999.

Five members of the syndicate were subsequently prosecuted in November 1999 for trafficking for the purposes of prostitution, and for conspiracy to defraud the Immigration Department. They were acquitted on both counts. Judge Day criticised police officers for showing a "cavalier disregard" for the rules when taking statements from the defendants, and refused to allow statements from three of the defendants for this reason. The judge also cast doubt on the reliability of Miss Ochada as witness - he was reported as saying that "he didn't for one minute believe her evidence" that she had been brought to work as a prostitute against her will.<sup>88</sup>

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<sup>86</sup> *Bagwis*, August 1999.

<sup>87</sup> "Filipina 'Forced into Sex Trade'", *South China Morning Post*, 16, 18 and 24 November 1999.

<sup>88</sup> "Scolding for Police as Five Cleared of Prostitution Case", *South China Morning Post*, 24 November 1999.

## ***Case B***

A young Filipino woman, aged 16, had been introduced to an agent in the Philippines, and was recruited to work in Hong Kong as a receptionist in 1991. She was given a passport in a false name, and a middle-man posed as her father in entering Hong Kong. When she arrived in Hong Kong, she was taken to a flat and raped by the boss, and then had to provide sexual services to another man straight afterwards. She continued to have to service clients every day for no pay. She was told she would have to pay back the money for her passport, airfare and clothes. After two months, she suffered two epileptic fits in one afternoon, and was taken to hospital. The Mission were called to the hospital by the interpreter, who had been concerned about the woman. Whilst the woman said she wanted to report the case to the police, she did not subsequently pursue this. The hospital discovered that her visa had expired and informed the Immigration Department, which filed a case against her for overstaying. She failed to turn up to the first court hearing and was given a 6 month custodial sentence, which was later reduced to 3 months.<sup>89</sup>

### ***IV.D.3. Recruitment***

In all the known cases of women being recruited for the purposes of forced prostitution, the women were lured to Hong Kong by the promise of legitimate work, whether as baby-sitters, receptionists, karaoke bar workers, jewellery sellers or, in one case, as a domestic helper. There are no reported cases of women being abducted, or recruited by force or coercion.

There is evidence of organised crime and triad involvement in recruiting women into Hong Kong for forced prostitution, as there is in recruiting women to work in prostitution in villas. In 1994, for example, it was reported that the Sun Yee On triad society was luring Thai and Filipino women into Hong Kong, setting them up in false marriages and forcing them to work as prostitutes.<sup>90</sup> This type of organised crime and triad involvement would suggest that much greater numbers of women are involved than the 39 identified.

### ***IV.D.4. Entry into Hong Kong***

Of the 28 women for whom the information is available, 15 entered legally and 13 illegally. The women who entered legally came on tourist visas, except for one woman who came on a domestic helper's visa. Of the 13 women who entered illegally, it is known that 2 Filipino women came on false passports and 5 Mainland women were smuggled in over the border by

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<sup>89</sup> As case notes were no longer available in relation to this case, the author made attempts to re-confirm with the Mission that the details cited above were correct.

<sup>90</sup> "Foreign Women Lured to Hong Kong Brothels", *South China Morning Post*, 1 January 1994.

speedboat. One woman was married to a Hong Kong resident in the Philippines before being brought into Hong Kong (and seven were forced into sham marriages with local residents *after* they arrived in Hong Kong).

#### ***IV.D.5. Living and Working Conditions***

Most of the women were taken from the airport straight to villas, usually in the Mongkok, Sham Shiu Po or Tsuen Wan districts. One Thai woman was sold to a villa for HK\$10,000, and then sold on to another villa a few days later (Case H). The woman who entered on a domestic helper's visa was taken to a private flat, where she was forced to provide sexual services to clients (Case J). Some of the women were initially raped by their bosses or guards. In one case, the woman was drugged on her first night, before being raped and then having to provide sexual services to 35 men that night (Case I).

All of the women were confined to the villa and guarded. Whilst most of the women provided sexual services in the villa, in one case, the woman was escorted to customers in houses and flats within the district. Some had their passports confiscated, and were not allowed to keep any money (for example from tips), in order to prevent their escape. Most of the women were forced to provide sexual services for between 10 and 20 customers a day for no pay. In some cases their earnings were supposedly being credited against their "debts" for travel and documentation. For the women for whom sham marriages had been arranged, that debt was between HK\$20,000 and HK\$35,000.

In some cases, women reported that they were not allowed to refuse oral or anal sex, and many customers refused to wear condoms. In one case (Case I), the women were given drugs, and received injections to stop their menstruation. They were locked into a cell with bunkbeds and a bricked-up window at night, with a plastic bucket as a toilet.

#### ***IV.D.6. Escape***

Despite the difficulties involved, many of the women had managed to escape, for example whilst their guards were asleep. A few were discovered during police raids for illegal immigrants. A case was also reported in April 2000 of a Mainland woman who had dropped a note out of the window of the brothel, saying she was being held there against her will (Case N). However, no further details on the case have been reported since.

#### ***IV.D.7. Trafficking under Hong Kong Law***

It is clear that those women who have been brought into Hong Kong for the purposes of forced prostitution are victims of trafficking, and those responsible have committed a

(particularly grave) offence of trafficking under section 29 of the Hong Kong Crimes Ordinance.

#### ***IV.D.8. Trafficking under the Modern International Definition***

Women who have been recruited by deception or debt-bondage for the purposes of forced prostitution are unquestionably victims of trafficking under the modern international definition.

#### **IV.E. Women Recruited to work in Nightclubs**

##### ***IV.E.1. Introduction***

Many women from the Philippines and Thailand are recruited to work as entertainers in nightclubs in Hong Kong. These are mainly located in the districts of Tsim Tsa Tsui and Wanchai. This section focuses on the women working in the clubs in Wanchai. It is based on discussions with Action for Reach Out, which has visited 27 clubs in Wanchai. As described further in Appendix 1 (“Methodology”), I have also been liaising with Action for Reach Out to conduct a study on the experiences of 10 Filipino women working in different clubs and for different agencies in Wanchai. Whilst a number of women have already agreed to participate, due to their very limited free time, only one interview had been conducted at the time of writing<sup>91</sup>. This was with “E”, who came to Hong Kong in March 2000 (see Appendix 3 for the questions drafted to guide the interviews).

Each club employs about 15 to 20 women as entertainers. This involves dancing, drinking and talking with clients and, although this is on a voluntary basis, “escort work”. Escort work does not necessarily involve providing sexual services (some men simply want company for dinner for example), although it usually does.

##### ***IV.E.2. Recruitment***

Action for Reach Out estimates about 75% of the women working in the clubs in Wanchai are from the Philippines and 25% from Thailand.

The Filipino women are in nearly all cases recruited by an agency, for a six-month period. There are three to five agencies operating in Hong Kong, providing women to different clubs. The largest agency, which recruits about 50% of the Filipino women, has a particularly good reputation for treating the women well and seems to be a legitimate business, with office addresses in the Philippines and business cards. Some Filipino women are put in touch with

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<sup>91</sup> Subsequently, a number of other interviews have been conducted. The results of these interviews will be published at a later date.

an agency by friends. Others are also recruited through a “talent manager”, who is employed by agencies to scout for attractive women. “E”, for example, was approached in a shopping mall and asked if she wanted to go abroad to earn more money.

Some Thai women are also recruited by an agency. However, most of the Thai women are Hong Kong residents (having married locals), and operate only through a mamasan rather than through an agency.

It is not very clear how much women are told about the job by the agency, or how much they know from friends, before they come to Hong Kong. This is one of the main areas to be discussed in the interviews. Some women are given contracts, but these might be in Chinese, which are then translated orally. To date, it has not been possible to obtain a copy of a contract, in order to establish whether there are any discrepancies between what the contract says and what the women are told it says. “E” signed a contract, but was not given a copy to keep.

Regarding the nature of the job, Action for Reach Out estimates that about half of the women know before they come to Hong Kong that the clubs also offer escort services. The other half believe that they are simply coming as dancers, and (as was the case with “E”) do not know that they will be expected to do escort work. In relation to pay, all the women seem to be informed by the agency what they will earn as basic salary and commission on drinks. It is not clear whether some women are also told what they can earn through providing escort services (if they are told about escort work at all).

The agency fee that Filipino women pay is between HK\$10,000 and HK\$16,000. The Thai women tend to pay a lower agency fee of about HK\$8,000. The agency fee usually covers visa, ticket and accommodation, and sometimes a small allowance on arrival. There are some reports of agencies charging for insurance, although it is not clear what this covers, since, at least in relation to medical expenses, medical check-ups are offered for free at the Social Hygiene Clinic or the women report paying HK\$500 to visit a private doctor. “E” also had to pay a separate fee of HK\$3,000 to the manager who “discovered” her.

#### ***IV.E.3. Entry into Hong Kong***

The Filipino women are either escorted to Hong Kong or come in small groups and are met on arrival by someone from the agency. They enter legally on a six-month entertainer’s visa.

Action for Reach Out believes the position is the same with the Thai women recruited through an agency, i.e. they enter legally on an entertainer’s visa.

#### **IV.E.4. *Living Conditions***

The women are accommodated in flats provided by the agency. They have to pay for their own food and personal items. Action for Reach Out has visited two flats, which were probably around 500 square foot, housing between 7 and 15 women each. “E” shares her bedroom with 5 other women. She thinks that the size of the room is fine for 6 women, and each has their own bed. Some women have complained that they have to share a single bed (of a bunk bed) when there is an overlap between those women who are leaving and those who are arriving. This overlap can be for two weeks.

Depending on the agency, the women might live in a flat which is not “minded” (guarded), and be relatively free in their movements (as is the case with “E”), or they might live in a flat which is minded and have limited, or no, opportunity to leave the flat. About half fall into each category. The women who are not minded are nevertheless supposed to stay in the flat, and the agency might sometimes call to check up on their movements. Of the women that are minded, some women have to sign out and give details of where they are going, and provide proof on their return. Others have free time, but this may be limited to a mere two hours a week, and then between 1 pm and 3 pm, when the women would usually be sleeping. Most women are allowed to visit the Social Hygiene Clinic, which offers free check-ups every fortnight. The strict confinement of the women is obviously prompted by a concern that the women may earn some money “on the side”, of which the agency and mamasan would be deprived their usual cut (see IV.E.5 below). Action for Reach Out has never heard of any cases of psychological or physical abuse against the women by the agency, mamasan or minders. The interviews will seek to confirm this.

#### **IV.E.5. *Working Conditions***

The women are required to work seven days a week, usually from 8 pm to 5 am. However, those clubs that have a happy hour (5 or 6 out of the 27 clubs) require the women to work from 3.30 pm to 5 am. Some of the women are given two days off a month. “E” preferred to work instead of taking her two days off, as she received double pay on those days.

Most of the women have to pay back the agency fee within three to six months of their arrival in Hong Kong. However, “E” reported that her agency’s policy was to take her first two months’ basic salary and first month’s commission and tips to pay back the agency fee. The basic salary is usually HK\$2,300 to HK\$3,000 a month, although “E” reported that she was paid a basic salary of HK\$6,500 (she was not aware that this was unusually high, however, she had not yet worked the first two months, so it remains to be seen if she actually received



this amount). The women also receive an average of HK\$40 commission on each drink bought for them by a customer (it varies between HK\$30 and HK\$50 depending on the club), as well as tips. “E” said she was bought about 60 drinks each month at HK\$40 commission each, which amounts to HK\$2,400 commission a month. On the basis of an average basic salary of HK\$2,600, and commission on (say) 40 drinks a month at an average of HK\$40 each, amounting to HK\$1,600, a woman would earn a total of HK\$4,200 each month. Over three months she would therefore earn HK\$12,600, and over six months, HK\$25,200. It is clear from these calculations that if a woman is only given three months to pay back the agency fee (HK\$10,000 to HK\$16,000), she is likely to struggle unless she does escort work or a boyfriend pays the agency fee back for her, which sometimes happens. In “E’s” case, since her first two months’ basic salary and her first month’s commission were used to pay the agency fee, she said she needed to do escort services, otherwise she would not have had any money to pay for food or personal items. The interviews seek to establish more information in this area.

All the women are asked whether they also want to work as an escort. This is technically voluntary, and it would seem that the agencies do not pressurise the women. However, “E” thought that if she refused, the mamasan (who receives commission on escort services) would send her back to the agency. In any event, most of the women, seeing how much can be earned through escort work, find it hard to refuse. The club charges customers HK\$4,000 to buy a woman out for the night. Although the woman must return by midday the next day, all the other details of the arrangement are left for her to agree with the customer, which makes the arrangement technically legal. Of the HK\$4,000 buying-out fee or “bar fine”, the woman receives HK\$1,000. The club, mamasan and agency each receive HK\$1,000. If a customer buys a woman out after 4 am, he may pay a lower bar fine, and the woman may consequently receive less, usually HK\$750. Women tend to average between 4 and 10 escorts a month (“E” averaged 13 in her first month). They may also earn a lot from tips from customers.

The mamasan, who works outside the club attracting customers, receives commission on the men who want an escort, but not on drinks. Some women have reported being pressurised by their mamasan to take customers generally, or particular customers, or to give the mamasan a cut of their commission on drinks. However, generally, the mamasans seem to treat the women well, and look after their interests. For example, the mamasan usually vets potential customers, and is cautious about tourists (since they are not resident in Hong Kong), or men of certain nationalities who have a general reputation for treating women badly or wanting sado-masochistic sexual services. Where the man is not a regular, the mamasan requires

payment by credit card, so that there is a record of the client should the woman not return or have difficulties with him. All the women say that they ask men to use condoms, but some men refuse, and some men pay more for sex without a condom, which some women might agree to. “E” reported that some men slip the condom off during sex. Indeed, a 1999 report on Hong Kong men using prostitutes (both in Hong Kong and abroad) found 27% refused to wear condoms.<sup>92</sup>

The club keeps a record of what the woman has earned through commissions on drinks and escort services. Action for Reach Out also encourages the women to keep their own records, so that they are able to check the record is correct. However, they have not heard of any complaints about non-payment, or incorrect payment.

The women tend to earn about HK\$20,000 in six months, although they can earn a lot more if they are popular and do a lot of escort work. They are never allowed by the agency to extend their six-month visa, as the clubs want a constant turn-over of new women.

#### ***IV.E.6. Trafficking under Hong Kong Law***

In my view, it seems unlikely that section 29 of the Crimes Ordinance, which makes it an offence to bring women into Hong Kong *for the purposes of prostitution* would be interpreted by the Hong Kong courts to include bringing women to work in Hong Kong nightclubs as entertainers, even though on average they provide escort services every third night. There are certainly no reported attempts to ask the Hong Kong courts to interpret it this way.

#### ***IV.E.7. Trafficking under the Modern International Definition***

However, depending on the particular circumstances, a woman who has been recruited to work as an entertainer in a nightclub in Hong Kong could be a victim of trafficking under the modern international definition, if her situation is non-consensual. Taking the most relevant internal alternatives of the definition, this might be if: (a) she is recruited by deception or debt bondage; and this is (b) for the purposes of being placed in forced labour or slavery-like practices. Both (a) and (b) must be met for the case to amount to trafficking under the modern international definition. In the case of women recruited for nightclub work, each is a very grey area in itself.

In relation to (a) (the recruitment process), there often appears to be a level of deception in the recruitment process, in that many women are not informed that the job also invariably entails providing escort services. However, escort work is technically voluntarily. There is no

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<sup>92</sup> “*One in Seven Makes Visits to Prostitutes*”, *South China Morning Post*, 26 May 1999.

evidence of women being recruited by means of debt bondage, although the study seeks to confirm this.

In relation to (b) (the purposes of recruitment), the agency primarily recruits women for the purposes of entertainment. Depending on the particular circumstances, the conditions in which the women live and work could possibly amount to slavery-like practices for the purposes of (b). Of particular relevance would be whether, due to the amount of her agency fee, the repayment period, her basic salary and commission on drinks, a woman has no choice in whether or not to do escort work in order to pay her agency fee back within the repayment period. A further relevant factor is that many of the women are confined to the flat when they are not working in the nightclub or have an extremely limited level of freedom. In itself, this is a violation of the human right to freedom of movement.<sup>93</sup> Other issues include some women not having a bed to themselves, some having to work 14½ hour days 7 days a week, some not being allowed to refuse customers and some customers refusing to wear a condom. More issues may become apparent through the interviews.

## **V. APPROACH OF HONG KONG AUTHORITIES**

### **V.A. Introduction**

The following section attempts to assess the approach which the Hong Kong authorities take to the issue of trafficking of women for the purposes of prostitution. The information (which is currently rather limited) is based on a number of sources. In particular, the Immigration Department and Public Prosecutions Department provided statistical information and information on certain aspects of their policies. The information provided by the Police Force is currently limited to statistical information (see further Appendix 1 (“Methodology”)).

It should be noted that, unlike in many other countries in which trafficking is reported, I have not found any reports of any involvement or complicity of Hong Kong officials in the trafficking of women into prostitution in Hong Kong.<sup>94</sup>

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<sup>93</sup> As protected *inter alia* by the UDHR, article 13(1) and the ICCPR, article 12(1).

<sup>94</sup> For example, there is evidence of complicity of Thai and possibly Burmese officials in the trafficking of Burmese women to Thailand, see Asia Watch Women’s Rights Project, *A Modern Form of Slavery, Trafficking of Burmese Women and Girls into Brothels in Thailand*, (Human Rights Watch, USA 1993), at 75 ff; and evidence of complicity of Nepalese and Indian police in the trafficking of Nepalese women to India, Human Rights Watch Asia, *Rape for Profit: Trafficking of Nepali Girls and Women to India’s Brothels* (Human Rights Watch, USA, 1995), at 51 ff.

## V.B. Trafficking Statistics

I have compiled the following statistics from a number of different sources in relation to the offence of trafficking under section 29 of the Hong Kong Crimes Ordinance (sources are cited in the footnotes):

### Statistics on Trafficking

Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Cases Reported <sup>95</sup>	16	4	4	32	80	27	15	1	0	3
Persons Arrested <sup>96</sup>					20	5	1	0		
Prosecutions <sup>97</sup>		[1]		[2]		[1]				[1]
Convictions <sup>98</sup>		[0]		[2] <sup>99</sup>		[0] <sup>100</sup>				[0]

It can be seen that the number of cases reported of trafficking women for the purposes of prostitution, having reached a peak of 80 cases reported in 1994, tailed off to a mere 1, 0 and 3 cases reported in 1997, 1998 and 1999 respectively. There is no evidence whether this reflects a decrease in trafficking activities, or only in the detection rate. However, given that organised crime syndicates, including triad societies, seem to have such a high stake in the business, it seems highly unlikely that trafficking activities have abated so dramatically in this period. Rather, the figures strongly suggest that traffickers are not being actively pursued. Further, even where cases are reported, the number of persons arrested seems extremely low by comparison.<sup>101</sup>

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<sup>95</sup> Letter from the Commissioner of Police dated 11 April 2000, on file with the author.

<sup>96</sup> Taken from the *Hong Kong Government's Initial Report to the CEDAW Committee*, *supra* note 49, Annex D.

<sup>97</sup> Figures in square brackets are based on reports in the Hong Kong press. According to the Director of the Public Prosecutions Department, no statistics are available on the number of *prosecutions* in relation to the offence of trafficking: letter from the DPP to the author, dated 3 May 2000, on file with the author.

<sup>98</sup> Figures in square brackets are based on reports in the Hong Kong press. According to the Director of the Public Prosecutions Department, no statistics are available on the number of *convictions* in relation to the offence of trafficking: letter from the DPP to the author, dated 3 May 2000, on file with the author.

<sup>99</sup> The convictions were for aiding and abetting trafficking, "*Prison for Thai Bride Trafficking*", *South China Morning Post*, 16 September 1993.

<sup>100</sup> Although the accused in this case was found guilty for living off the earning of prostitution.

<sup>101</sup> Although it is not clear whether "cases reported" refers to the number of women trafficked, in which case one "person arrested" could be responsible for a number of "cases reported", or if "cases reported" refers to instances of trafficking, which could involve *any* number of women.

When the Special Vice Squad in Kowloon West was upgraded in 1994, it was generally expected that there would be a change in tactics in pursuing those responsible for bringing foreign and Mainland Chinese women into Hong Kong for the purposes of prostitution.<sup>102</sup> However, even the article which reported this fact then proceeded to report only on the increase in prosecutions of foreign and Mainland Chinese prostitutes, without considering this in the context of trafficking at all. This emphasis on women, rather than on traffickers, seems to be a general hallmark of the situation in Hong Kong.

### **V.C. Police Force**

I have not yet contacted the Vice Squad regarding its policies in pursuing traffickers. However, from the statistical information obtained to date, particularly the number of cases reported in the last 3 years (a total of 4), there seems to be very little activity in this area. Rather, as will be discussed below, it seems to be the women who are sought out, rather than their traffickers (the women no doubt making much easier targets).

The police carry out routine checks in villas, massage parlours and nightclubs for illegal immigrants and for non-local women overstaying their visa and/or working as prostitutes in breach of their conditions of stay. According to Action for Reach Out, there rarely appears to be any investigation into whether women are victims of trafficking on these routine raids.<sup>103</sup>

Nevertheless, it is recognised that some of the women brought into Hong Kong for the purposes of *forced* prostitution (as identified in Part IV.D above, *infra* p 23) were in fact discovered in police raids for illegal immigrants. Of course, this could have been because the circumstances in those cases were immediately apparent, or because the women themselves complained. In any event, in these cases, and in those where women escaped from a situation of forced prostitution and reported their situation to the police, the police appeared to take the cases seriously and to make concerted attempts to find the traffickers. However, this is often fraught with difficulties. Firstly, the women usually do not know the address of where they were held captive, and even if they are able to describe the surrounds, it may take a long time for the police to be able to locate the premises. Secondly, their captors or guards, on discovering their escape or on a tip-off, may be quick to hide the evidence. In one case, the woman knew the address of the villa where she had been held, but by the time the police got there all signs of the premises having ever been used for the purpose had disappeared – the

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<sup>102</sup> “Vice Squad to Step-Up Crackdown against Prostitution Rackets”, *South China Morning Post*, 21 June 1994.

<sup>103</sup> Sister Ann Gray, *HKSAR Government Report on the CEDAW Convention from Action for Reach Out*, paper presented at *Seminar on the CEDAW Convention*, University of Hong Kong, 28 November 1998, available at the website of the Centre for Comparative and Public Law, University of Hong Kong, <http://www.hku.hk/ccpl/cedawweb/actionforreachout.html> (website visited 31 January 2001).

guards and the other women being replaced by people the woman had never seen before (Case F). In another case, the villa in which the woman had worked had an intricate warning system of coloured lights so that on a police raid, the women were taken to a hidden room and the apartment was immediately changed to assume the appearance of an ordinary residence (Case O).

Finally, on the subject of cases of forced prostitution, in what seems to be a very unusual case, a woman who had been trafficked for the purposes of forced prostitution returned to the Philippines and then took part in a police operation to trap the trafficker that had brought her to Hong Kong. She arranged a second visit through the man who had brought her to Hong Kong the first time, on the condition that this time she would actually be paid. He was arrested as he boarded the plane to Hong Kong, accompanying the woman and three other young women (Case I).

Returning to police activity in relation to the women involved, the following statistics are available for the last five years on the number of arrests and prosecutions for breach of condition of stay under section 41 of the Immigration Ordinance.<sup>104</sup> The number of *convictions* is not available.

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<sup>104</sup> Statistics provided by Immigration Department, letter dated 28 April 2000, on file with the author.

### Statistics on Breach of Conditions of Stay (Men and Women)

	1995		1996		1997		1998		1999	
	Arr	Pros	Arr	Pros	Arr	Pros	Arr	Pros	Arr	Pros
<b>Overstaying</b>	21,416	14,658	19,137	14,063	22,292	15,267	24,297	17,384	28,041	17,843
<b>Working illegally<sup>105</sup></b>	5,227	4,100	4,005	3,079	3,463	2,553	5,549	3,935	4,132	3,280

The figures do not indicate any particular trends. However, statistics are not kept on the *type* of work illegally engaged in,<sup>106</sup> so it is not possible to calculate how many women are arrested and prosecuted for breach of condition of stay for working as a prostitute and to note any particular trends in this context. Nevertheless, newspaper reports on the number of non-local prostitutes arrested in Kowloon West in 1992 (843 women), 1993 (1877 women) and the first quarter of 1994 (620, which would amount to approximately 2480 over the year) indicate a dramatic increase in the number of non-local prostitutes arrested. More recent figures do not appear to be reported in the press. The statistics are also not broken-down into males and females, although the introductions to the Annual Statistical Tables on Receptions of the Correctional Services Department for 1997 and 1998 state interestingly that a large proportion of receptions of women (i.e. women who have been convicted and sentenced to imprisonment) were for breach of condition of stay, namely 1510 women in 1997, and 2072 women in 1998.

Those women who have married a local resident hold a dependant's visa, which allows them to work in Hong Kong. They are therefore treated the same as local prostitutes. Whilst prostitution itself is not illegal (see Part III.A above, *infra* p 10), they may be charged with soliciting for an immoral purpose. The number of persons charged with, and convicted for, soliciting has increased *12-fold* in the last 10 years:

<sup>105</sup> Including those both overstaying and working illegally.

<sup>106</sup> Letter from Immigration Department dated 16 May 2000, on file with the author.

### Statistics on Soliciting (Men and Women)<sup>107</sup>

Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
<b>Charged</b>	72	197	215	94	238	255	458	448	929	974
<b>Convicted</b>	61	142	211	82	186	240	444	392	773	835

Again, there are no publicly available figures showing the break-down of men and women charged and convicted.<sup>108</sup> Rather tellingly, the Hong Kong Government completely omitted to mention the offence of soliciting when commenting on the legislation and practice relating to trafficking and prostitution in its Initial Report to the CEDAW Committee in October 1998. However, the zealous use of this offence against women was brought to the attention of the CEDAW Committee by a number of non-governmental organisations in their shadow reports on the Government's Initial Report.<sup>109</sup>

Finally, as well as there being a number of reports of sex workers generally being treated discriminatorily on the basis of their work,<sup>110</sup> Action for Reach Out reported one case of a police officer speaking very abusively in Cantonese in front of a victim of forced prostitution (not realising that the Action for Reach Out representative could understand Cantonese) (Case F).

#### **V.D. Immigration**

The Immigration Department has a role at different stages of the process relating to migration/trafficking, whether on entry into Hong Kong, in granting dependant's visas to women who have married local men, or in deporting women from Hong Kong.

<sup>107</sup> Letter from Commissioner of Police, 11 April 2000, on file with the author.

<sup>108</sup> There are also reports of questionable police tactics being used to charge women with solicitation and to obtain statements from them, and of women not being informed of their rights, e.g. not to sign the statement, or to have legal assistance from the Duty Lawyer Service, although a review is outside the scope of this study. For further information, see for example: Sister Ann Gray, *HKSAR Government Report on the CEDAW Convention from Action for Reach Out*; Zi Teng, *Response to Article 6 of Initial Report*, in *Submission to the CEDAW Committee on the Initial Report under the CEDAW Convention by Non-Government Organisations*, February 1999, available at the website of the Centre for Comparative and Public Law, University of Hong Kong, at: <http://www.hku.hk/ccpl/cedawweb/CEDAW4.html> (site visited 31 January 2001); Zi Teng, *Research Report on Mainland Chinese Sex Workers*, *supra* note 66, 42.

<sup>109</sup> *Submission to the CEDAW Committee on the Initial Report under the Convention on the Elimination of all forms of Discrimination against Women by Non-Government Organisations*, *supra* note 108.

<sup>110</sup> For further information, see sources cited at *supra* note 108.



On entry, immigration officers have discretion to limit the three-month maximum stay in Hong Kong to one month or a fortnight in cases where they are suspicious about the woman's reasons for coming into the territory. Although the figures are now rather out of date, in 1992, about 2,600 female "doubtful visitors" were denied entry into the territory.<sup>111</sup> More recently, in July 1999, there was (at least comparatively for Hong Kong) a public outcry when it was reported that immigration officers had been instructed to treat all first-time female visitors from Thailand as suspected prostitutes, and to question them accordingly.<sup>112</sup>

The Immigration Department seems to be vigilant in checking the validity of marriages between local men and South East Asian women. In March 1997, it was reported that the Immigration Department was launching a crackdown on marriages of convenience, and that in the preceding two years, 446 out of 1,767 applications from Southeast Asian women to join their husbands had been refused.<sup>113</sup>

In June 1993, the Immigration Department changed its policy towards foreign women found to be working in the sex industry whilst on a tourist visa. Rather than (simply) being deported as had been the case before, such women were now to be charged for working in breach of conditions of stay and then deported after serving their sentence. As Mainland Chinese women did not originally fall within the policy, this change led to a large decrease in women from South East Asia, and an increase in those from Mainland China. However, the policy was extended to Mainland Chinese women in 1995,<sup>114</sup> so now applies to all non-local women.

The Immigration Department does not appear to look behind any of these situations to establish whether they involve trafficking. Indeed, the Immigration Department informed me that it did not have any policies towards women who had been trafficked (e.g. whether in identifying women who had been trafficked, or in dealing with trafficked women), referring me instead to the Police Force. It informed me that my questions concerned "enforcement against vice activities", whereas the role of the Immigration Department was to control the entry of immigrants and enforce the Immigration Ordinance against immigration offenders.<sup>115</sup>

In relation to women who have been the victims of trafficking for *forced* prostitution, whilst there may be no particular policy, in practice these women seem to be returned home without being charged for illegal entry or breach of condition of stay. The Hong Kong Government

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<sup>111</sup> "Pimps go Abroad to Recruit Girls", *South China Morning Post*, 26 February 1993.

<sup>112</sup> "Custom Officers Learning Thai after Prostitute Row", *South China Morning Post*, 15 July 1999.

<sup>113</sup> "Fake Marriages to be Targeted in Vice Purge", *South China Morning Post*, 30 March 1997.

<sup>114</sup> "Vice Squad Step Up Crackdown of Prostitution Rackets", *South China Morning Post*, 21 June 1994.

<sup>115</sup> Letter from Immigration Department, 16 May 2000, on file with the author.

does not appear to fund the women's flight home. The Philippine Consulate reported in 1993 that it usually provided the return airfare for Filipino women who had been forced into prostitution.<sup>116</sup> In one case in the early 1990s, the Catholic Diocesan Pastoral Centre for Filipinos raised the airfare for the women involved from donations.

### **V.E. Criminal Justice System**

Information on how traffickers are dealt with by the criminal justice system is very limited. As mentioned above, statistics are not available on the number of prosecutions and convictions for trafficking (but only on the number of cases reported and persons arrested).

The only information I have been able to find on the type of sentences handed down to those convicted of the offence of trafficking is in relation to one case in 1993, where two men found guilty of aiding and abetting trafficking were sentenced to 12 months' and 18 months' imprisonment.<sup>117</sup> This type of sentence hardly seems to be a deterrent to traffickers, particularly given the huge profits likely to be involved.

In those cases where the trafficker is prosecuted, the women might agree to act as witnesses for the prosecution and testify against the trafficker. In such a case, a woman may be granted immunity from prosecution herself, or her willingness to assist the prosecution may be taken into account in mitigation of sentence. According to the Director of Public Prosecutions, there is no strict rule which determines whether or not a woman who testifies for the prosecution will be granted immunity, rather this will depend on the circumstances of the particular case. If the woman's evidence is the only evidence to implicate the trafficker, the prosecution may find that the use of an immunity is necessary. However, if there is other available evidence, the woman may be charged separately with an immigration offence. If she pleads guilty and indicates her willingness to testify for the prosecution, this may assist her in terms of mitigation of sentence. The fact that a woman is brought into Hong Kong for the purposes of *forced* prostitution will be taken into account in the decision whether or not to grant immunity.<sup>118</sup> In the known cases of trafficking for forced prostitution which were identified in Part IV.D above, those women who are known to have agreed to act as a witness for the prosecution were indeed granted immunity.

However, a woman who has agreed to act as a witness for the prosecution may find herself in difficult circumstances. She may have her passport confiscated. She is not allowed to work,

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<sup>116</sup> "Gangs force Filipinas into Prostitution", *South China Morning Post*, 22 November 1993.

<sup>117</sup> "Prison for Thai Bride Trafficking", *South China Morning Post*, 16 September 1993.

<sup>118</sup> Letter from Director of Public Prosecutions, letter dated 3 May 2000, on file with the author.

nor is she given any living expenses from the Hong Kong Government. She is usually accommodated by, and at the cost of, a non-governmental organisation. The police do not appear to provide a safe house or witness protection before, during or after the trial. In one case of trafficking for forced prostitution which came to court, the women were jeered at outside the court by a number of men who presumably were involved in the syndicate or triad society which had brought the women to Hong Kong. The case may take months to come to court, and not surprisingly given the circumstances, some women tire of waiting. The Catholic Diocesan Pastoral Centre for Filipinos reported one case of trafficking for forced prostitution where the women decided after 5 months of waiting that they wanted to return home, and the case against their trafficker had to be dropped.<sup>119</sup>

At court, the prosecution of the trafficker may be thwarted if the women are not believed to be reliable or credible witnesses. According to Action for Reach Out, in an early 1990s case of trafficking for forced prostitution,<sup>120</sup> a woman testifying against her trafficker had entered into Hong Kong on a false passport, and fearing prosecution herself, gave her name as that on the false passport. The defence lawyer, who knew from his client that she had been provided (by the client) with a false passport, homed in on this on cross-examination, and the case was dropped as the witness was found to be unreliable. Lack of recognition for the vulnerable position of the woman in this case meant that her trafficker walked free. In the last known case of trafficking to come to court, in November 1999, the judge was reported as saying of the witness that “he didn’t for one minute believe her evidence” that she had been brought to work as a prostitute against her will (Case M).<sup>121</sup> It is difficult without having more knowledge of the case, or having been present at the proceedings, to know to what extent the judge’s position was justified, or to what extent it might reflect an underlying disbelief that a woman could end up in this type of situation without having consented to it at some stage in the process.

Finally, the penalties which women are liable to receive should be mentioned. The standard penalty for a woman convicted of working as a prostitute in breach of condition of stay is 3 months’ imprisonment (even if she has only been working for a matter of days when arrested)<sup>122</sup>, followed by deportation. If she entered Hong Kong illegally, the standard penalty

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<sup>119</sup> A late 1980’s case reported by Catholic Diocesan Pastoral Centre for Filipinos.

<sup>120</sup> Possibly Case A.

<sup>121</sup> “*Scolding for Police as Five Cleared of Prostitution Case*”, *South China Morning Post*, 24 November 1999. See Part IV.D.2 above, *infra* p 24.

<sup>122</sup> Sister Ann Gray, *HKSAR Government Report on the CEDAW Convention from Action for Reach Out*, *supra* note 103.

is 15 months' imprisonment, followed by deportation. In addition, if the woman is from Mainland China, she will also be punished on her return. Compared to a trafficker's penalty of 12 or 18 months, this seems extremely harsh. I have not yet been able to obtain information on the standard penalty for soliciting.<sup>123</sup>

## VI. OBSERVATIONS AND RECOMMENDATIONS

The fact that the number of women trafficked into Hong Kong may be fewer, or their situation less extreme, than those of women trafficked into other Asian countries does not lessen the (international) obligations of the Hong Kong Government to actively take measures to prevent trafficking, to pursue and prosecute those involved, and to provide women with appropriate protection against human rights violations associated with it.

The following observations and recommendations are not intended to be exhaustive, but rather are intended to focus specifically on the information collated to date on the particular situation in Hong Kong:

- The Hong Kong Government should actively follow through the commitments it has recently made at the regional level to address the issue of trafficking, and in particular should examine the way in which it can quickly and effectively implement the useful proposals under the ARIAT Action Plan.
- It is crucial for the Hong Kong Government to produce more statistical data on trafficking. In particular, data on the number of reported cases and arrests for trafficking is almost meaningless without data on the number of *prosecutions* and *convictions* for trafficking. The availability of statistical information seems very inconsistent; it is particularly strange that information is available on the number of persons prosecuted for breach of condition of stay, and the number of persons convicted for soliciting, but no such statistics on prosecutions and convictions are available in relation to trafficking, even more so given the Government's duty to report on trafficking in the context of the CEDAW Convention. Further, the statistical information available does not provide the breakdowns (e.g. as to gender and nationality) necessary for a proper analysis of how the issue of trafficking is dealt with by the authorities and in particular how women fare in the equation, as opposed to their traffickers.

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<sup>123</sup> Unfortunately the statistics already provided to me by the Duty Lawyer Service (on 30 May 2000) do not distinguish between soliciting for immoral purposes and breach of conditions of stay.

- In my view, the offence of trafficking under section 29 of the Crimes Ordinance, which is based on a traditional model of trafficking, is too broad. The inclusion of women who are voluntarily “trafficked” into prostitution (both in terms of recruitment and end situation) deflects much-needed attention from the situations of those women who are truly, i.e. involuntarily, trafficked into prostitution – in a Hong Kong context, those women who are recruited by deception into forced prostitution or into abusive and exploitative conditions in villas and nightclubs. The overly broad use of the term may also hinder awareness and understanding of the situations in which many trafficked women find themselves, whether by the authorities, the criminal justice system, the press or the public. Section 29 should be reviewed – perhaps by the new Women’s Commission - in the context of more modern international understandings of trafficking, focusing on the human rights of the women involved. In particular, the offence should focus on the lack of the trafficked person’s consent in the recruitment process and end conditions. It should also be expanded to cover other types of trafficking, and not just trafficking for the purposes of prostitution.
- Given the high level of organised crime and triad involvement, and the huge profits to made, it is extremely doubtful that trafficking activity has decreased, yet the total number of reported cases in the last 3 years is a mere 4. There must be more concentration on actively investigating and pursuing traffickers. The current emphasis of the police seems to be on pursuing and punishing women, rather than traffickers. In particular, there should be routine investigation into whether women who have been arrested as illegal immigrants or in breach of conditions of stay have been trafficked.
- Police should receive (further) training in recognising and investigating cases of trafficking and in dealing with victims of trafficking. They should also receive (further) training on respecting the rights of women in the sex industry generally. Indeed, the CEDAW Committee, in its concluding comments on Hong Kong’s report on the CEDAW Convention (1999) (the *CEDAW Committee’s Concluding Comments*) included a recommendation that regulations to protect women sex workers be put in place and enforced.<sup>124</sup>
- Whilst not strictly a trafficking issue, the substantial increase in prosecutions for the offence of soliciting against women over the last 10 years is disturbing, effectively

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<sup>124</sup> *Report of the Committee on the Elimination of Discrimination against Women*, Twentieth Session, UN Doc. A/54/38/Rev.1, para 326, available at the website of the United Nations High Commissioner for Human Rights at: <http://www.unhchr.ch/> (search “treaty bodies” database by UN Document Reference).

making prostitution criminal. The offence also appears to be used discriminatorily against women, in that men/clients are rarely prosecuted (as noted in the CEDAW Committee's Concluding Comments<sup>125</sup>).

- Public awareness needs to be increased of the human rights abuses of trafficked women. A confidential hotline should be set-up and advertised, to encourage reports from clients of suspected cases of trafficking and indeed other abuses of women in the sex industry.
- To the extent that they do not already do so, the Hong Kong Government and/or relevant consulates should bear the cost of returning victims of trafficking to their home countries.
- Women who are victims of trafficking should generally be granted immunity from prosecution.
- If women agree to stay in Hong Kong to act as witness for the prosecution of the person who trafficked them, they should be provided with accommodation and financial support. They should also be provided with access to health, psychological and other social services as necessary. Ideally, given the length of time many cases take to come to court, the women should be granted a temporary work visa.
- Cases of trafficking should be brought to court as quickly as possible, in particular to limit the possibility of intimidation of witnesses and/or their families and to limit the possibility of witness withdrawing their assistance in order to return home.
- Section 8 of the Organized and Serious Crimes Ordinance (Cap 455 of the Laws of Hong Kong) gives the court the power to make confiscation orders to recover the proceeds of certain organised crimes, including trafficking of persons into Hong Kong, where the proceeds of the crime exceed HK\$100,000. It is extremely important that the court uses this power wherever possible to recover the proceeds of trafficking, which might act as a greater deterrence to syndicates and triad societies involved in trafficking. The amounts recovered could be used towards the costs involved in assisting victims of trafficking.
- The CEDAW Committee's Concluding Comments recommended that the Government monitor the links between the presence of migrant women, a regulatory approach to

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<sup>125</sup> Id, para 325.

prostitution and trafficking in women.<sup>126</sup> In particular, I would suggest that the Immigration Department take an active role in detecting cases of trafficked women on entry, rather than simply treating such cases as a matter of immigration control (however, noting in particular the policy towards Thai women entering Hong Kong in 1999, the policy adopted should be sensitive and tactful). There is need for better co-ordination between law enforcement and immigration.

Finally, in the international context, as mentioned earlier, it is crucial that the United Nations adopts a modern definition of trafficking, and that a modern international instrument on trafficking is developed which addresses both prevention *and* the protection of the human rights of women involved.



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<sup>126</sup> *Report of the Committee on the Elimination of Discrimination against Women*, *supra* note 124, para 325.

## APPENDIX 1

### METHODOLOGY

#### 1. INTRODUCTION

Whilst some information is available on the Hong Kong sex industry generally, very limited information is available on the situations of non-local women who have been recruited to work in the sex industry, or forced into prostitution, in Hong Kong. An earlier attempt was made by Action for Reach Out in 1996 to obtain information and statistics on trafficking in women and forced prostitution for the purposes of a report being prepared by GAATW for the Special Rapporteur on Violence against Women. However, the various governmental departments which Action for Reach Out contacted at the time were not willing at the time to provide the necessary statistics, nor to provide GAATW representatives with access to women serving sentences for breach of condition of stay.<sup>127</sup> The information contained in this paper is therefore based substantially on primary research. The following sets out the methodology adopted.

#### 2. GENERAL INFORMATION ON THE HONG KONG SEX INDUSTRY

- Review of the literature available on the Hong Kong sex industry. Kate Whitehead's *After Suzie: Sex in South China* (1997) was particularly helpful background.
- I contacted Veronica Pearson whose chapter on the sex industry in Hong Kong in *Women in Hong Kong* (1995) was based on interviews with 8 local women working on the streets. Veronica Pearson informed me that she had not done any further research in this area, and could not usefully add to the information contained in that chapter (30 March 2000).
- Review of documents produced both by the Hong Kong Government and by non-governmental organisations in relation to the Initial Report of the Hong Kong Government to the CEDAW Committee (October 1998), available at the website of the Centre for Comparative and Public Law, University of Hong Kong <http://www.hku.hk/ccpl/cedawweb>.

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<sup>127</sup> Sister Ann Gray, *HKSAR Government Report on the CEDAW Convention from Action for Reach Out*, *supra* note 108.



- Review of articles appearing in the English-language Hong Kong press. This involved extensive electronic searches of the South China Morning Post, and a review of newspaper articles collated by Action for Reach Out.

### **3. INFORMATION ON WOMEN RECRUITED FOR THE PURPOSE OF WORKING ON THE STREETS, IN VILLAS OR IN NIGHT CLUBS IN HONG KONG**

- Review of literature on migration and trafficking for prostitution, focusing on literature on Asia. This included hard copy literature and literature available on relevant websites, in particular those of GAATW (<http://www.inet.co.th/org/gaatw/>) and CATW (<http://www.uri.edu/artsci/wms/hughes/catw/catw.htm>). Scant reference was made in the literature to the situation in Hong Kong.
- Human Rights in China had prepared a useful report on trafficking of Mainland Chinese women (mainly within Mainland China), and I discussed with them their methodology in obtaining this information. I subsequently visited Human Rights in China, who provided me with further documents and various press reports (24 March 2000).
- An attempt to follow-up a brief reference on the CATW website to trafficking in Hong Kong was not successful.
- In relation to the experiences of non-local women working on the streets, Zi Teng provided me with a copy of their *Research Report on Mainland Chinese Sex Workers* (February 2000), which included information based on interviews with 11 Mainland Chinese women working independently on the streets in Hong Kong. I also met briefly with Zi Teng (24 March 2000). I also obtained information through my meetings with Action for Reach Out and from press reports.
- In relation to the experience of non-local women being recruited to work in villas, information is limited to that contained in press reports. As the women are constantly “minded”, it has been impossible for Action for Reach Out or Zi Teng to speak directly to any of these women.
- I obtained information relating to the experiences of Filipino women recruited to work in nightclubs through my meetings with Action for Reach Out. Action for Reach Out agreed to conduct “interviews” with 10 women working in nightclubs in Wanchai, with a spread of women from different agencies and nightclubs. The intention is to conduct the interviews as informal discussions, with notes being written after (rather

than during) the discussion, so that the women feel that they can speak relatively freely, and also so that attention is not drawn to the fact that they are participating in a study. Ideally, the interviews are to be conducted at the Social Hygiene Clinic or at another neutral place, however some interviews (e.g. of women who do not have any free time, or whose free time is monitored) may have to be conducted in the nightclubs, perhaps over a number of visits. We agreed that, for the same reasons, it would not be conducive for me to be present at the interviews. As at 30 May 2000, Action for Reach Out had been able to conduct only one interview, due to the limited availability of the women involved, but further interviews have since taken place (and will be reported in due course). A copy of the guidance notes drafted for the interviews is attached at Appendix 3.

- I attended a Symposium on Human Smuggling at Hong Kong University (19 February 2000). During the question session, I asked the panel (which included representatives of various of the Hong Kong authorities) about incidences of smuggling of women into Hong Kong for the purpose of prostitution, but did not receive a satisfactory response.
- At the Symposium on Human Smuggling mentioned above, I spoke to Gloria Ko, Head of Hong Kong Office of the International Organisation for Migration (*IOM*), who followed up with me afterwards. She informed me that the IOM did not have any specific information on the trafficking of women into Hong Kong (25 February 2000).
- I met with Dr Roderick Broadhurst, Department of Criminology, University of Hong Kong, and followed up his suggestions, in particular regarding the collation of statistical information and the work being conducted by the United Nations Interregional Crime and Justice Research Institute (*UNICRI*) (see below).
- I wrote to Monika Peruffo at UNICRI, regarding UNICRI's work on human smuggling and trafficking in the context of the Global Programme against Trafficking in Human Beings, in particular in relation to Hong Kong and in relation to UNICRI's methodology. She provided some useful (but not Hong Kong-related) documents and references in this area (11 April 2000).

#### **4. INFORMATION ON TRAFFICKING FOR THE PURPOSES OF FORCED PROSTITUTION**

As Hong Kong law does not distinguish between trafficking for the purposes of forced prostitution and other types of trafficking, there are no statistics specifically available in

relation to cases of trafficking for forced prostitution. In order to establish how many known cases of trafficking for forced prostitution there have been in the last ten years, and to gain an understanding of the experiences of the women involved, the following methods were adopted:

- Review of literature on trafficking in Asia for references to any cases of trafficking of women into Hong Kong for the purpose of forced prostitution. I located only two brief (comprising several paragraph) articles written on the topic. I followed up the sources referred to in one article, and in the other followed up with the author of the article herself, Cynthia Ca Tellez of the Mission for Filipino Migrant Workers.
- Review of articles appearing in the English-language Hong Kong Press. This involved extensive electronic searches of the *South China Morning Post* and reviewing the newspaper articles collated by Action for Reach Out and Human Rights in China on trafficking and forced prostitution. The Archives Department of the Hong Kong Standard informed me that it was not able to find any relevant articles on the issue (it is not yet possible to conduct electronic searches of the Hong Kong Standard). Unfortunately, I am not able to read Chinese, so I was not able to conduct a search of the Chinese-language Hong Kong press.
- Discussions with non-governmental organisations. I have spoken to numerous non-governmental organisations which provide support to sex workers and/or migrants, to see whether they are aware of and/or have provided support in relation to any women who have been trafficked for forced prostitution, namely: Action for Reach Out, Zi Teng, Mission for Filipino Migrant Workers, Friends of Thai, Catholic Diocesan Pastoral Centre for Filipinos, the Association of Sri Lankans and the Asian Migrant Centre. I met with Action for Reach Out on a number of occasions, and the Mission on 5 March 2000, to discuss in more detail the particular cases which they were aware of, and had been involved in. Action for Reach Out also provided some case notes.
- I have written to both the Philippine Consulate and the Thai Consulate in Hong Kong for information on cases of trafficking for forced prostitution involving their nationals, and on the role of the Consulate in these type of cases. The Philippine Consulate replied that it was not able to act on the request, but had forwarded it to the National Commission on the Role of Filipino Women (19 April 2000). I did not receive a response from the Thai Consulate.
- I have not been able to locate, and therefore speak to, any women who have been

victims of trafficking for the purpose of forced prostitution in Hong Kong. The support organisations did not have details of what had happened to the women on their return to their home countries.

## **5. STATISTICS**

- The Hong Kong Government's Initial Report to the CEDAW Committee in October 1998 appears to be the first publicly available document which provides statistics on trafficking. Even then, the statistics provided are limited to the number of cases reported and arrests made, and only cover a three and a half year period.
- The following public reports and statistics were also reviewed. They were of limited assistance to the specific issue of trafficking, although they did provide related statistics, for example on the number of persons charged for "local laws", which includes breach of stay and soliciting:
  - Yearly Review of the Public Prosecutions Department.
  - Annual Reports and Statistics of the Immigration Department.
  - Annual Reports and Statistics of the Hong Kong Police Force.
  - Annual Review and Statistical Tables on Reception of the Correctional Services Department.
- Various specific statistics were requested from the following persons, who kindly provided the following information:
  - The Crime Wing Statistician for the Police Force, who provided statistics for the last 10 years on the number of cases reported and cases detected in relation to the offence of trafficking, as well in relation to certain other offences (letter dated 11 April 2000).
  - Director of Public Prosecutions, Department of Justice, who informed me that, despite my understanding to the contrary, the Department does not keep statistics on the numbers of prosecutions and convictions in relation to specific offences, rather it keeps statistics only on the overall number of prosecutions in various courts, i.e. not broken down according to offence (letters dated 5 April and 3 May 2000).
  - Director of Immigration, Immigration Department, who provided statistics for the last 5 years on the number of persons arrested and prosecuted for breach of

condition of stay, including a break down in relation to those who had overstayed and those who had been working illegally (letter dated 28 April 2000). The Immigration Department informed me that it does not break down the statistics on working illegally into *type* of work, so it is not possible to establish the number of persons arrested for working illegally as a prostitute (letter dated 16 May 2000).

## **6. POLICIES OF HONG KONG AUTHORITIES**

There was scant information on the policies adopted by the authorities in Hong Kong in responding to cases of trafficking. However, information was obtained from the following sources:

- Immigration Department, which informed me that it considers trafficking to be an issue of enforcement against vice activities, and therefore a matter for the Police Force (letter dated 28 April 2000).
- Director of Public Prosecutions, Department of Justice, who provided information on the granting of immunity to women who testify for the prosecution against a trafficker (letter dated 3 May 2000).
- Discussions with non-governmental organisations as to how the authorities had dealt with particular cases (in particular in relation to cases of forced prostitution).
- Press reports.

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## APPENDIX 2

### EXTRACTS FROM THE CRIMES ORDINANCE (CAP 200 LAWS OF HONG KONG)

#### **Section 29: Trafficking in persons to or from Hong Kong**

##### *Exploitation of other persons for sexual purposes*

- (1) A person who takes part in bringing another person into, or taking another person out of, Hong Kong for the purpose of prostitution shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.
- (2) It shall not be a defence to a charge under this section to prove that the other person consented to being brought into or taken out of Hong Kong whether or not she or he knew it was for the purpose of prostitution or that she or he received any advantage therefor.

#### **Section 147: Soliciting for an immoral purpose**

- (1) A person who in a public place or in view of the public;
- (a) solicits for any immoral purpose; or
  - (b) loiters for the purpose of soliciting for any immoral purpose,
- shall be guilty of an offence and shall be liable on conviction to a fine of \$10000 and to imprisonment for 6 months.
- (2) For the purposes of subsection (1), but without prejudice to the generality of the expression "any immoral purpose", each of the following is immoral-
- (a) buggery by a man with another man;
  - (b) an act of gross indecency by a man with another man.

## APPENDIX 3

### QUESTIONS TO GUIDE DISCUSSION

#### Personal Details:

#### Club:

#### Agency:

#### Recruitment and Travel to Hong Kong

1. How were you recruited back home?

*E.g. through newspaper advertisement, visit to or from agency, through friends or family?*

2. How much was the fee you paid to come to Hong Kong? What did it cover? Did you have to pay for anything else?

*I would suggest you try an open question first, as there may be fees we don't know about, then ask more specifically whether she had to pay for anything like clothes, medical insurance etc*

3. When do you have to pay the agency fee back?

4. Were you given a contract? What did it say? Do you still have a copy?

*N.B. cases where contract in Chinese and translated orally. If possible, ask for copy of contract.*

5. How did you travel to Hong Kong? Did you travel alone or were you accompanied?

6. Did you travel on your own passport? What type of visa did you have before you came to Hong Kong?

*If it was a tourist visa, when was this changed to a working visa?*

#### Living Conditions

7. Where do you live? Who else do you live with? How many of you share the flat?

Do you have your own bed?

8. Are there guards or minders where you live? Are they good to you? Have they ever been physically or verbally abusive or violent towards you or anyone else in the flat?

9. Do you have to stay in the flat all the time, or do you have some free time? How much free time do you have each week? Do you have to tell the guards or minders

where you are going if you go out? What happens if you don't? Do they check up on where you have been?

10. (If relevant) did you know before you came to Hong Kong that you would be guarded, and wouldn't be able to leave the flat very often? How do you feel about this?

### **Working Conditions**

11. What hours do you work? How many days a week? Do you have any free days each week/month? Were you told the hours you would be working by the agency before you came to Hong Kong?
12. Do you sometime provide escort services? How often? Do you feel there is any pressure on you to provide escort services, or are you free to choose whether you do?
13. What did you understand you would be doing in Hong Kong? Did you just think you would just be dancing or did you know that these types of clubs usually offer escort services? Did the agency tell you this, or did you know from friends? Did you think that you would agree to offer escort services yourself?
14. Are you allowed to refuse clients who you don't like the look of?
15. Do you make sure your client uses a condom? What happens if a client doesn't want to use a condom?
16. How much do you usually earn in a week/month? How much is your basic salary? How much commission do you get paid for drinks? How much do you get paid for going out with a client? How much did the agency tell you you would earn before you came to Hong Kong? Did you know that you would get a basic salary, and the rest would be through commission on drinks and providing escort services?
17. Are you always paid your salary regularly? Is it usually correct, or do you have to watch that you are being paid the right amount?



## **APPENDIX 4**

### **ASIAN REGIONAL INITIATIVE AGAINST TRAFFICKING IN WOMEN AND CHILDREN**

#### **Meeting**

**29-31 March 2000, Manila, Philippines**

#### **Chairperson's Statement**

The Philippines and the United States of America, in their capacity as co-hosts of the Asian Regional Initiative Against Trafficking in Women and Children called an action-oriented meeting of governments, international organizations and non-governmental organizations to address the problem of millions of women and children being trafficked throughout the world, and particularly in the Asian Region, each year. This meeting, chaired by the Philippines, and co-chaired by the United States, followed on from other efforts, including the Manila Process, the Bangkok Declaration, and intergovernmental Asia-pacific consultations on Refugees, Displaced Persons and Migrants among others, to attack this scourge. The following Participants and Observers, Australia, Brunei Darussalam, Canada, Hong Kong China, Japan, Kingdom of Cambodia, Kingdom of Thailand, Macau China, Malaysia, Mongolia, New Zealand, Papua New Guinea, People's Republic of China, Republic of Indonesia, Republic of Korea, Republic of the Philippines, Russian Federation, Singapore, Socialist Republic of Vietnam and the United States of America and the European Union, ADB, ASEAN Secretariat, ASEANOPOL, Asia Foundation, Ford Foundation, INSTRAW, INTERPOL, IOM, SEAMEO-INNOTECH, UNCICP, UN Committee on Economic, Social and Cultural Rights, UNESCO, UNFPA, UNICEF, UNICRI, UNIFEM and World Bank, and several non-governmental organizations met in Manila on 29-31 March 2000.

1. Participants and Observers noted with concern that trafficking in human beings can translate into violations of human rights, inhumane treatment and various forms of abuse and exploitation. The causes of trafficking are complex. While there are numerous contributing factors, the primary root cause is poverty, most particularly among women and children who may have little or no access to education, support services, or resources.
2. Participants and Observers emphasized that trafficking in persons is a transnational crime and combating this global problem will require an integrated approach at national, sub-regional, regional and international levels. Countries of origin, transit and destination must work together in order to achieve significant progress, including working within established frameworks for regional cooperation. This pernicious modern-day slavery is repugnant to all nations and on that basis Participants and Observers expressed confidence that with cooperation among countries of origin, transit, and destination it will be possible to combat trafficking. Where trafficking in persons has already occurred, the human rights of trafficked persons should be protected and the criminal who now traffic with impunity should be brought to justice.
3. To that end, the above noted Participants and Observers met, considered the advice of international experts, and, in a series of workshops, exchanged information, engaged

in dialogue, reviewed best practices, discussed and developed an Action Plan for the region. This plan offers suggestions for possible future steps and practices to fight trafficking in persons, especially women and children, in all its forms.

4. The ARIAT Action Plan contains many practical proposals to combat trafficking. The Chairperson of ARIAT urges countries in the region and other organizations to carefully examine the attached Action Plan and, in the light of their domestic legal systems and the circumstances in each country, consider appropriate implementation in their jurisdictions. Participants are encouraged to cooperate with one another and with civil society at national, sub-regional, regional and international levels in addressing the strategic areas set out in the Action Plan, namely prevention, protection, prosecution, repatriation and reintegration.

## **ARIAT Regional Action Plan Against Trafficking in Persons, Especially Women and Children**

### **Overarching Areas**

#### *Overarching Area 1: Information and Data*

- Improve information sharing between state agencies at the local and national levels.
- Establish a data bank on trafficking including incidence rates, trafficking patterns in countries of origin, transit and destination, and investigative information as well as number of cases prosecuted.
- Standardize statistical data on trafficking at the national, sub-regional, regional and international levels.
- Promote exchange of information, best practices, and lessons learned among the countries of the Asia-Pacific Region and beyond.
- Develop anti-trafficking information materials for dissemination to diplomatic and consular missions in concerned countries, including information on where to seek assistance.
- Consider the development of the trafficking-specific inter/intra-net site “Trafficking of Persons Information Center” (TOPIC) and, until such time as it comes on line, the use of existing networks.
- Acknowledge the misuse of the Internet by traffickers and develop effective counter-strategies.
- Consider the importance of establishing national task forces or focal points.

#### *Overarching Area 2: Cooperation with international organizations, non-governmental organizations, the private sector, civil society and media.*

- Promote cooperation and partnership among governments, non-governmental organizations, the private sector and civil society in the prevention, protection,

prosecution, repatriation and reintegration aspects of trafficking in persons, especially women and children.

- Generate greater public awareness on the human costs of trafficking in women and children.
- Provide comprehensive and immediate assistance for trafficked persons.
- Sensitize major media outlets (print and electronic) to the issues and encourage them to write articles about trafficking, to publicize hotlines and services for victims, including NGO and governmental agencies.
- Promote regional cooperation, particularly South-South cooperation, among the countries of the region in building networks and anti-trafficking capacity.
- Ensure coordination with parallel regional initiatives to avoid duplication.

#### *Overarching Area 3: Gender Mainstreaming*

- Incorporate gender mainstreaming issue into national, sub-regional, regional and international plans for economic cooperation and development.
- Strengthen existing mechanisms at all levels, national, sub-regional, regional and international, to promote gender mainstreaming.

### **Strategic Areas for Action**

#### Prevention

##### *Strategic area 1: Education / Training*

- Promote education (formal, informal and non-formal)/vocational training/scholarship programs for children and women to minimize their susceptibility to being trafficked.
- Encourage and support training of professionals in physical and mental health and other related areas, thus enabling them to recognize and treat trafficked persons appropriately.
- Strengthen, where appropriate, national/regional centers for training of law enforcement agents, caregivers and related personnel.
- Encourage a gender and child sensitive perspective in the training of law enforcement agents, prosecutors, lawyers and community leaders among others.

##### *Strategic area 2: Economic Dimensions*

- Encourage existing regional economic fora to examine the relationship between economic development and trafficking in persons, especially women and children.
- Encourage greater regional cooperation for broad-based skills training and economic opportunities for women and youth who are at risk of being trafficked.

### *Strategic area 3: Legislative Framework*

- Examine the need for and adopt, as appropriate, additional legislative and other measures to prevent trafficking, including the promotion of security and integrity of travel documents.
- Provide or strengthen, where necessary, training of law enforcement, immigration, consular and other relevant partners to combat trafficking, in cooperation with appropriate national, sub-regional, regional and international organizations and non-governmental bodies.

### Protection

#### *Strategic area 1: Human rights / Enabling Legal Environment*

- Provide witnesses with special support to report and file complaints designed to protect their safety and to reduce official procedures and their traumatizing effects.
- Promote efforts to ensure that national laws/regulations provide sufficient and substantial information and assistance and adequate protection of the human rights of trafficked persons, including in the repatriation process.
- Endeavor to forge bilateral, sub-regional, regional and international agreements against trafficking, including on mutual assistance and cross-border cooperation.

#### *Strategic area 2: Safety and Assistance of Trafficked Persons*

- Provide, as appropriate, shelter and economic, psychological, medical and legal assistance for trafficked persons.
- Provide physical safety for trafficked persons, and appropriate consideration to humanitarian and compassionate factors, including in the process of determining their status, should equally be provided.
- Establish hotlines/complaint lines and establish relationships with NGOs in order to increase reporting and identify trafficking situations.

### Prosecution

#### *Strategic area 1: Rule of Law*

- Endeavor to adopt laws and measures, as may be necessary, to criminalize trafficking in persons, taking into account the grave nature of the offense.
- Examine the need for and adopt, as appropriate, laws and other legal measures to impose penalties on all aspects of trafficking, including the seizure and confiscation of gains obtained by criminal organisations.
- Endeavor to support the finalization of the elaboration of the United Nations Convention against Transnational Organized Crime, its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against Smuggling of Migrants by Land, Air and Sea, as mandated by the United Nations General Assembly resolutions 53/111 and 53/114, and call for the active

participation of all countries.

#### *Strategic area 2: Regional and International Cooperation*

- Support regional organisations and institutions in their efforts to combat trafficking in persons, particularly in women and children.
- Encourage cooperation at the national, sub-regional and regional levels among law enforcement and immigration authorities, as well as social and health workers of countries concerned through systematic exchange of investigative information leading to prosecution of traffickers.
- Promote national, sub-regional and regional training of relevant officials including police, judges, prosecutors, customs, immigration, border guards, as well as consular authorities.
- Endeavor to adopt suitable national, sub-regional and regional measures and forge agreements, as may be necessary, to prevent, detect and investigate trafficking across boundaries and to strengthen border controls.
- Promote cooperation and partnership of governments and non-governmental organizations, the private sector and civil society.

#### Repatriation and Reintegration

##### *Strategic area 1: Repatriation and Monitoring Programs*

- Establish bilateral, multilateral, sub-regional or regional agreements related to repatriation process aimed at humanitarian assistance of the trafficked persons.
- Facilitate and accept without unreasonable delay, including the expeditious issuance of travel documents, the safe, orderly and dignified return of a national who is a trafficked person.
- Encourage countries of origin to ensure the safe and effective reintegration of trafficked persons.
- Endeavor to provide adequate programs for the reintegration of trafficked persons into their respective families and communities, including medical, legal and economic assistance.
- Ensure that legislative frameworks provide trafficked persons access to adequate procedures of redress.

#### Follow-up and Progress Review

- Ensure the full and active participation of trafficked persons, especially women and children, in the process of follow-up.
- Encourage follow-up action and periodically assess the progress of implementation of the various measures in the areas of prevention, protection, prosecution, and repatriation and reintegration.
- Stress the significance of sub-regional, regional and international collective efforts in

the implementation of this Plan, particularly in making available necessary resources and facilities towards a more comprehensive approach to combating trafficking in persons, especially women and children.

- Promote the participation of state and non-state actors and stakeholders in the implementation of this Plan.
- Emphasize the significant role of responsible media reporting in generating public awareness in support of this Plan.

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