

# **Migrant Nightclub/Escort Workers in Hong Kong: An Analysis of Possible Human Rights Abuses**

**Robyn Emerton and Carole Petersen**

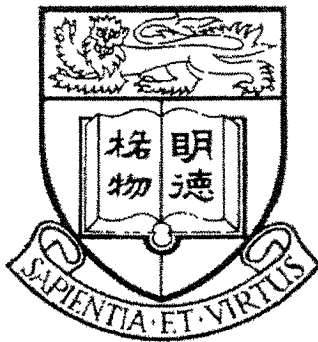
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# Migrant Nightclub/Escort Workers in Hong Kong:

## An Analysis of Possible Human Rights Abuses<sup>1</sup>

by

Robyn Emerton<sup>2</sup> and Carole Petersen<sup>3</sup>

### Introduction

The paper is part of a broader study of the human rights of women who migrate or are trafficked to Hong Kong for the purposes of working in the commercial sex industry. The study is being conducted by a small team of researchers from the Faculty of Law and the Sociology Department at the University of Hong Kong, with assistance from a community organisation that works for the rights of sex workers in Hong Kong.<sup>4</sup> Our project builds on a preliminary study conducted by Robyn Emerton,<sup>5</sup> and aims to generate further, much-needed, data on this issue, which will be used to recommend appropriate law and policy reform, as well as to help community organisations and consulates in their work with women who have suffered human rights abuses in Hong Kong.

This particular part of the study focuses upon Filipino women who work in Hong Kong nightclubs under a short-term (six-month) visa. The majority of these women also do a certain amount of “escort” work which normally (although not always) includes sexual services. The fee is divided among the woman, the club owner, the mamasan, and the employment agency. We have focussed on this particular group in part because there is very little published data on them and because they provide an important “test” of some of the claims that are often made about migrant sex workers. On one hand there are some reports of Filipino women being recruited to work in Hong Kong nightclubs and then being forced into prostitution and forced to work in brutal conditions.<sup>6</sup> Cases such as these would almost certainly fall within the

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<sup>4</sup> The organisation, which would prefer not to be named, has assisted us by providing data and conducting interviews based upon a questionnaire on recruitment methods and women’s working and living conditions.

<sup>5</sup> *Preliminary Report into the Trafficking of Women into Hong Kong for the purposes of Prostitution*, February 2001, Occasional Paper No.3 of the Centre for Comparative and Public Law (CCPL), Faculty of Law, University of Hong Kong, available at <http://www.hku.hk/ccpl/pub/occasionalpapers/index.html>.

<sup>6</sup> See, for example, “Tale of a Trafficked Woman”, which describes how a woman identified only as “Anna” was lured into Hong Kong on the promise that she would be paid 80,000 pesos (approximately \$1,600 US or \$ 12,800 Hong Kong) to work as a “bar girl” and was then forced to have sex with 30

definition of trafficking. On the other hand, it appears that most of the Filipino nightclub/escort workers in Hong Kong have come voluntarily and that a significant percentage knew that they would be engaging in escort work. There is, however, very little published data available which makes it difficult to assess their situation or whether they are subject to human rights abuses. Thus this project seeks to answer certain key questions, including: (i) the extent to which women in the study knew, before they agreed to come to Hong Kong, that they would be doing escort work; (ii) whether they were fully informed, when recruited, of the terms under which they would be working; (iii) their living and working conditions in Hong Kong; (iv) the extent to which they suffer human rights abuses, either by the state (e.g. the police or immigration officials) or by private actors (e.g. recruitment agencies, mama sans, club owners, etc...). Based upon this data, we will consider whether these night club workers have been trafficked within the modern international definition of trafficking, as provided in the new United Nations Protocol on Trafficking.<sup>7</sup> We will also consider what reforms, if any, might be adopted to better protect women from human rights abuses if they occur.

### **Hong Kong's International and Regional Commitments**

It should first be noted that China is yet to sign the Protocol on Trafficking, on behalf of itself or Hong Kong (indeed it is hoped that the results of our broader study can be used to call for its signature). However, Hong Kong is bound by CEDAW, which calls on states to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women" (Article 6), and in its last Concluding Comments on Hong Kong in 1999, the CEDAW Committee specifically recommended that the government monitor this area.<sup>8</sup> China and Hong Kong also participated in the Asian Regional Initiative against Trafficking (ARIAT) meetings in March 2000 and committed to the ARIAT Action Plan arising out of those meetings.

Hong Kong is also bound by the two major human rights instruments, the ICCPR and ICESCR, which contain other human rights relevant to this area, such as the right to freedom of movement and just and favourable working conditions. It is also bound by ILO conventions (which are referred to, together with the ICCPR and the ICESCR, in Article 39 of the Basic Law, Hong Kong's regional constitution since China resumed sovereignty in July 1997).

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clients a day or was denied food; the story appears on the home page of IPS: The Philippine Migration Trail (<http://www.ips.org/migration/hkong-1.html>).

<sup>7</sup> A similar definition was adopted by the United Nations Special Rapporteur on Violence against Women in her report to the Human Rights Commission on this issue, 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, para 13.

<sup>8</sup> *Report of the Committee on the Elimination of Discrimination against Women*, Twentieth Session, UN Doc A/54/38/Rev.1, para 325.

## **Background**

As mentioned before, the project focuses on Filipino women working in the nightclubs in one particular district of Hong Kong, called Wanchai. The community organisation does outreach work in 27 of these nightclubs, each of which employs about 15 to 20 women as entertainers, on six month contracts. About 75% of these are Filipina (the other 25% Thai), in the 18-25 age range. The clientele is predominantly English-speaking Western men who work in Hong Kong, although it also includes some tourists and foreign business men. (Local Cantonese-speaking men are more likely to frequent the nightclubs in Tsim Tsa Tsui district.) The job involves dancing, drinking and talking with clients and invariably “escort work” – which usually involves providing sexual services, although in some cases, customers simply want company.

## **Recruitment Methods**

We are aware of five agencies, which recruit women for the clubs, some of which are more reputable, and treat the women better, than others. Most of the women interviewed were put in touch with the agency by friends or relatives, although some were recruited through “talent managers”, who scout for attractive women on behalf of an agency.

The women pay an agency fee of between HK\$10,000 and HK\$16,000, which covers visa, ticket and accommodation, and sometimes a small allowance on arrival. One woman also reported having to pay a separate fee of HK\$3,000 to the talent manager who “discovered” her.

## **How much do the women know before they agree to come to Hong Kong?**

An important question is how much the women were told about the job by the agency, or how much they knew from friends, before they come to Hong Kong, and in particular whether they were aware that they would be expected to do escort work.

All the women said that they were given a contract to sign, but they rarely remembered what was in it, other than their employment would be for 6 months. In some cases, the contract was in Chinese, which was translated orally. None of the women was given a copy of the contract. We are not sure that this involves any deliberate deception – some of the women said they did not even bother to read the contract before signing it, and none asked for a copy.

Nevertheless, the interviews established that 12 of the 18 women knew before they came to Hong Kong that they would be expected to offer escort services. Some were informed by the agency, others just by their friends. 5 understood they would work as a dancer, waitress or receptionist, but said that they were not aware that escort work was involved (and 1 did not answer this question).

In relation to pay, only three of the women said that they were informed by the agency how much they could expect to earn each month, others said that they had no idea. One woman was told she would earn HK\$21,000 a month, for just dancing, which was not true. The other two were given realistic estimates, based on basic salary, commission and escort work.

Most of the women also knew what hours they would be expected to work, and that they would be minded outside the nightclub.

### **Entry into Hong Kong**

The women enter Hong Kong legally on a six-month work visa. There isn't a special entertainers visa in Hong Kong, although we understand that the Immigration Department sets some sort of quota of these visas for each nightclub, depending on its size. The women are never allowed by the agency to extend their six-month visa, as the clubs want a constant turn-over of new women.

### **Living Conditions**

#### *Accommodation*

The women are accommodated in flats provided by the agency – the standard of the accommodation is reasonably good. They have to pay for their own food and personal items.

#### *Freedom of movement issues*

Although agencies vary with respect to this issue, most of the women are “minded” at the flat, and have only limited, and in one or two cases no, opportunity to leave the flat. Of the women that are minded, most have to seek permission to leave the flat, give details of where they are going and provide proof on their return. They might receive a HK\$500 penalty if they do not do so. The minders may occasionally accompany them. Even the women who are not minded say that they are supposed to stay in the flat, and the agency might sometimes call to check up on their movements. Most of the women are allowed to visit the Social Hygiene Clinic, which offers free health check-ups every fortnight.

The strict confinement of the women seems to be prompted by a concern that the women may earn some money “on the side”, by arranging to meet a client outside the nightclub, and therefore depriving the bar, agency and mamas an of their usual cut of the escort fee, or “bar fine”. Whilst about half of the women said that they were concerned about not having any freedom, and one that she felt like a prisoner, the other half said that they were not bothered by this and indeed interestingly, one woman said that being minded made her feel safe.

#### *Little abuse of women by minders*

None of the women reported psychological or physical abuse by the agency or minders, although a few said that the minder sometimes used bad language towards them.

## **Working Conditions**

### ***Long hours, few days off***

The women are required to work seven days a week, usually from 8 pm to 5 am, although in the case of clubs that have a happy hour (5 or 6 out of the 27 clubs) from 4 pm to 5 am. Some of the women are given two days off a month after the first month, but might be offered double pay as an incentive to work on those days. Others are not given any days off at all.

### ***Pressure to do escort work?***

All the 18 women interviewed offered escort services, although 6 said that they initially objected to doing this. In one case, the woman rang up her parents as soon as she found out she was expected to do escort work, and was adamant that she wouldn't cooperate. However, she did ultimately stay on and agree to do escort work; in fact, this particular woman came back to Hong Kong for a further six month contract after her first contract had expired.

The women are asked whether they want to work as an escort and this is technically voluntary, however about half the women said that they felt pressured into it in one way or another (although recognising that they could earn a lot more money this way). Some thought that they would be sent back home if they did not do escort work, and that they would still have to pay back the agency fee, which would be impossible for them.

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, as the club is negotiating the woman's time, not the services she offers, i.e. it doesn't amount to the club living off the earnings of a prostitute, which is an offence under Hong Kong law (although prostitution itself is not illegal). Of the HK\$4,000 buying-out fee or "bar fine", the woman receives HK\$1,000, whilst the club, mamas and agency each receive HK\$1,000. The women reported an average of between 2 and 5 escorts a month, although two of the interviewees reported 7 to 10 escorts a month. They may also earn a lot from tips from customers.

### ***Problems in paying back the agency fee without escort work***

Most of the women are required to pay back the agency fee within two to three months of their arrival in Hong Kong, and the fee, as mentioned before, is usually in the region of HK\$10,000 to HK\$16,000.

Generally they would earn a total of HK\$4,200 – 5,100 each month, without escort work, comprising an average basic salary of HK\$2,600 – 3,500 (although two women reported receiving HK\$6,500 per month), and commission of HK\$1,600 (based on an average of 40 drinks a month at HK\$40 per drink). Over two months they would therefore earn HK\$8,400 – 10,200, and over three months HK\$12,600 – 15,300. It is clear from these calculations that if a woman is only given two to three months to pay back an agency fee of HK\$10,000 to HK\$16,000, she may struggle unless she does escort work or a boyfriend pays the agency fee back for her, which



sometimes happens. This was reflected in a number of interviews, where the women said that they felt pressured into escort work in order to pay back the agency fee.

### ***Pay on time and correct***

The club keeps a record of what the woman has earned through commissions on drinks and escort services. No complaints were made about non-payment, or incorrect payment.

### ***The right to refuse customers and to insist on safe sex***

The mamas an, 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 mamas an to take customers generally, or particular customers, or to give the mamas an 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 non-local men. 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.

Half of the women said that they are not allowed to refuse clients who they do not like the look of. All the women, except one, said that they ask men to use condoms, and if the men refused, would offer oral sex or hand job instead, or else leave their client. One woman reported that some men slip the condom off during sex. A 1999 report on Hong Kong men using prostitutes (both in Hong Kong and abroad) found 27% refused to wear condoms<sup>9</sup>, so it seems that the nightclub workers, and their customers, are particularly well educated in relation to the risks of unprotected sex. This could be due to the efforts of community organisations, which carry out educational programmes in the nightclubs, with the consent of the clubs and agencies.

### ***Discriminatory Practices by Police***

Some women have mentioned, outside the context of the interviews, that they have been subject to police raids in the clubs, where the police have checked their handbags for condoms and KY jelly. We would argue that the police do not have any right to do this, as sex work in itself is not an offence in Hong Kong, only soliciting. This is an area that we hope to conduct further research on as harassment by police can constitute a significant human rights abuse.

### **Trafficking under the UN Protocol**

On the basis of our findings, it seems unlikely that the standard process of recruiting Filipino women to work in Hong Kong's nightclubs would be considered to constitute trafficking for the purposes of the UN Protocol, although in rare instances (such as Anna's case), trafficking is most definitely involved.

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<sup>9</sup> "One in Seven Makes Visits to Prostitutes", *South China Morning Post*, 26 May 1999.

Article 3 of the UN Protocol defines “trafficking in persons” to include “the recruitment of persons ... by means of deception ...for the purpose of exploitation”. It could certainly be said that in some cases, there is an element of deception (in the form of non-disclosure) in the recruitment process, in particular with a third of the women interviewed reporting that they were not informed that the job would involve escort work. Whilst it might be argued in reply that escort work is technically voluntarily, so there is no deception, our research shows that such work is an *inevitable* part of the job (with all 18 women having ultimately done escort work), and in some cases, a *necessary* part of the job, without which the women would not be able to pay back their agency fees in time. One woman was also misled as to the amount of money she would earn, not being told that it would actually involve a high level of escort work to achieve the figure quoted to her.

Whether this deception is “for the purposes of exploitation” is a more difficult question – “exploitation” is defined in the UN Protocol to include “at a minimum, the exploitation of the prostitution of others or other sexual exploitation ... slavery or practices similar to slavery, servitude”, irrespective of whether the woman consented to this when she was recruited.

It could definitely be argued that the financial and other pressures on women to do escort work amounts to sexual exploitation, in situations where the women did not know beforehand that they would be required to do escort work (notwithstanding the fact that they receive payment for this work). However, whether it could be said that they were recruited “for the purpose” of sexual exploitation is less clear – with escort work constituting (at least in most cases) only a fraction of the women’s work, which otherwise involves only dancing and entertaining customers.

Depending on their particular circumstances, the conditions in which the women live and work could also possibly amount to slavery-like practices. Of particular relevance would be the cases in which women need to do escort work in order to pay back the agency fee within the prescribed period, are extremely limited in their freedom of movement, have no days off in six months, and are not allowed to refuse customers. However, it is not clear at which point individual human rights abuses would together amount to slavery-like practices for the purposes of this definition, or in which circumstances, women could be said to have been recruited “for the purpose” of slavery-like practices.

### **Comparison with situation of domestic helpers in Hong Kong**

In our view, any assessment of the living and working conditions of the nightclub workers in this study must take into account the alternative jobs that are available to them. It is well known that a significant number of Filipino women feel compelled to migrate to Hong Kong for employment (due to the limited opportunities in their home country). Indeed, Filipinas make up the largest group of expatriate workers in Hong Kong. The vast majority of these women work as “foreign domestic helpers”, employed under a two-year contract approved by the Hong Kong government.

Some feminist legal scholars argue that prostitution is inherently exploitative and would probably view the “escort” done by the nightclub workers in the same light. However, if one does not accept that view of prostitution then it is not at all clear that working for 6 months as a nightclub/escort worker is necessarily more exploitative than domestic work, particularly when one compares the earnings. The minimum

wage for a foreign domestic helper in Hong Kong is \$3,650.<sup>10</sup> Foreign domestic helpers who work for several years for one family may receive pay increases but many are paid only the minimum wage, year after year. In contrast, the nightclub/escort workers interviewed for our study reported earnings ranging from \$7,000 per month and some were reporting significantly higher earnings. Nightclub workers also pay a higher “placement fee” than foreign domestic helpers are supposed to be charged (but it appears that foreign domestic helpers are often overcharged so it is difficult to assess the precise difference<sup>11</sup>) In any event, even after paying the agency fee and personal expenses, this study indicates that most nightclub/escort workers are taking home at least \$20,000 profit at the end of their six month contract. In contrast, a foreign domestic helper earning minimum wage will find it difficult to save more than \$12,000 to \$15,000 in six months. It is also noteworthy that none of the nightclub workers interviewed for this study reported being cheated out of their earnings whereas it has been widely reported that some employers do not pay their domestic helpers the required minimum wage. Helpers are reluctant to report this for fear of being dismissed and returned home. (Although the Hong Kong government will allow a foreign domestic helper to stay in Hong Kong to bring proceedings against an employer it makes little economic sense to do so because she will normally not be given permission to work and thus must live on charity (e.g. at a shelter) while litigating her claim.)

The interviews do show that the nightclub workers work very long hours, have few or no days off, and enjoy almost no freedom of movement when they are not working. In our view, these conditions raise significant human rights concerns and should be addressed. Foreign domestic helpers enjoy more freedom of movement and can develop a social life outside of work. However, their freedom is also quite limited, since they live with their employers, work 6 days a week, and are essentially “on call” at all times, other than Sunday. Indeed it has also been reported that some employers do not even give their domestic helpers Sunday off or do not allow them to enjoy a full day of rest. (For example, a helper may be required to return home in time to wash dishes on a Sunday evening.)

The other significant point to note is that a nightclub/escort worker is apparently less vulnerable to physical abuse than a foreign domestic helper in Hong Kong. None of the nightclub workers interviewed for this study reported abuse, either by the agency,

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<sup>10</sup> Foreign domestic helpers also are supposed to receive accommodation (normally a small but separate room in the employer’s household), food or a food allowance, and transportation to and from Hong Kong (at the start and end of their contracts. However, it has been reported that many employers do not meet these requirements. For example, they may require the helper to sleep on the floor, in a closet, or in the children’s room so that she can attend to children during the night.

<sup>11</sup>Under the Employment Agency Regulations (Cap 57A, Regulation 10(2)), an employment agency may charge a successfully placed domestic helper a commission of not more than 10 per cent of his/her first month's salary. Overcharging or charging any other fees, such as registration fee or processing fee, is strictly prohibited (and may result in the agency losing its licence). However, each year, the Labour Department receives a number of complaints of overcharging – 46 domestic helper complaints in 2000, and 76 from January to October 2001. According to a question raised by a Legislator (in the Hong Kong Legislative Council), the fees complained of were in the range of HK\$8,000-HK\$10,000. (See <http://www.info.gov.hk/gia/general/200112/12/1212175.htm>.) Indonesian domestic helper groups also have campaigned recently against excessive agency fees and claim that they are required to pay, on average, HK\$5,655 in agency fees. (See <http://www.asian-migrants.org/news/100545770161382.php>.)

the minders, or the mamasans (although some did report incidents of harassment by the police). It also appears that reasonable care is taken to ensure (as far as possible) that the women are safe when they go out with clients. In contrast, foreign domestic helpers are isolated and can be very vulnerable if they live with an abusive employer or if one member of the family has violent tendencies. For example, a solicitor was recently convicted of raping his foreign domestic helper. A woman was convicted of deliberately burning the hands of her foreign domestic helper with an iron (as punishment for damaging an item of clothing). Beatings have also been reported and documented. Of course, the majority of domestic helpers probably do not live in abusive households. However, a Filipino woman choosing to come to Hong Kong has no way of knowing what sort of employer she will wind up with and once she has signed a two-year contract it is very difficult for her to change employers. (The Hong Kong government enforces a “two week” rule that requires foreign domestic helpers who leave or are fired from their jobs to sign a new contract within two weeks or leave the territory. This makes women particularly vulnerable to harsh employers since the employer knows that she will endure a great deal before quitting her job or filing a complaint.)

From an economic point of view, the one clear advantage of the foreign domestic helper contract is that it is for two years and can be renewed (many women have worked in Hong Kong for several contracts). Thus the long-term earning power of a foreign domestic helper will be greater. However, some women might not wish to be away from their families and home country for such a long period of time. Many foreign domestic helpers have worked in Hong Kong for so many years that they have missed the opportunity to marry and establish a family in the Philippines; others have children who they have been compelled to leave with relatives and rarely see.

In our view, the comparison with foreign domestic helpers places is important because it gives context to any assessment of nightclub/escort workers’ living and working conditions. Unless one views all prostitution as inherently more exploitative than working as a domestic servant, it is not at all clear that one job is better than another. Rather, one’s assessment of the two jobs will depend largely on one’s personal needs and goals, and one’s ability to tolerate certain conditions. For a significant number of women, working in a bar and doing occasional escort work may be preferable to working as a foreign domestic helper. And many Filipina women may have few other opportunities to earn money to support their families or to attain other financial goals. Thus, in our view, it would be irrational to label those women who come to Hong Kong *with full knowledge* that they will be working as nightclub/escort workers as “victims of trafficking”, unless their living and working conditions are abusive. However, a woman who is not given the full picture and is then later pressured to engage in escort work is, in our view, a victim of trafficking.

### **Conclusion and Recommendations**

Our research to date has shown that this group of women live and work in relatively good conditions, particularly when compared to domestic helpers, who comprise the majority of migrant workers in Hong Kong. However, it has identified some areas of concern:

- Lack of information on nature of job, in particular expectation to do escort work

- Pressure to do escort work, in particular inability to pay back agency fee unless do escort work
- Long hours, with little time off.
- The fact that some women are not allowed to refuse particular clients.
- The very limited freedom of movement

It is arguable whether these circumstances could amount to trafficking within the definition in the UN Protocol. Nevertheless, they are issues which could, and should, be addressed as human rights issues. These concerns might be addressed in several ways, starting with increased education in the home country as to the nature of entertainment work in Hong Kong, in particular that it will involve escort work.

Education could also be increased at the Hong Kong end. The community organisation with which we have worked has applied several times to the Hong Kong government for a grant to prepare a small booklet for women on arrival in Hong Kong, informing them of their rights as entertainers, and providing relevant contact details. However, each time this application has been turned down (although a similar booklet for domestic helpers exists). This attitude (combined with the reports of police harassment) raises serious questions about the Hong Kong government's treatment of migrant nightclub workers.

It might be considered whether a standard contract should be introduced in relation to nightclub workers, regulating hours of work and days off, and repayment of the agency fee. However, any proposals for reform must be made carefully, with due regard for the possible "backlash" that could result. Given attitudes toward the commercial sex industry, it is entirely possible that a call for a standard contract would only generate unwanted attention (e.g. from the police) rather than in improving living and working conditions for this group of women.

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