The next step

Grenville Cross says Hong Kong needs a consolidated law to deal more effectively with the problem of human trafficking. For a start, it should consider the suggestions offered by a recent US report

Defeating human trafficking,” said former US secretary of state Condoleezza Rice, “is a great moral calling.” Human trafficking involves sexual exploitation, forced labour or debt bondage, and exists in most places. It is naïve to pretend, as some do, that Hong Kong is somehow immune from such things. Trafficking is a major human rights concern, and the United Nations Office on Drugs and Crime has commented that it might more accurately be described as “enslavement”.

An estimated one million people are trafficked each year, and the victims, mainly women and children, face a bleak future. Human trafficking is thought to be the world’s fastest growing criminal enterprise, generating annual profits estimated at over US$30 billion and, in Southeast Asia, the problem is acute. Hong Kong’s own commitment to combating trafficking has recently been questioned, and a review of local arrangements is expedient.

Although Hong Kong has in place some effective laws to combat different types of human trafficking, these tend to be piecemeal and spread across the statute book, and penalty provisions are sometimes outdated. Hong Kong’s status in the campaign to eliminate trafficking was recently downgraded by America’s annual Trafficking in Persons Report, and this suggests some local slippage.

Whereas Hong Kong, since 2001, had been graded at Tier 1 (fully compliant with the US trafficking legislation’s minimum standards for prohibiting, punishing and eliminating severe forms of trafficking), this was reduced, in 2009, to Tier 2 (not fully compliant, but making significant efforts). The American concerns focus on Hong Kong’s position as a destination and transit territory for people “subjected to forced prostitution and possibly forced labour”, and on a lack of sufficiently rigorous measures to combat the problem.

The government’s response has been a mixture of bluster and denial, which is a pity, as alarm bells are ringing. There is no reason to suppose the US trafficking reports are not well-intentioned, and they contain some constructive suggestions, including the need for a more focused response to the problem and for stiffer penalties for those involved in the exploitation of migrants. The advice proffered on such things as securing the co-operation of foreign trafficking victims in court cases, campaigning to reduce the demand for commercial sex, and improving the monitoring of employment agencies, was not sought, but has been given in good faith, and is surely welcome food for thought for the recently created anti-trafficking task force.

Although Tier 2 status is quite respectable, and is also extended, for example, to Japan, Macau and Singapore, Hong Kong must now seek to raise its game, and to join the likes of New Zealand, South Korea and Taiwan on Tier 1. This is achievable, although it may be difficult if the government continues to insist its house is fully in order. Hong Kong has traditionally enjoyed a sound record for law enforcement in the Asia-Pacific region, and a more precise strategy to counter human trafficking will burnish its credentials.

The adoption of a clear definition of human trafficking is advocated in the protocols under the UN Convention on Transnational Organised Crime. A comprehensive definition, quite apart from affirming the rights of victims, can promote a convergence in the national laws which bolster international efforts to prosecute trafficking cases. Severe penalties for human traffickers will also facilitate deterrence.

In Australia, a Tier 1 country, a general trafficking offence was introduced in 2005. This criminalises the bringing of a person to Australia by means of threats, force or deception, and offenders face up to 20 years’ imprisonment if the victim is exploited, or subjected to cruel, inhuman or degrading treatment. The offence of trafficking a child attracts the same penalty, which sends out a clear message of the abhorrence felt towards this crime.

In Canada, another Tier 1 jurisdiction, the updated Criminal Code creates a human trafficking offence of exploiting or facilitating the exploitation of a person, punishable with life imprisonment. Exploitation is defined as causing a person to provide, or offer to provide, labour or services by engaging in conduct that leads the victim to reasonably fear for their safety or that of someone known to them, if they fail to comply.

In Ireland, which is also Tier 1, the Criminal Law (Human Trafficking) Act 2008 created the offence of trafficking in another person for the purpose of exploitation, punishable with life imprisonment, and the offence is committed “if coercion, deceit or abuse is involved”.

A specific offence of trafficking a child for the purpose of exploitation was also adopted in Ireland, punishable with life imprisonment. If Hong Kong were to follow suit, this would go a long way towards allaying the concerns of non-governmental organisations, such as ECPAT International, that have argued that child trafficking is fast in Asia, and that Hong Kong needs to respond with a more specific policy framework of its own.

In Hong Kong, the Bill of Rights prohibits slavery, servitude and forced or compulsory labour, and this must be fully reflected in the local laws, which may have to be draconian. The Bill of Rights does not contain offence provisions or penalties, and a specific offence of trafficking in persons which targets exploitation and is buttressed by condign punishments for offenders would assist. The conduct which amounts to exploitation needs to be fully identified, and the net should be widely cast. If the trafficking involves a child, few will complain if the maximum penalty is set at life imprisonment.

An overarching human trafficking law would supplement the present legislative regime, and align Hong Kong with global initiatives to counter an evil that has been likened to a modern type of slavery. This should proceed in tandem with measures to promote best practice in protecting the interests of the vulnerable and monitoring the incidence of trafficking. If this strategy also helps to restore Hong Kong’s Tier 1 status, this will be a welcome bonus for the efforts of local law enforcers.

If Hong Kong’s human trafficking laws are in any way deficient, it is the traffickers who will benefit, and the most vulnerable who will suffer. Policymakers disregarded this at their peril.

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