

# Why the Kim Jong-nam assassination raises the need for a human trafficking framework

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*Carmelite Chambers, London and 37 Park Square, Leeds, UK  
Charles Darwin University and William Forster Chambers, Australia*

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The University of Hong Kong



The half-brother of North Korean leader Kim Jong Un was assassinated at Malaysia airport in February 2017 by women squirting poisoned pens. News items suggest they thought they were part of a prank, were paid a limited fee and may have been from such a disadvantaged background that they were exploited. This raises issues of substantive law around their intention to kill when they committed the assault and any operative deception might be relevant to those issues. However, what is also important is to consider the effect of the UN human trafficking protocol which defines trafficking to include *the ....recruitment of persons...by means of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation....* Trafficking in human beings for the purpose of criminal exploitation is an increasingly significant phenomenon with victims being exploited through a variety of criminal activities. UN Guiding principles are that trafficked victims who commit crime should not be prosecuted or, if they are, should not be punished.

Taking into account the recent decision in *ZN v. SECRETARY FOR JUSTICE AND OTHERS* [2016] HKCFI 2179; HCAL 15/2015 (23 December 2016), this presentation considers the role that abuse of process can play in criminal appeals and the need for a transnational human trafficking framework both for investigation and the exercise of any discretion to prosecute victims of human trafficking who commit crime.

**Felicity Gerry QC** is admitted in England and Australia and has had ad hoc admission in Hong Kong and Gibraltar. She specializes in serious and complex crime, often with an international element. She led the defence team in *R v Jogee*, the ground breaking appeal in the UK Supreme Court which corrected the law on complicity and held that the form of accessory liability known as 'joint enterprise' was an erroneous tangent of law and the wrongly decided *Chan Kam-shing* (Hong Kong) 2016. She was *Solicitors Journal* Legal Personality of the Year for 2016 and is described in the Legal 500 for 2016 as 'well respected for national and international appellate issues'. In 2014 she assisted lawyers for Filipina Mary Jane Veloso who was temporarily reprieved from execution in Indonesia after raising her status as a victim of human trafficking and she has advised in other similar death row cases.

Felicity is Adjunct Fellow at Western Sydney University where she lectures in Terrorism, Cybercrime and Sexual Offending and also a Senior Lecturer at Charles Darwin University where she leads an *Indigenous justice Exoneration Project*. She researches on women & law, technology & law and reforming justice systems. She has recently published three chapters in *Human Trafficking: Emerging Legal Issues and Applications* (2017) on the *Mary Jane Veloso* Case, *Using Digital Technologies to Combat Human Trafficking: Privacy Implications* and *Gender Issues in Human Trafficking: Empowering Women and Girls Through Awareness and Law*.

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