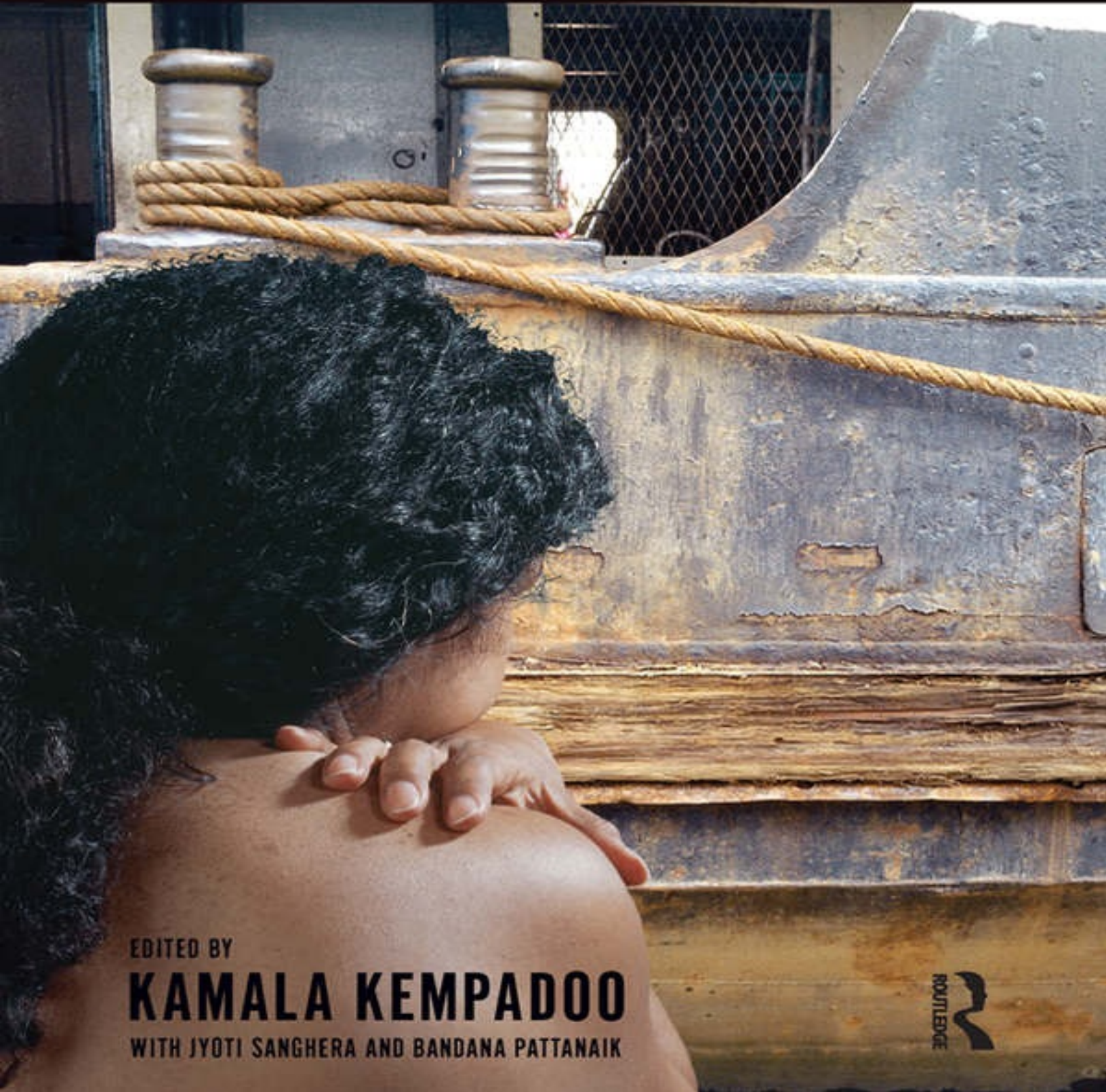


TRAFFICKING AND PROSTITUTION RECONSIDERED

NEW PERSPECTIVES ON MIGRATION, SEX WORK, AND HUMAN RIGHTS



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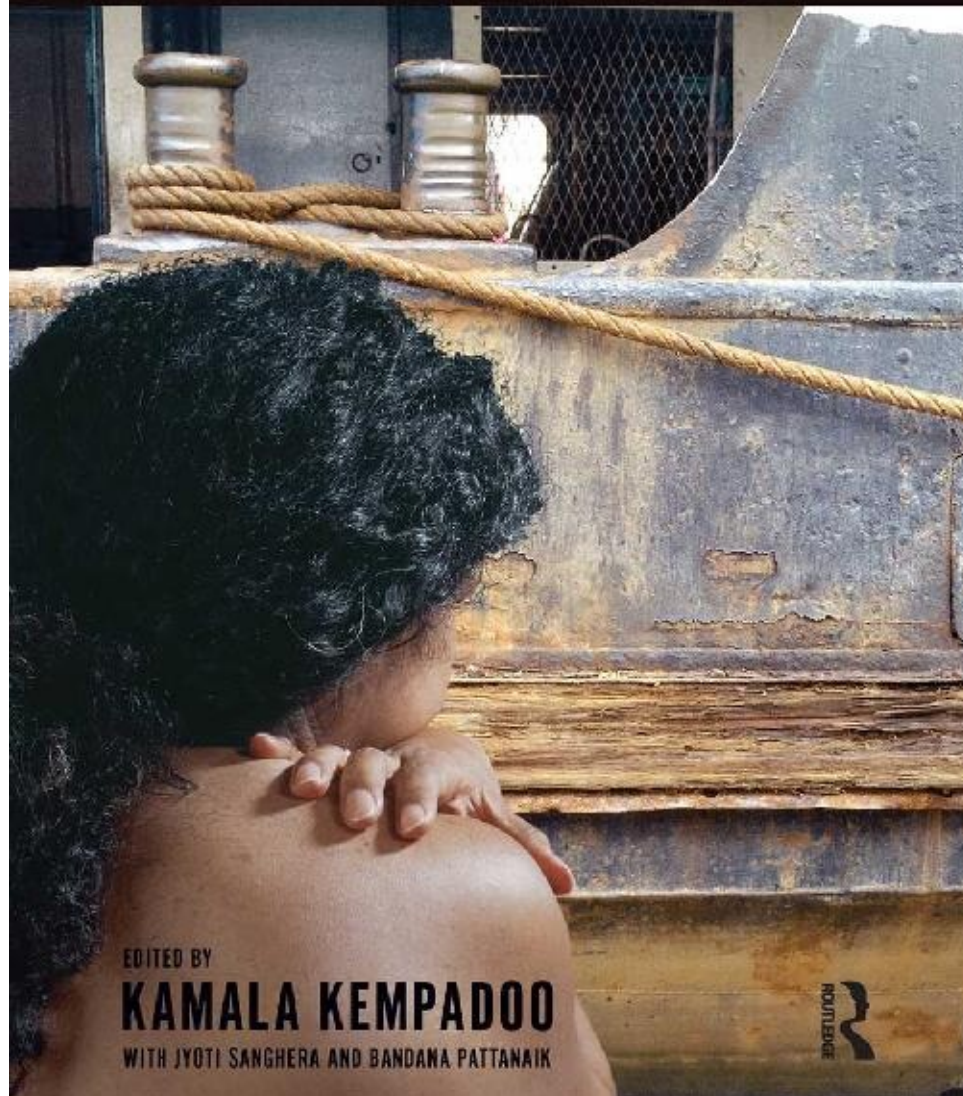
KAMALA KEMPADOO

WITH JYOTI SANGHERA AND BANDANA PATTANAİK

ROUTLEDGE

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NEW PERSPECTIVES ON MIGRATION, SEX WORK, AND HUMAN RIGHTS



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New Perspectives on Migration, Sex Work, and

Human Rights



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TRAFFICKING AND PROSTITUTION

RECONSIDERED

New Perspectives on Migration, Sex Work,

and Human Rights

edited by

Kamala Kempadoo

with

Jyoti Sanghera and Bandana Pattanaik

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Only when human sorrows are turned into a toy with glaring colors will

. . . people become interested—for a while at least . . . The “righteous”

cry against the white slave traffic is such a toy. It serves to amuse the people for a little while, and it will help to create a few more fat political jobs—parasites who stalk about the world as inspectors, investigators, detectives, and so forth.

Emma Goldman, *The Traffic in Women*, 1910

Human trafficking exploded into the public consciousness at the start of the twenty-first century, yet it is not a new issue and has been a global concern since the mid-nineteenth century. Today it is cast by political leaders, alongside

terrorism and drug trafficking, as one of the three “evils”

that haunts the globe, and it has become the subject for much academic research, [policy work, and action in a wide variety of disciplines and fields.](#)¹

Trafficking is also variously taken up in law enforcement efforts to control immigration and transnational organized crime, in state policies and interventions to regulate the sex trade, and in research and social work among undocumented and bonded laborers. Nevertheless, there are competing definitions of trafficking; little consensus or agreement among researchers, policy makers, and activists about the scope of the problem; and scant evidence or substantiation about actual trafficking practices. Moreover, vii

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much of what is pursued in the name of a war on trafficking has troubling consequences for poor people around the world.

This collection aims to bring some clarity to the matter and offers views and insights that differ from those proffered by today’s global political leaders or the mainstream media. It presents recent ways in which trafficking is conceptualized, redefined, and made operational by people who work in the field and who value the rights and lives of the poor and the marginalized. It foregrounds critical examinations of state and international governmental definitions of trafficking, while proposing alternatives for study, research, and intervention. The contributions draw from grounded research, activism, and debates that have taken place since the late 1990s—particularly in Asia—

focusing on people’s livelihood arrangements and survival strategies under new forms of globalization, in which gender, race, ethnicity, and nationality are central organizing principles. The collection was initially inspired by workshops on feminist participatory action research in 2000 and 2001 held by the Global Alliance Against Traffic in Women (GAATW) in Thailand, at which research projects and perspectives on trafficking in a number of different countries were presented and discussed. All three editors of this collection were part of the workshops as resource persons and had some attachment to the GAATW organization: Bandana Pattanaik as research project coordinator, Jyoti Sanghera as member of the board, and this author as a member of the working group on

research methodology. The understanding that had developed from extensive participatory research and work with nongovernmental organizations (NGOs) presented by the majority of the participants in the workshops was that “trafficking” was evident in various migration processes and sites of work and not just in the sex trade. This shared conceptualization of the problem was striking, as it offered an alternative perspective to the radical feminist, predominantly Western, view that dominated international debates on trafficking at the time. From the realization that the researchers were articulating a complex redefinition of trafficking based on grounded observations and local realities, we set out to make this perspective more visible through publication. Simultaneously, through the GAATW network we solicited other writings from people working in the anti-trafficking field. This book is a culmination of that effort, and although GAATW was a central funder in the process, the following chapters do not represent that organization’s perspective but draw from a far broader movement in the world of anti-trafficking. Given that Asia, especially South and Southeast, is the area of the world where the recent international interest in trafficking originated, and where the majority of the participants in the GAATW workshops conducted their research, we have focused the collection on writings that deal with and speak to Asian experiences, realities, and debates.

This book documents trafficking not as the enslavement of women, but as *the trade and exploitation of labor under conditions of coercion and force*,

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analyzed from the lives, agency, and rights of women and men who are involved in a variety of activities in a transnationalized world. The writings—all by intellectuals who have worked closely with trafficked persons, sex workers, and women’s empowerment groups—shed light on everyday circumstances, popular discourses, national policies, and grassroots struggles for change. By conceptualizing the problem from the ground up, the essays and analyses link theory and praxis in ways that are often overlooked by researchers and academicians who have recently joined the anti-trafficking industry and who attempt to intervene in debates from their ivory towers or political platforms. Nevertheless, this collection does not claim to offer a singular solution to the problem. In viewing trafficking as little more than undocumented migration and

forced labor, some authors imply that the term should be completely jettisoned.

Others critique the concept for its ability to highjack attention away from structural, underlying causes that give rise to exploitation, structural violence, and the coercion of (migrant) workers, and thus seek to redefine and refocus it. Still others here wish to make it more precise and applicable to empowerment work among migrants. However, even with these different emphases, all authors in this book share a critical stance toward the contemporary hegemonic discourse on trafficking, and advance an approach that supports the humanity, agency, and rights of the poor.

Noticeable throughout much of the research and analysis here is the centrality of women. On the one hand, it can be argued that this focus maintains the gendered divide around which earlier definitions of trafficking settled and thus reinforces the general, dominant image of trafficking as pertinent only to women's and girls' lives. On the other hand, the reformulations of the concept of trafficking—to encompass a gendered quality of labor migration, exploitation, and oppression—combine with the knowledge that women are disproportionately represented among the poor, the undocumented, the debt-bonded, and the international migrant workforce, which leads to a continual foregrounding of women's lives and experiences. Gendered inequality remains a central feature that guides research and investigations, with situations of poor women and girls becoming a main concern for those involved with anti-trafficking work. Thus, although the issue of the trafficking of men and boys is gaining some significance in international debates and a broader notion of the trafficking in *persons* is now popular, we are still faced with little empirical research, particularly from Asia.

THE MAKING OF AN INTERNATIONAL TRAFFICKING DISCOURSE

The term “trafficking” is most commonly attached to international conventions that addressed the early-twentieth-century emergence of women

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as cross-border migrants on the world stage along patriarchally and racially defined gendered divisions of labor. These migrations were lodged in the large-scale international relocations and massive displacements of people that followed the abolition of slavery in the nineteenth century, and which

accompanied the internationalization of waged labor embedded in the period of globalization of capitalism between 1850 and 1914 (Stalker 2000; Tilly 2004). Predominantly poor and working-class men and women crossed borders, clandestinely or not, to find new futures, enduring systems of bonded labor and indentured servitude that positioned and maintained them as cheap, disposable labor forces (Scully 2001). Women sought to independently move or were moved through organized channels—commonly as sexual and domestic partners—servicing and reproducing the migrant workforce, sometimes obtaining new freedoms through non-marital sexual relations and work that could include prostitution (Guy 1991; Walkowitz 1980; White 1990). Nevertheless, ideas about the mobility and trade of women’s labor and bodies that emerged around nineteenth-century indentureship and debt-bondage systems ignored the impacts of colonialism and demands of patriarchal, racialized capital, and attached prostitution and “loose” sexual relations to notions of a degraded migrant women’s sexuality and the immorality of migrant men. In the nineteenth-century narratives, women were often portrayed as coerced, deceived, lured, trapped, kidnapped, and forced into prostitution, explained by the “natural” sexual depravity and uncivilized character of (im)migrant communities. Consequently, as occurred for Chinese women in West Coast cities in the United States and Canada during the latter part of the nineteenth century, and for Indian women under British colonial indentureship systems, the women’s lives and movements were subjected to laws and policies that restricted or even banned their migration (Bisnauth

[2000; Lubheid 2002; Reddock 1985](#)).²

Nineteenth-century discourses on gendered international migration patterns set the stage for a racialized social panic about the “White Slave Trade.” The ever-growing number of women traveling abroad for work and new life opportunities caused great anxiety and suspicion among middle-classes and elites, reinforcing ideologies about the entrapment and enslavement of, particularly, white, Western European, and North American women in prostitution (Grittner 1990; Guy 1991; Walkowitz 1980). The panic instilled in the European-American imagination a notion of the bar-baric, uncivilized, non-Western Other who brutalized and violated white women, while serving to restrict Anglo/European women’s mobility and sexual freedoms (Doezema 2000; Findlay 1999). Trafficking as synonymous to the White Slave Trade came to dominate international attention around the subject of women’s international migration and mobility and led to a series of international debates and conventions in the early twentieth century,

spearheaded by the League of Nations, about the “traffic in women and children.” The international campaign, couched in terms of sexual

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morality, gave rise to a plethora of nationally defined law enforcement and policing efforts to eradicate prostitution. Moreover, as Emma Goldman, anarchist and staunch advocate of women’s sexual autonomy, critically pointed out in the first decades of the twentieth century, the anti-white slavery crusade that became synonymous with an anti-prostitution campaign, was supported, if not led, by Western European and US middleclass feminist [reformists who sought to “save” their “fallen” sisters.](#)³ [The anti-](#)

prostitution feminist approach imparted a particular imperialist bourgeois logic to early anti-trafficking campaigns, which, as several essays in this collection indicate, has continued to intersect with conservative Christian political agendas and ideologies.

The early international definition of trafficking, as exclusively attached to activities in the global sex trade, led to the 1949 United Nations Convention for the Suppression of Trafficking in Persons and the Exploitation of Prostitution of Others. However, between the two World Wars in the twentieth century, the moral panic over white slavery and trafficking subsided, and in the new surge of globalization in the post-World War II era, labor and immigration were regulated and organized under state supervision. Interest in the subject reemerged in the 1970s, highlighted in the first instance by feminists concerned with the social impacts of the reconstruction and development of the Southeast Asian region in the aftermath of the Vietnam War and the continued stationing and servicing of US military troops in the region.

Sex tourism, mail-order bride arrangements, militarized prostitution, and coercions and violence in the movement and employment of women from poorer to more affluent areas at home and abroad for work in leisure, relaxation, and sex industries were paramount in the early campaigns (ISIS-wicce 1990/91, “Asian Campaigns”). “Sexual slavery” was claimed, from a radical feminist perspective, to be central to this understanding of trafficking, and it was taken to epitomize the very worst of patriarchal oppression and the greatest injury to

women. The patriarchal institution of prostitution—but also marriage and the family—was defined in this feminist approach as inherently violent and abusive for women, and those who participated in such institutions were believed to be deceived victims of male power and privilege (Barry 1984). By 1985 the issue of trafficking was integral to the international women’s movement, becoming a part of the United Nations Fora on Women and of various women’s networks and organizations around the world (ISIS-wicce 1990/91, “World-Wide Solidarity”).

Nevertheless, another feminist perspective began to emerge, grounded in grassroots activities and action research projects with “trafficked women,”

particularly in and from the global South. It offered nuanced and different analyses, and indicated that although many women were indeed coerced and violated in the global sex trade, their situations were in many ways similar to those of other migrant women who sought to make a livelihood for themselves and their families in a highly gendered and racialized world order

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(Skrobanek et al. 1997). Taking into account such new approaches and understandings of the subject, the UN Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, commissioned a worldwide research project on trafficking in 1996 to reestablish the parameters of the [problem.4](#)

The report marked an important shift in international feminist definitions of trafficking, as Lin Chew describes in her essay here, culminating in advice by the Special Rapporteur to the United Nations to delink processes of recruitment and transportation under coercion from the sex trade: that is, to conceptually separate the traffic of women from prostitution. Moreover, prostitution was defined as a legitimate form of work. “Trafficking of women”

was redefined in this way as: “*All acts involved in the recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion*” (Wijers and Lap-Chew 1997). It was seen to be shaped in various ways by hegemonic and local patriarchies, globalized capitalism, and the widening gaps between the “haves” and the

“have-nots,” as well as by reconfigurations of empire under late-twentieth-century globalization that reinscribed international hierarchies around notions of racial, religious, and national difference (Kempadoo and Doezema 1998). From such a feminist perspective, the global sex trade was defined as one, but not the only, site in which trafficking occurred. Sectors that required unskilled or semi-skilled non-sexual labor, such as domestic service and manufacturing, as well as the racialization and feminization of the global workforce and migration processes produced through the globalization of capitalism, became [relevant to the analysis](#).⁵ The redefinition rested upon an understanding of the imbrication of force and violence in conditions and processes in which poor, predominantly brown and black, women were involved in their search for social and economic security in the new world order.⁶ Concurrent with this feminist redefinition of trafficking, studies proliferated on the subjects of transnational human smuggling, “new forms of slavery,” undocumented migration, and forced displacements that affected both women and men (Bales 1999; Kwong 1997; Kyle and Koslowski 2001; Human Rights Watch 1996). An important difference between smuggling and trafficking, however, rests upon the intention for which the movement takes place. The common understandings of trafficking in persons emphasize the end conditions— *the forced labor or slavery-like situations*—for which the recruitment and transportation of persons within and across state and national borders occurs, and which may or may not involve smuggling.

THE TWENTY-FIRST CENTURY INTERNATIONAL GOVERNMENT ANTI-TRAFFICKING DISCOURSE

The late-twentieth-century shift in the conceptualization of trafficking— from prostitution to unregulated migration and forced labor—is to some

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extent reflected in the most recent UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which replaced the 1949 United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of Prostitution of Others (UN 2000).

The new UN Protocol is examined and referred to throughout this book in various ways. However, the protocol explicitly links trafficking to state efforts to

tackle all types of organized criminal activities that cross national borders and accompanies the UN Convention Against Transnational Organized Crime. Thus, whereas the early-twentieth-century UN approach primarily focused on the international sex trade, by 2000 this had dissolved, and trafficking was subsumed under the heading of international criminal activity. The trafficking of persons is also located in the 2000 convention as akin to the trafficking of drugs and weapons and defined as being of almost equal magnitude, taking place for a range of industries, only one of which is the sex industry. Anti-trafficking in this framework is synonymous with a war on international crime, and represents an attack on the movement of persons, weapons, or drugs that defy or circumvent legal boundaries and borders. Simultaneously, the link between policies to curb trafficking and those for immigration control is more explicit and visible, as governments in the global North increasingly express concern that the actions of traffickers and migrant smugglers interfere with orderly migration (Gallagher 2001a).

Punishment of those who assist others to circumvent national immigration restrictions and disrupt older patterns and flows of migration thus stands at the very heart of the contemporary UN anti-trafficking policies. The protocol continues to criminalize the “exploitation of the prostitution of others” when this involves cross-border and transnational activities, yet does not criminalize all prostitution, to allow for differences in national legislation on the issue.

The United Nations International Convention Against Transnational Organized Crime was agreed upon in Palermo, Italy, in November 2000, has been signed by some 147 member states, and came into effect on September 29, 2003. It is supplemented by three Optional Protocols—one on the Smuggling of Migrants, the second to “Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” and a third that addresses illicit manufacturing of, and trafficking in, firearms. The Trafficking in Persons Protocol came into force on December 25, 2003. The 2000 UN Convention and new ideas about trafficking are also echoed in a variety of national and regional policies, laws, and initiatives that have been recently adopted by governments around the world. These include the US 2000 Trafficking Victims Protection Act (TVPA), the 2001 ECOWAS

Declaration and Action Plan on Human Trafficking, the Law Against Human Trafficking passed by the Colombian Parliament in June 2002, the 2002 SAARC Convention, the ARIAT Regional Action Plan of March 2000, the European

Union Council Directive on Short-term Residency Permits for Victims of Trafficking of February 2002, and the Philippines' Anti Trafficking in Persons Act that was passed in May 2003. All tie into the umbrella

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framework of the UN Convention on Transnational Crime, and signal a growing panic at the turn of the century by the international political community and national governments about unregulated migration flows and profitable, cross-border activities that lie outside of state control.[7 Simul-](#)

taneously, a variety of documents, policies, and guidelines by international agencies such as the International Organization for Migration (IOM), the International Labor Organization (ILO), UNICEF, and Anti-Slavery International (ASI) have been produced, much of which focuses on the management of “[irregular international migration flows](#).”[8](#)

CRITIQUES AND REPOSITIONINGS

The changes in UN definitions of trafficking described above have, to some extent, been influenced by shifts in understandings among various feminists, researchers, activists, and community workers about prostitution, migrant work, and the global political economy. However, by prioritizing crime, punishment, and immigration control, the global government approach departs from perspectives that have been generated from concerns with social justice and human rights. It is these latter perspectives that are presented in this collection of essays. Due in part to the sustained claim of prostitution as “work,” or sexual labor, by national and international prostitutes’ rights groups, the earlier preoccupation with the global sex trade as the ultimate expression of the oppression of women is by and large exchanged for a focus on gendered labor migrations and working conditions in multiple sectors and sites. Injustices and violence to women are seen to be created or exacerbated by UN and governmental anti-trafficking initiatives. The critique of international and local state discourses on trafficking, which follows from such analyses, shares a common interest in a new agenda for humanity that reverberates in perspectives articulated by political and social movements that emerge “from below” or “the grassroots” (Appadurai 2000; Brecher and Costello 1994; Panitch and Leys

2003; Wright 2003).

A common concern amongst many human rights and social justice advocates in such social movements is that the framework adopted by the UN supports the neoliberal economic interests of corporations, multilateral agencies, policy experts, and national governments, rather than those of the world's working and poor people. Current global economic policies calling for free trade and unqualified access by large transnational corporations to an unlimited supply of natural resources and raw materials, it is argued, guarantee, and defend, the rights of socially powerful elites—the propertied, managerial, cosmopolitan, and professional classes—while they limit the access, movement, and rights of the dispossessed and the economically weak and powerless (Ruggerio 2003). In this

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arrangement, a continual regulation of the supply of cheap, flexible, wage-labor is paramount, with immigration laws and policies playing a critical role in controlling flows of labor. Thus, even though the UN Protocol requires that “states that ratify it take some steps to protect and assist trafficked persons” with full respect for their human rights, it has come to the attention of many involved with migrants that human rights violations have not abated under anti-trafficking policies and legislation. One of the most striking effects, which has been commented upon widely, and is reiterated in many of the following essays, is that while trafficked/migrant persons are designated “victims” under various policies and laws, unless they become informants to the police, they are treated as illegal immigrants and criminals, and as threats to national security. As the designers of the UN Trafficking Protocol candidly state, “generally, developed countries to which persons are often trafficked have taken the position that there should not be a right [for the trafficked person] to remain in their countries”(UN *After Palermo* 2000). Access to documented status and residency in the destination country—that is easily afforded to categories of highly skilled workers, technocrats, business-elites, and those with enough financial clout—is not extended to the working class, and growing numbers of poor immigrants add to the already large number of persons who are processed through criminal justice systems, with increasing numbers being detained or incarcerated for nonviolent crimes, such as illegal migration, drug use and trafficking, and sex work (Bhattacharjee 2002; Lindsley 2002; Scalia 1996). From the vantage point

of trafficked persons, visas created for them may appear as a “stay of deportation,” as they simply allow the individual to remain in the destination country for as long as required for criminal proceedings against traffickers (Pearson 2002).

Moreover, research by organizations such as the Dutch Foundation Against Trafficking in Women (STV), the Global Alliance Against Traffic in Women based in Thailand, and Anti-Slavery International in the UK, as well as by several authors in this collection, shows that besides the primary ways in which trafficked women, men, girls, and boys are dealt with in destination countries—arrest, detention, and deportation—once “rescued” they are most commonly returned home as undocumented migrants, left to face the shame and humiliation that accompanies such categorization and deportee status (Pearson 2002; Skrobanek et al. 1997; Wijers and Lap-Chew 1997). In addition, there is a fear of reprisals from traffickers or fear that the family or home community is made aware of a women’s involvement in criminalized, stigmatized activities. The case where Nigerian women, deported from Italy for undocumented migration and sex work, were publicly paraded and humiliated on their return is but one illustration of the multiple dimensions of injustice women face in the name of a war on trafficking.⁹ [John Frederick also notes in chapter seven that in Nepal, young](#)

“rescued” women who have been returned home from brothels in India

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are commonly institutionalized in safe houses or special homes indefinitely, as they no longer fit in the model of the “good Nepali woman” and are left with inadequate psychological and social care to enable them to settle back into their home community or to reconstruct a life for themselves. In response to such disregard for migrant women’s lives, several authors here argue that instead of deportation, state policies and interventions need to create systems that allow for “safe migration” in order that violation and injustices in processes of migration be eliminated, and the right to freedom of movement be guaranteed for all. As the majority of the authors in this collection point out, efforts to repress migration, to keep people at home, or to “push them back,” often do greater harm than good, and run counter to the interests of the migrant person. Or as one

commentator succinctly puts it, “People don’t want to be rescued, they want to be

[safe. They don’t want to go back, they want to go on. . . .”](#)¹⁰

Because the global governance paradigm on trafficking does not address the root causes for the undocumented movement and employment of people around the world, it also fails to significantly reduce “trafficking.” Instead, as many of the essays here describe, it changes some migration and work patterns or pushes activities even further underground. It [creates, for example, what Phil Marshall and Susu Thatun in their chapter](#)

here call a “Push-down Pop-up” effect, where interventions serve to suppress trafficking in one geographical location or community and cause it to resurface elsewhere. A displacement rather than an eradication of the problem has become the pattern, and trafficking practices morph and mutate in unpredictable ways. Some communities or groups may, then, be “saved” by anti-trafficking efforts, yet at the same time, new communities or younger generations are found to supply the demand for cheap services and labor. New techniques for screening border-crossers at official checkpoints furthermore compel “coyotes” or “carriers” to find new avenues for their charges, and alternative entry points and modes of cross-border smuggling are [tried. Jyoti Sanghera observes in chapter one that](#)

new sites or destinations are also found, as well as more repressive forms of confinement. In gallant rescue attempts—usually loudly broadcast in the media—large sums of money may be handed over to secure the release of individual “slaves,” generating new sources of income and new business arrangements for small-time recruiters, people-smugglers, and employers (Kristof 2004). In addition, policies developed within a framework that stresses the tightening of immigration controls tend to empower anti-immigrant sentiments and xenophobic acts. Apart from the various examples in the following essays, it has also been noted for the US that right-wing, armed vigilante groups complement state and federal forces’

efforts to deter and detain undocumented border-crossers (Cooper 2003).

Apart from not addressing structural problems, migrant women and men who are deported for infringing upon national immigration laws (even

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though they may be “rescued”) are generally forced through state anti-trafficking interventions to return to the same conditions that initially prompted their move. They are thus made vulnerable to “re-trafficking.”

Global structural inequalities in the distribution of wealth and in access to education, employment, health care, and social security; militarized conflicts and occupations; dispossessions from the land and environmental disasters; and gender-based or religious violence and ethnic conflicts, all of which underlie the movement of women into particular labor market sectors, are not eradicated in the global-government approach to trafficking. Conditions at home remain for the most part unchanged. Returned or deported migrants may then make new attempts to leave, and are once again made vulnerable to smuggling, deception, or coercion in the migration process, debt-bondage, and/or violence from employers, law enforcement officials, and clients. The wider economic and political conditions thus remain pressing issues, which the global state-led war on trafficking evades, yet which, according to authors here, are crucial for the international community to take up in anti-trafficking work.

In addition to the violence that the anti-immigration fervor promotes, the dominant international approach to trafficking primarily identifies foreign-originating international gangs and “source” countries as the main culprits, criminals, and beneficiaries in the trafficking business. Given that the majority of “destination” countries are claimed to be Western, postindustrial countries, this creates an international divide around na-

[tionality and race, as Ratna Kapur also points out in chapter two. The](#)

narrow lens of the state anti-trafficking approach and the skewed representation of migration are [particularly evident for the United States.11 Here](#), while it has been established that most of the trafficking occurs not for underground sex industries run by criminal elements, but for sweatshops, farming, service, and domestic work that are attached to formal sectors of the economy, state and public attention is quickly drawn to groups of middle-persons who are held up as the “real” menaces—recruiting agents and those who assist others to move without legal documents or money—

who are commonly identified as greedy, immoral men from the global South and postsocialist states. Thus, the first US government report to document trafficking into the country identifies Mexican, African, and Middle Eastern families; Thai and Latin American men; Russian, East European, and Italian organized crime groups and syndicates; Asian, Mexican, and Nigerian smuggling rings; the Canadian “West Coast Players”; Chinese Triads; Hmong gangs; etc., as the primary agents who profit and benefit from trafficking (O’Neill 1999). Media and research reports on trafficking worldwide often reproduce this focus. Profiteers appear almost exclusively as networks of foreign men, and trafficked persons in these scenarios become poor brown or black women from Asia, Africa, and Latin America, or young women from Eastern Europe and Russia.

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Apart from reflecting a xenophobic, racist agenda, the dominant anti-trafficking paradigm also ignores to a large extent the enmeshment of legal sectors in organized crime. As Margaret Beare et al. point out in recent studies of transnational organized crime, one of the more obdurate characteristics of organized crime is that established (legalized) and underground (criminalized) sectors stand in a symbiotic relationship (Beare 2003). Without assistance from “legitimate” businessmen, lawyers, police and other law enforcement officials, politicians, and CEOs of large corporations, these scholars argue, organized crime is unsuccessful. Yet, an elision of this relationship has occurred, which can be traced to a particular influence by the US on international and UN definitions of crime, informed by a specific history (Woodiwiss 2003). Thus, whereas in the early twentieth century organized crime meant to the US government white-collar and corporate activities, local political and police corruption, and anti-prohibition activities, all of which were defined by sociologists and criminologists as indigenous to the US political and economic system and thoroughly integrated into the social structure, by the middle of the century organized crime was redefined as an organized criminal conspiracy led by gangsters, “unassimilable” immigrants and

“undesired” aliens. By the 1960s, it was believed, foreign elements “threatened the integrity of local government . . . corrupted police officers and lawyers . . . infiltrated legitimate business . . . [and] subverted the decency and integrity of a free society,” conflicting with, or even posing a danger to, the very fabric of

society and the state (Mitsilegas 2003;Woodiwiss 2003, 21). US

law enforcement, and specifically the police, were repositioned in this change in definition from being a part of the problem to “a thin blue line standing between society and hordes of criminals” (Woodiwiss 2003, 16). Public and government attention shifted away from the interlocking of established and legal institutions with illegal activities, and instead refocused on immigrants, legitimizing and empowering judicial and police powers to control immigration and immigrants’ activities. Transnational organized crime appeared then as “the result of the growing numbers and variety of individuals and groups reaching advanced countries. . . .” (Ruggerio 2003, 174). This US state definition has since become mainstream in international governmental conceptualizations of organized crime. According to Beare, it produces a global, hegemonic rhetoric and a frenzy of activities that “depend upon a public’s perception of a growing threat of transnational crime” that originates from countries foreign to the “developed” metropolis, led by organized “mafia”-

like networks and gangsters who are seen to threaten the peace and security of the core capitalist nations, and requiring a state response of strict border immigration and controls (Beare 2003, xviii; see also Mitsilegas 2003). A war on the trafficking of humans through increased policing and immigration control is but one response by the international governmental community to this perceived problem, and since September 11, 2001, has been closely linked to the US-led war on terrorism.

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The crediting of trafficking to the foreign “Other,” who is configured as a threat to Western societies and civilization, serves thus as a scare tactic to corral racist, nationalist sentiments and to obfuscate the interaction between the state, corporate capital, and underground sectors. To counter this skewed perception, some scholars point to the need to investigate

“crime in the suites” or “white-collar crimes,” as well as police and state military complicities, in order to properly address the problem of trafficking and to recognize the investment and gains made by established, “legal” (white) social and political institutions. The few cases of corporate corruption and use of

trafficked labor that have come to light—such as by Walmart and Tyson Foods in the US—and the white-collar crime that riddles other large transnational corporations, such as Enron and Parmalat, suggest that there are indeed multiple parties who benefit from criminal activities. Cases of police brutality and harassment described by sex workers and undocumented workers, or situations where employers are protected by national judicial systems at the expense of workers' rights, also implicate the state in processes of trafficking.¹² [The interaction and collusion of a va-](#)

riety of actors and institutions in trafficking therefore requires a far broader lens than that embedded in the hegemonic anti-trafficking paradigm.

LACK OF EVIDENCE

Many of the claims made about trafficking are unsubstantiated and undocumented, and are based on sensationalist reports, hyperbole, and conceptual confusions, a problem that extends to wider international discourses on transnational crime. The “non-empirical basis for many of the media, police and political responses,” the packaging of news as entertainment, the imprecision that creeps into concepts due to overuse, the exaggerations and “guesstimates,” and unreliable evaluative information, plague many studies and claims about transnational organized criminal activity (Beare 2003). It is equally so in the field of trafficking. For example,

“slavery” is often used to name instances of trafficking. It is a condition that is held up as the worst possible that humankind knows and immediately summons to mind the Atlantic slave trade with the capture and enslavement of Africans, the horrors of crowded vessels with men and women in chains and squalor, human markets and auction blocks with captive bodies on parade or for sale as merchandise, the whip and hanging-noose, rape, and torturous labor conditions. However, despite the violent and brutal history that the term invokes, most researchers in the field of contemporary trafficking, even those who wish to incite moral indignation, acknowledge that debt-bondage, indentureship, and hyperexploitative contractual arrangements are the most common forms of contemporary forced labor practices (Bales 1999; Hynes and Raymond 2002). As Peter Kwong notes, from an extensive study

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of Chinese immigration into the USA, fees for “snakehead” services, which could be as high as US \$50,000, and which are usually are paid off by work in underground or informal sectors, give to Chinese operations “similarities to nineteenth-century coolie contract labor”(Kwong 1997, 75). Slaves are said to make up the smallest proportion of those who today are smuggled, trafficked, and/or engaged in forced labor (Bales 1999). The distinction between different labor regimes is important here, for whereas slavery is premised on property relations—the permanent and legal ownership of one human being by another and the power invested in the owner to command that property at will—debt-bondage, indentureship, and forced labor are lodged in contractual, wage relations and principles of free labor power and its market exchange value. Conceptual slippages occur widely however, producing distortions and inaccuracies. For example, Nana Derby, while noting that “debt bondage and servitude . . . largely replaced slavery when it was finally abol-ished in the 1880s,” and that it is these that are manifested in twentieth-century forms of migration and trafficking, insists on using the term “slavery” to describe contemporary forms of bonded labor (Derby 2003). The conceptual muddle that this author finds herself in conflates all forced labor with slavery, and serves little purpose other than furthering a myth. Rather than support this conceptual confusion, “slavery-like practices” is a term preferred by anti-trafficking researchers and activists who wish to carefully signal the commonalities and distinctions between legal enslavement and forced, waged labor.

Attempts to prove instances of trafficking also generate biases and inaccuracies. In some cases, as is pointed out in several of the following essays, there is an acute underutilization or lack of reliance on some sources and an overreliance on others. Thus, information and knowledge that exist within the local community, for example among HIV/AIDS peer educators and sex workers, is rarely tapped into for developing knowledge about, or for designing interventions and policies to address, trafficking.

Rather, newspaper stories created by visiting journalists or case studies collected from a handful of “rescued” girls by eager social workers are commonly seized upon as “the facts.” Accurate figures about trafficking do not exist, and only extreme cases make for interesting journalistic re-portage. Indeed, as experts on trafficking reveal in a 2004 report on “sex slaves in America,” there are no clear statistics on trafficked persons (see ASI 2003). Nevertheless, the claim remains

that “the number is huge,” and journalists continue to produce and parade individual “victims” to sup-

[port this claim.](#)¹³ In an effort to substantiate claims about numbers and statistics, UNESCO designed a project to research and identify sources and research methods used to collect data on trafficking.¹⁴ By early 2004, the researchers had found, for example, that the US State Department had not [provided details on how its “facts” had been collected or arrived at.](#)¹⁵

Nevertheless, far-reaching policies, legislation, and interventions are con-

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structed on the basis of “the evidence,” or, [as Kapur puts it in chapter two](#)

here, “there is a tendency to accept unverified statistics and data, without further interrogation.”

Unsubstantiated or biased claims about trafficking are also embedded in political campaigns. The Bush administration’s war on trafficking stands as an exemplar. The campaign revolves around an annual evaluation and ranking of national efforts to combat trafficking into three tiers, according to standards set by the US State Department. Countries that do not comply with the US standards are placed in the lowest tier and are subject to sanctions. However, since its inception, the system created by the State Department has been critiqued for its lack of evidence, unsystematic data collection, and a lack of analysis (Gallagher 2001a; Gallagher 2001b; Marshall 2001; Human Rights Watch 2003). This glaring tendency has led critical state analysts to conclude that some nations will be punished “only on the basis of insufficient evidence” (Shah 2002). That Iran and many countries that are seen by the US State Department to harbor people who oppose US imperialism or to have majority Arab or Muslim populations, such as Indonesia, the United Arab Emirates, Afghanistan, Bahrain, Lebanon, Sudan, Qatar, Turkey, and Saudi Arabia, were all placed in the lowest tier in 2002, and thus were defined as sanctionable, most clearly illustrates the political intention of the ranking. This highly politicized assessment is further underscored by the fact that even though the Bush administration made trafficking an important dimension of US foreign policy in 2003, it simultaneously backed out of international plans to crack down on trafficking to

avoid imposing sanctions on Israel, Russia, South Korea, and Greece, while announcing its intentions to impose sanctions on Burma, Cuba, and North Korea.¹⁶ [The coincidence between what](#)

the Bush administration declares to be irresponsible countries on the issue of trafficking and those defined by the same administration as “rogue states” or supporters of terrorism should be reason for acute suspicion of the way in which “facts” about trafficking are constructed. As several of the authors here argue, analyses of immiseration, structural violence, and social injustice in the world today must be lodged in real, material conditions. Hyperbole, unsubstantiated claims, and sensationalism, while perhaps useful for rustling up indignation and moral condemnation about inhuman treatment and exploitation, can, and often do, lead to greater abuse and violations, even in the hands of well-meaning anti-trafficking policy makers and activists.

THE PERSISTENT “PROBLEM” OF PROSTITUTION

A premise that still underpins many national anti-trafficking laws and policies is that not only is trafficking for work in sex industries a

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transnational crime, but sex work itself is a criminal act. As described in several essays here, many national laws reflect this position and condemn all prostitution as illegal and criminal activity, through which anti-trafficking campaigns advocate the prohibition of prostitution and the “rescue” of young women and girls from cross-border sex work. The impact of such a recuperation of nineteenth-century ideas on national women’s movements and women’s emancipation is presented here for Taiwan and the US by Josephine Ho and Melissa Ditmore. The authors describe how liberal and radical feminists formed alliances with neoconservative governments and Christian fundamentalists to demand an end to women’s rights to sexual self-determination and autonomy. This trend is also embedded in US international aid policies, which since February 2003 require nongovernmental organizations to adopt a policy denouncing prostitution in order to be eligible for funding. Organizations that advocate or support prostitution as an employment choice, or agitate for the decriminalization of prostitution are defined as inappropriate partners for

USAID

anti-trafficking grants or contracts.¹⁷ Organizations engaged with sex worker empowerment in, for example, HIV/AIDS prevention programs, as Melissa Ditmore [points out in chapter six](#), are thus subject to a withdrawal of US funds and support. Women from the global South as agents in their own right, who may consciously and willingly cross borders in undocumented status in search of a livelihood or a better way of life, and/

or who exchange sex as part of this process, are classified in this narrow framework as “sex slaves.” Health and NGO workers, or even policy makers who work with such women or who support the decriminalization of prostitution, may then also be labeled “traffickers” or “pimps.” Poor women’s sexuality is used to mobilize anti-trafficking sympathy, funds, and global attention for increased policing, law enforcement, and a monitoring of borders, but at the same time, the women’s decisions and “choices” are denied legitimacy. A critique of the neoconservative, religiously fundamentalist, anti-sex thrust of much of the contemporary government-led anti-trafficking work, is an important aspect of this book. Many of the authors argue here that it is not prostitution per se that is harmful to women, but rather that under the ruse of anti-trafficking interventions, prostitutes’ rights to work, migrate, receive health care, social benefits, and respect are violated.

WOMEN’S AGENCY AND TRAFFICKING

Central to the dominant trafficking discourse is the idea that those who are subject to violence and slavery-like practices are “victims.” This designation has implications for the advancement of women’s rights and freedoms, and connects to wider debates about the conceptualization of gender oppression. The notion of victim immediately captures the principle

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that women’s subjugation and oppression is not of their own making, but rather a consequence of masculine power and male dominance. Patriarchy—as the system that upholds gendered inequalities and male dominance—has long been established as a harm to women, and rape, incest, or domestic violence are defined through feminism as the primary ways in which women are collectively

victimized. The notion of “woman-as-victim” was deployed by the US women’s movement during the 1970s to demand recognition of the injustices of patriarchy, borrowing from political struggles and definitions in the 1960s that stressed black victimization at the hands of a white racist society (Barry 1984). However, the objectifying dimensions of the definition, and its ability to dismiss any conception of will and agency, has also been recognized by feminist researchers and theorists. “Victim” raises questions, as Lois McNay (2000) points out, about the very conception of gender in social theory. Should gender be viewed exclusively as a set of externally imposed norms, or can it be taken as a more complex construct that reflects interactions and intersections between external social structures and human agency? Leading social theorists have advanced that both social structural and human factors are critical in shaping gendered (and sexualized) constructs and identities.¹⁸ With the help of such theorizing it is often assumed in contemporary feminist theory that the gender category “woman” is neither exclusively object nor subject, and that under conditions or systems of domination such as patriarchy, racism, and imperialism, women express forms of resistance, agency, subjectivity, and self-determination. “Woman” is taken in such social theory to be simultaneously “victim” and “agent.” However, the continued reliance on “victim” in anti-trafficking work ignores this trend, privileging external forces in the conceptualization of the trafficked person, and denying women agency or subjectivity in the process (Schwenken 2003). Such a conceptualization sustains an image of women as pure, unblemished, and innocent prior to the trafficking act, as clean passive slates that are consequently imprinted and given character by and through the actions of men. Ditmore argues here that the gendered distinction between, on the one hand, women as victims, and on the other, men as actors, is also acutely visible in the UN Protocols on trafficking and smuggling. Whereas the former primarily speaks about women and children, the latter refers most commonly to men. Women and children by definition are trafficked

—kidnapped, transported against their will over borders, and held in slavery-like conditions—due to their presumed innocence, purity, and inability to take action on their own behalf, while it is men who are thought to actively seek to be smuggled, and hence are viewed as implicated subjects. This gendered distinction easily slips into the work by researchers of smuggling and “new forms of slavery,” as in the following description:

“The physical path of *a person being trafficked* includes stages of degradation of a person’s mental state. A victim gets deprived of food, gets hungry,

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a little dizzy and sleep deprived. *She* begins to break down, *she* can't think for herself. Then take away *her* travel documents and you've made *her*

[stateless. . . .](#)¹⁹ [The transition](#) from “trafficked person” to victim to woman occurs in the blink of an eye, feminizing and objectifying the subject. Victim, trafficked person, and woman become categories that not only intersect, but indeed, are collapsed into one another.

The ability of the concept “victim” to rob the (feminized) individual from any notion of agency and subjectivity, and to ideologically locate the trafficked person as helpless and pitiful, has strong implications for how change is imagined and brought about through anti-trafficking interventions.

Victims, who by this definition are passive and child-like, are deemed incapable of undertaking any action, thus requiring “rescue” or “saving” from their circumstances by others who stand outside of the trafficking process and who, it is believed, “know best” (Skrobanek et al. 1997, 18). The construction of, and changes to, the [trafficking myth in Nepal, discussed in chapter](#)

[seven, illustrates how even the work of local well-intentioned nongovern-](#)

mental organizations can fall into this trap, lending to the process of the objectification, a further victimization, or even a retraumatization of women.

Moreover, as Anti Slavery International observes, many so-called trafficked persons tend to define themselves not as “victims of trafficking” but as “migrant workers who have had some bad luck as a result of a bad decision”

(Pearson 2002). The term “trafficked victim” does not always generate recognition or self-identification, and may be counterproductive in everyday human rights and social justice work. Due to the paternalistic and discordant dimensions of the term “victim,” the Foundation For Women in Thailand came to the conclusion in the mid-1990s that “the most just and effective work can be done only in partnership with the women affected by trafficking” (Skrobanek et al. 1997, 45) and has since advocated the concept of “affected women” over “victim.” In most of the essays here, “trafficked person”

is a common identification, which attributes a degree of agency, subjectivity, and humanity to the woman, man, boy, or girl who is caught up in systems of violence and exploitation, and does not create a gendered divide. However, it is the social, economic, and human rights of workers—whether viewed as “trafficked persons,” “affected women,” “sex workers,” “undocumented migrants,” or “transnational migrant subjects”—that constitute the overriding theoretical and political concern for the authors in this collection. And it is a commitment to ending the exploitations, injuries, and injustices with these populations in mind that underwrites these essays.

THE FOLLOWING CHAPTERS

This book focuses, then, on a rearticulation of the trafficking discourse that has taken place through mainly feminist definitions since the mid-

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1990s, drawing attention away from state drives for greater immigration control and global policing, and recentering upon the needs, agency, and rights of migrant and working communities. The essays are organized into three distinct themes. In the first, the writings address the main problems with the contemporary conceptualization and implementation of anti-trafficking policies and laws, and propose several ways forward. [In chap-](#)

[ter one, Jyoti Sanghera, advisor on trafficking to the United Nations High Commissioner of Human Rights, critically discusses the hegemonic anti-trafficking discourse. She points to fifteen myths that cloak the subject of trafficking, and asks that anti-traffickers take stock of their practice and develop more realistic and appropriate understandings and interventions.](#)

Trafficking, she notes, rests upon two major factors: the illegalization and criminalization of poor people, particularly those seeking to migrate and/

or to improve their position in the labor market. Political and legal responses to trafficking, she continues, are by and large repressive and punitive, harming these vulnerable populations even further. Not only does her essay center women’s rights in the debate, but she also argues for a careful distinction between women and girls when addressing trafficking, in order to not rob either

of their own specific agency, sexuality, and rights. In doing so, she raises the questions of where to draw a line between coercion and “consent” for young people under the age of 18, and how best to promote their rights and agency, while still protecting them.

[In the following chapter, Ratna Kapur notes that the legal](#) responses to the contemporary global movement of people are premised on liberal understandings of difference and are leading to a reassertion of a “First/Third World” divide. Recent laws dealing with immigration, trafficking, and smuggling, she argues, are some sites where assumptions about difference play out and negatively impact on the human right to mobility, particularly of poor women from the global South. Moreover, she points out, the panics that result from the laws and assumptions help shore up the borders of the nation-state, emphasize social and cultural homogeneity, and revive conservative family values and sexual morality. Kapur argues for constructive and liberating responses to this closure and conservatism, through designing new frameworks and laws that center on the rights of the transnational migrant subject. Phil Marshall and Susu Thatun continue themes broached by both Sanghera and Kapur, and argue that many prevention activities undertaken in the name of anti-trafficking cause greater harm than good to young women in the Greater Mekong Sub-region. Their chapter urges us to reflect upon why existing strategies for the prevention of trafficking, which include poverty alleviation projects and often produce a “Push-down Pop-up” effect, require revision, if not an overhaul.

They argue for more attention to be given to the underlying structural factors that produce global structural inequalities and hence trafficking, rather than to migration alone. The authors propose a number of ways in

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which anti-trafficking interventions could be effective, which include the creation of fair and safe migration policies that dovetail with global labor market realities, an improvement of terms and conditions of employment, confiscation of assets of businesses that profit from the exploitation of trafficked labor, and the creation of avenues for trafficked persons to access justice.

Finally in this section, the essay by Lin Chew is a first-hand narration of her involvement in anti-trafficking activism that has significantly impacted international definitions on the issue and which has informed the work of organizations such as the Global Alliance Against Traffic in Women. From her unflagging twenty-odd years of experience she traces her personal shift from an anti-Violence Against Women feminist approach to trafficking, to a well-studied pro-rights position that locates trafficking as the violation of women's rights to mobility and work. She notes that while a shift from a focus on prostitution to migration has been extremely important and influential in international debates and policies, the contemporary challenge in anti-trafficking work is to more fully address situations and conditions of forced labor and slavery-like practices. Chew advocates here a new stage in anti-trafficking work, namely the integration of anti-trafficking strategies into existing labor market policies and legislation.

[In part two, the legacy of the conflation of trafficking](#) with prostitution is addressed. In her analysis of the activities and discourses engendered by women's NGOs in Taiwan, Josephine Ho traces how a campaign that was initially articulated as an effort to eradicate prostitution transformed into an intricate national program of social control and discipline of the national sexual body. She thus documents how through a national middleclass anti-trafficking discourse, the concern about young aboriginal women in sex work gave way to a broader, more generalized social panic about uncontrollable youth sexuality, while legitimizing national and international demands for a stricter governance of sexual acts and behaviors. Melissa Ditmore examines the embedding of ideology in anti-trafficking policy. In particular she describes how the combination of abolitionist feminist perspectives—which collapse trafficking with prostitution—and US neoconservative and right-wing Christian sexual morality influenced the drafting of the 2000 UN Trafficking Protocol and the implementation of the 2003 USAID policy. She points out that the operation of this abolitionist ideology through policy can result in greater harm to vulnerable populations due to its anti-prostitution stance and a denial of the human rights of sex workers. This can result, she contends, in a defunding and decrease in support for organizations in the global South that work, for example, with poor women and sex workers to provide HIV/AIDS

prevention and treatment services. The implications of such policy for the health and well-being of wider populations in the global South are, then, quite [profound. In chapter seven, John Frederick](#) takes up the myth of

“sex trafficking.” Rather than focusing on how trafficking and the sex trade

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are linked, he traces changes that have occurred within the Nepali-dominant narrative or “myth.” This myth, he observes, originally settled around the ideas of the kidnap, smuggling, rape, and enslavement in Indian brothels of young Nepali women, and their rescue, repatriation, and rehabilitation by the state and NGOs. By breaking down the myth into discreet scenarios that correspond to specific realities and interventions, Frederick argues that the original trafficking myth has to some extent been modified, in areas such as the identification of “the victims” and “traffickers,” in narratives about how women are “lured,” and around the rehabilitation process. In other areas the myth persists. The changes, he notes, have come about primarily due to the information and actions of grassroots actors who have long-standing experience of defending and advancing the rights of migrants and sex workers, and through information provided by the women themselves. With Frederick’s detailed analysis of the changes, as well as of the stubborn areas of the myth, this chapter is a firm reminder of the ongoing work needed around the subject of trafficking, and the care that anti-trafficking practitioners must exercise to avoid uncritically adopting the myth or supporting counterproductive strate-

[gies. The final chapter of this section comprises excerpts](#) from writings and statements by three sex workers’ rights organizations calling for international support for sex workers who are harassed, victimized, and abused by state approaches to trafficking. This chapter underscores the significance of sex workers’ participation not just in anti-trafficking efforts, but in the articulation of a critique of the systematic violence that takes place in the name of a war on trafficking.

[Part three](#) presents reports and analyses of anti-trafficking research, policy, and action projects in various Asian countries. The report by Jagori on migration and work in two states in western India—Rajasthan and Gujarat—

examines working conditions and trajectories for migrant workers within a national context. It illustrates remarkable similarities with international processes. Migratory tribal groups of India appear in the report as some of the

most vulnerable, although the impact of globalization is seen to have also dispossessed and displaced others. Many poor women, men, and children in these two states are consequently thrown into the labor market as disposable working populations. Their vulnerability to coercion, hyperexploitation, and debt-bondage—in fishing, construction and saltpanning industries, as factory, domestic or sex workers, or as day-laborers—is extreme. Important to the Jagori study is that elements of trafficking are found in various labor migrations, conditions, and sites. For the GAATW project in the Mekong region, Jan Boontinand describes the specific way in which the organization developed a feminist participatory action research methodology with national women’s organizations in Vietnam and Cambodia. The project simultaneously educated researchers on the subject, collected data on trafficking, and empowered women to collectively take matters into their own hands. It

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is a fine example of feminist research practice that works with and for women

[in a collaborative fashion. The third chapter in this section traces the emer-](#)

gence of a “second generation definition of trafficking” among several groups and organizations in Bangladesh. It describes how a variety of different assumptions and ideas about trafficking that people originally brought to the table were transformed, through a collective desire to find clear and workable solutions to the problem of trafficking. The discussion and work undertaken to gain clarity about trafficking issues led to the creation by the Bangladeshi group of an elaborate model that is now used as a consciousness-raising and educating tool for anti-trafficking NGOs in various parts of the world. The chapter shows how, despite ideological differences between practitioners, activists, and policy workers, an open, interactive, participatory process can produce new, shared definitions of trafficking and different ways of thinking about anti-trafficking interventions. Finally, Natasha Amhad illustrates the very fine and tenuous line between “trafficking” and “migration.” In researching the backgrounds, reasons, and motivations for Bangladeshi women and men to move clandestinely to India, she exposes the complexities that are involved, and argues for policies that do not distinguish between “trafficked persons” and “undocumented migrants,” but rather secure and [protect all migrants’ rights. This final section richly illus-](#)

trates and further grounds the earlier analyses of trafficking, stressing the very complicated intersections of forced and voluntary labor and migrations at the national and international level. It also poses alternative ways of thinking about trafficking, and demonstrates that there are many processes and sites that can be studied and researched. Together with the other sections of the book, it urges us to carefully consider the situations of many women and young men and girls in Asia, and to construct not just more accurate definitions and concepts, but policies, laws, and interventions that empower and liberate poor communities in the global South from the devastations of twenty-first-century globalization.

This collection of essays is the mere tip of an iceberg of insights, knowledge, and critique about trafficking in Asia. There is much more that could not make it into the pages of this book, and many other grassroots perspectives and experiences that are not covered here. Nevertheless we hope that in examining trafficking from this global location, and with respect for migrant and worker rights, agency, and humanity, this book provides alternative ways of thinking about the subject and offers gems of insight that can inspire future theory, policy, and action.

NOTES

[1.](#) A recently compiled directory of organizations worldwide that are involved with trafficking lists over 900 nongovernmental human rights, women's rights, anti-violence, sex-

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workers' rights, and health-care organizations, government organizations, international agencies, and academic departments. See Change, "Combating Trafficking in Persons: A Directory of Organisations" (London: Anti-trafficking Programme, 2003).

[2.](#) For example, Anna-Louise Crago argues that a precursor to the twentieth-century discourse on trafficking is lodged in the ideologies and laws that were constructed in the United States around Asian immigration. She notes that in West Coast American cities, it was widely believed that "Oriental" women were involved in prostitution due to the immoral nature of the immigrant populations. Consequently, efforts were made to curb the migration of the women and to

prevent such “immorality” from further corrupting the nation. The first US act to explicitly address the issue was passed in 1870 and prohibited the importation of “Mongolian,” Chinese, and Japanese women. In 1875, the US Congress passed the Page Law which forbade the entry of prostitutes, felons, and Asian contract laborers into the United States and specifically prohibited immigration from “China, Japan or any Oriental country” for so-called lewd and immoral purposes. Crago observes,

“Chinese (and more broadly, ‘Oriental’) immorality and depravity, as ‘proven’ by the presence of prostitution, were marshaled in support for the ‘Yellow Peril’ panic and the 1882

Chinese Exclusion Act in the United States, as well as similar laws in Canada, which cut off legal immigration to all but a tiny elite minority” (Unpublished paper, presented at the conference *Mapping Insurgencies: Sex, Race and Globalization*, Committee on Lesbian/Gay/

Bisexual, Transgender Studies, University of Arizona–Tucson, April 25–26, 2003).

[3.](#) For Emma Goldman’s views on prostitution, the trafficking of women, the women’s movement, and reformist morality, see her essays “The Traffic in Women,” “The Tragedy of Women’s Emancipation,” “Victims of Morality,” and “Woman Suffrage,” originally published in 1910 and 1913, reprinted in Shulman (1996). Judith Walkowitz (1980) was one of the first feminists in the late twentieth century to revisit the subject.

[4.](#) The commissioned report was published as: Marjan Wijers and Lin Lap-Chew, *Trafficking in Women, Forced Labor and Slavery-Like Practices in Marriage, Domestic Labor and Prostitution* (Utrecht: STV, 1997).

[5.](#) Research on migrant women’s lives, such as by Grace Chang, *Disposable Domestic: Immigrant Women Workers in the Global Economy* (Boston: South End Press, 2000); Miriam Ching Yoon Louie, *Sweatshop Warriors: Immigrant Women Workers Take on the Global Factory* (Cambridge, MA: South End Press, 2001); and Rhacel Salazar Parrenas, *Servants of Globalization: Women, Migration, and Domestic Work* (Stanford: Stanford University Press, 2001) provides important insights into conditions for “Third World” women in the global labor market place. See also the more recent collection by Barbara

Ehrenreich and Arlie Russell Hochschild, *Global Woman: Nannies, Maids, and Sex Workers in the New Economy* (New York: Metropolitan Books, 2002).

6. Elsewhere I have defined this as a “transnational feminist perspective on trafficking.”

See for elaboration, Kamala Kempadoo, “Victims and Agents: The New Crusade against Trafficking,” in *Global Lockdown*, ed. Julia Sudbury (New York: Routledge, 2005).

7. See the [newsletter of the Global Alliance Against Traffic in Women \(GAATW\)](#) *Alliance News* July 18, 2002, for the full coverage of these various plans and conventions.

The acronyms used here refer to: the Economic Community of West African States (ECOWAS), the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, and the Asian Regional Initiative Against Trafficking (ARIAT) Regional Action Plan Against Trafficking in Persons, Especially Women and Children.

8. See, for example, ASI, “The Migration-Trafficking Nexus: Combating Trafficking through the Protection of Migrant’s Human Rights” (London: Anti-Slavery International, 2003); EU, “Campaign against Trafficking in Women” (Council of Europe Parliamentary Assembly, 2002); ILO, “Trafficking of Children: The Problem and Response Worldwide” (Geneva: International Labor Organization, 2001); IOM, “World Migration 2003: Managing Migration—Challenges and Responses for People on the Move” (Geneva:

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International Organization on Migration, 1993); ODHIR, “Trafficking in Human Beings: Implications for the OSCE. ODHIR Background Paper 1999/3” (Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights, 1999); OHCHR, “The OHCHR Trafficking Program” (Geneva: Office of the UN High Commissioner for Human Rights, 1999); UNICEF, “Profiting from Abuse—An Investigation into the Sexual Exploitation of Children” (UNICEF, 2001).

9. “3,000 Nigerian Prostitutes Await Deportation from Italy,” PanAfrican News Agency, September 14, 2000 (Stop-traffic News: <http://fpmail.friends-partners.org>

/pipermail/stop-traffic). In very extreme cases, deported sex workers have been executed.

This was, for example, documented by Human Rights Watch/Asia, where the Burmese military executed twenty-two HIV-positive sex workers after they had been forcibly repatriated from Thailand (UPI, April 2, 1992). See also “Burma and the Role of Burmese Women,”

October 13, 1995 (<http://fpmail.friends-partners.org/pipermail/stop-traffic>), and the NWSP

report on the XI International Conference on AIDS July 7–12, 1996 (<http://www.walnet.org>

/csis/groups/nswp/conferences/xiaids/xiaids_sessions3.html).

10. <http://fpmail.friends-partners.org/stop-traffic/2002/002045.html>.

11. For two recent analyses of the anti-migration tendency in the US Act, see Wendy Chapkis, “Trafficking, Migration and the Law: Protecting Innocents, Punishing Immigrants,”

Gender and Society 17, no. 6 (2003), and Janie Chuang, “Trafficking in Women: The United States as Global Sheriff?” *University of Toronto Feminism and Law Workshop Series* (Toronto: 2004).

12. In one case involving a California plastics company, the US Supreme Court ruled to not award an undocumented worker \$67,000 in back pay because the man was seen to be violating the law—he had been fired for joining a union while undocumented (*Denver Post* March 28, 2002). As the *Post* journalist pointed out, such a decision has greater consequences other than the issue of unionization, namely that “undocumented workers will be more afraid to report discrimination, safety violations or abuse by employers. . . . Employers will be less afraid of sanctions if they do.” In the Tyson Foods case, the giant Arkansas-based meat and poultry processing corporation, was indicted on charges of conspiring to smuggle illegal migrants from Latin America for work in fifteen of

its plants in nine different states.

In some instances \$200 was offered for each “illegal alien,” false documents provided to the workers, and wages paid that were below the legal minimum. The US government offered Tyson the possibility of payment of a \$1 million fine, to avoid prosecution (Bill Poovey, Associated Press Release, November 24, 2002).

13. A vivid illustration of the distortions such claims can produce is evident in a recent case in Canada. Operating from the claim that there are “hundreds” of young girls trafficked and enslaved in prostitution in the greater Toronto area in Canada, the national police force staged a “Home for Christmas” raid in 2003, in which they searched 350 under-cover prostitution sites and interviewed 504 people. The raids produced four “trafficked”

girls. However, as the girls were all above the age of consent—16 and 17 years old—they could not be forced by the police to leave the sex trade or to return home. Of the four, two expressed a desire to be “rescued.” The more profound outcome of the raid was that twenty-two adults, mainly migrant women, were detained and subjected to further investigation for violating immigration law. Other recent examples of the hyperbole can be found in the *New York Times Magazine*, January 25, 2004, or the series of columns written by Nicholas Kristof, on his rescue of two Cambodian women for the *New York Times*, January 17, 24, 28, and 31, 2004.

14. See the UNESCO Trafficking Statistics Project: <http://www.unescobkk.org/culture/trafficking/ev.asp?ev=83&id=83>.

15. In a message to the Stop-traffic List-serve, Jan 28, 2004, Vanessa Achilles of UNESCO-Bangkok writes: “In 1998, the U.S. Government estimated that 700,000 people are trafficked annually worldwide and 45,000 to 50,000 people, predominantly women and

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children, are trafficked each year into the United States for sexual exploitation or forced labor. This estimate was a compilation of data from 1997. Since then, the

statistic has been cited in a variety of contexts including in the TVPA [the 2000 Victims of Trafficking and Violence Protection Act] as a measure of how many victims end up in the United States every year. The numbers have recently been updated. None of these reports detail the methodology used to evaluate these figures” (<http://fpmail.friends-partners.org/pipermail/stop-traffic/2004/000066.html>).

[16.](#) See Malarek (2003) and the public statement by George W. Bush, September 2003, reproduced in *The Globe and Mail*, September 27, 2003.

[17.](#) “Trafficking in Persons: The USAID Strategy for Response,” February 2003 (www.usaid.gov/pubs/pd-abx-358-final.pdf).

[18.](#) See for example, the work of Michel Foucault, Pierre Bourdieu, Sherrie Ortner, Judith Butler, and Aiwaha Ong.

[19.](#) Kevin Bales, cited in the *New York Times Magazine*, Jan 25, 2004, p.72; emphasis is mine.

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PART I

SHIFTING PARADIGMS

Globalization, Labor Migration, and

Human Rights



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Unpacking the Trafficking Discourse

Jyoti Sanghera

Trafficking is a subject open to fierce debate, yet it also lends itself to critical reflection and honest conversation. In the following I offer an overview and analysis of the dominant discourse on trafficking by reflecting on the

assumptions, interventions, and approaches followed by its practitioners. This essay is written in the spirit of an invitation for a collective reflection on the mainstream anti-trafficking paradigm with its package of interventions developed over the past decade or more, particularly in Asia. It is also a plea to think beyond and outside of the box, for this box has incarcerated and inhibited creative thinking and practice for far too many years. I draw confidence for my candor—

which might seem to some audacious arrogance, but in all honesty is nothing more than a brutal reflection on our collective anti-trafficking practice—from the unwavering commitment of groups and allies to foreground the rights of those women whose struggle for a life of dignity they purport to support. In their commitment, these mindful practitioners have not shied away from abdicating their own strategies of engagement when these were found to be detrimental or lacking. It is no secret that the anti-trafficking arena is a beleaguered one. It has been made murkier by the melding together of complicated categories, constructs, and players. Issues of migration, trafficking, and sex work are peppered with constructs of sexuality, gender, and vulnerability, threaded through with categories of victim and agent, consent and coercion, and stirred together in a cauldron by cooks, who are far too many in number, much 3

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too disparate in their culinary skills, and have at their disposal a budget which is far too lavish for a mere broth. These “too many cooks” have not only managed to spoil the broth, but some of them have also ended up bonking each other with their spatulas. I locate myself squarely within the company of these cooks and after several years of engagement and serious reflection, humbly offer some suggestions for improving the recipe.

Central to this reflection process is calling a spade a spade, and not a snake. In the context of anti-trafficking work, this merely means eschew-ing the moral panics and jettisoning the practice of categorizing social reality under mutually exclusive dichotomies. That trafficking in persons is a critical issue is not the contestable point in this discussion. What is under question is the manner in which the trafficking discourse has been constructed and the assumptions and myths that have underscored this construction. The trafficking debate has

rendered itself too quickly to a simplistic association with the prostitution debate, the reasons for which will be discussed later. However, the outcome of this conflation has resulted in the ideological burdens of the prostitution and sex wars transmigrating into the anti-trafficking arena. It has also resulted in a dead-end scenario with a pro- and anti-prostitution position. Critical thinking and reflection, and hence hope, emerge from a growing and disparate range of players located in the middle, who consciously seek to complicate their analyses in commensuration with the layered reality of trafficking. At present, their plea for questioning, challenging, and complicating may simply be dismissed as a pro-prostitution position. However, it is from this forum of reflective practitioners that the praxis of embodying rights for women in the arenas of sexuality and labor will emerge.

MYTHOLOGIES OF TRAFFICKING: STATING THE PROBLEM

My thoughts are based upon the premise that there is a problem with the manner in which the “problem of trafficking,” especially within the Asia-Pacific region, has been addressed by a majority of players over the past decade or so. This problem is connected to the construction of the discourse of trafficking or the manner in which the trafficking story is being told within the Asian region (Frederick 1998). The dominant anti-trafficking discourse, and consequently understanding, is not evidence-based but grounded in the construction of a particular my-thology of trafficking. As a result, the interventions and programs flow-ing from this understanding have rarely led to the desired or expected results, i.e., the reduction of trafficking. Hence, despite the spate of heightened activity within the last decade on the part of a plethora of actors to curb the trafficking of women, and the investment of huge amounts of

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funds on the part of a host of donors, the common refrain among the same community of donors and grantees is that trafficking is “rapidly

[increasing,” and acquiring “monstrous dimensions.”¹ This begs the logi-](#)

cal question: If all the energies and monies deployed to curb trafficking are not resulting in its reduction but, on the contrary, leading to an increase of it, then where are we going wrong?

The dominant discourse of trafficking is based upon a set of assumptions. These, in a large measure, merely flow from unexamined hypotheses, shoddy research, anecdotal information, or strong moralistic positions. The issue is not whether they are true or false, but simply one of pushing conclusions that are not supported by rigorous empirical research and a sound evidence base. This faulty methodology of dis-seminating a flow of information and data whose origins are questionable contributes to the construction of both the dominant paradigm or discourse of trafficking, as well as the mythologies of trafficking.

Some of the dominant assumptions that inform the mainstream trafficking discourse are:

1. Trafficking of children and women is an ever-growing phenomenon;
2. Increasing numbers of victims of trafficking are younger girls; 3. Most trafficking happens for the purpose of prostitution; 4. Poverty is the sole or principal cause of trafficking; 5. Trafficking within the Asian subcontinent and the region is controlled and perpetrated by organized crime gangs;
6. All entry of women into the sex industry is forced and the notion of “consent” in prostitution is based upon false consciousness or falsehood;
7. Based on the assumption that most women in prostitution are coerced and trafficked, it is then assumed that they would be only too happy to be rescued and reintegrated with their families, or rehabilitated;
8. Rehabilitation into families and communities is viewed as an unproblematic strategy for it is assumed to provide adequate protection and safety to the victims of trafficking;
9. Brothel-based prostitution is the sole or major form through which sex trade in the region is conducted;
10. Police-facilitated raids and rescue operations in brothels will reduce the number of victims of trafficking in the prostitution industry;
11. Absence of stringent border surveillance and border control is the principal reason for facilitation of transborder trafficking; 12. Anti-migration strategies based upon awareness-raising campaigns which alert communities to the dangers of trafficking

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by instilling fear of strangers, and fear of big metropolises and cities, will curb migration and hence trafficking;

13. Strategies which club women and children together will be equally beneficial to both in extending protection against trafficking and redress after being trafficked;

14. All persons under 18 years of age constitute a homogenous category—children, devoid equally of sexual identity and sexual activity, bereft equally of the ability to exercise agency, and hence in need of identical protective measures;

15. Law enforcement is a neutral and unproblematic category and all it needs is sensitization and training on issues of trafficking in order to intervene effectively to curb the problem of trafficking.

These fifteen assumptions are the major founding blocks of the dominant discourse on trafficking. In challenging the dominant discourse of trafficking, my intention is not to deny the existence of trafficking as a problem in Asia—far from it. There is no denying the fact that with growing insecurity of food and livelihoods and shrinking avenues for regular migration, several harms, including that of trafficking, may be on the rise. Rather, my intention is to unravel the puzzle of why the trafficking story is shrouded in mystery; to unpack the elements of the trafficking discourse; to comprehend why a spade is not called a spade; and to examine some persistent maladies of the paradigm in order to generate deeper analysis, understanding, and, consequently, action.

A critical tool that enables a spade to be called a spade is the lens through which it is viewed. This, in effect, holds true of any social phenomenon. Here the trafficking discourse is analyzed through the lens of a rights-based approach, which incorporates within its core both a gender and development perspective as well.

THE CONTEXT OF TRAFFICKING

Trafficking in women and girls is acknowledged by the international community

as a global problem today. Reportedly, millions of children and women are said to be trafficked across borders and within countries, and the profits accruing from this trade are alleged to be phenomenal, exceeding, according to some estimates, the clandestine gains made

[from the underground trade in arms and narcotics.](#)² There is general

consensus that trafficking in women and children has become a significant facet of transnational organized crime, and the growth of such ac-

[tivities has been referred to as the “dark side of globalization.”](#)³

Unpacking the Trafficking Discourse

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We learn, through an endless cycle of stories, how trafficked women are separated from their families, and sexually exploited by means of coercion, violence, or abuse of authority. Their ability to seek help is severely constrained, especially if they are minors (UNICEF-EASRO 2001; Estes and Weiner 2001). In addition, trafficked women and minors are often further disadvantaged if they are undocumented migrants or immigrants; refugees or displaced; or if they belong to a marginalized ethnic, cultural, or religious social group. Poverty and lack of sustainable livelihood are common conditions of those who become victims of trafficking. These trafficked persons are often uneducated, unskilled, and debt-ridden.

Women are trafficked for a variety of reasons, including for the purposes of prostitution, domestic work, marriage, industrial and agricultural work, and trade in human organs. All victims of trafficking are not necessarily subjected to commercial sexual exploitation. Some of the purposes for which trafficking occurs, such as prostitution, pornography, sex tourism, and the marriage market, are by their very nature marked by commercial sexual exploitation. However, other sites into which trafficking feeds might result in other types of exploitation, forced labor, and abuse. It has been reported that even when women and minors are not ostensibly trafficked for the purpose of commercial sexual exploitation, their trafficked status renders them highly vulnerable to sexual exploitation and sexual abuse (UNICEF Innocenti Research Centre 2003).

The growth of trafficking in persons has been attributed to many causes,

including poverty, lack of sustainable livelihoods, structural inequities in society, gender discrimination, war and armed conflict, and other forms of natural or constructed disasters. However, it is critical to understand that these factors are not in themselves the causes of trafficking; they merely exacerbate the vulnerability of marginalized and disadvantaged groups and render them increasingly more susceptible to a variety of harms. Factors such as lack of livelihood options, conflict, and structural inequities create conditions for the displacement and mobility of populations and, hence, contribute to the “freeing up” of marginal and vulnerable groups, thereby creating a potential supply of migrants and livelihood-seekers. The sites of work that draw this supply of migrant livelihood-seekers are contingent upon demand from particular sectors of the economy for certain types of labor that would enable maximization of profit. Trafficking for commercial sexual purposes is tied to the expansion and diversification of the sex entertainment industry as well as to the expansion of marketable, intimate services and arrangements, including marriage.

The drive for maximizing profit under a competitive economic regime fields a demand for workers who are the most vulnerable and therefore the most exploitable and controllable. Children, followed by

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women, fit this description perfectly. It must be remembered that trafficking of persons is, most importantly, a demand-driven phenomenon.

And yet the majority of anti-trafficking interventions in the arenas of rescue, repatriation, rehabilitation, and even prevention are targeted only toward the supply of trafficking or the victims. This is a serious gap in the sphere of interventions.

THE NEXUS OF VULNERABILITY AND ILLEGALITY

A close examination shows that the recent impetus for transborder trafficking, as well as smuggling or other clandestine forms of labor recruitment, is connected to striking imbalances between the increasing supply of unskilled, indigent jobseekers on the one hand and the availability of legal and sustainable work in places where the jobseekers have legal rights to residence or citizenship on the other. A recent International Labour Organisation (ILO) study supports this view

and maintains that “labor trafficking should not, in theory, take place if the jobseeker has freedom of geographical movement and freedom of access to employment” (ILO

2001, 53). Lack of legal rights to mobility and to legally accepted forms of livelihood compel marginal and vulnerable groups to lead underground lives, enhancing manifold their vulnerability to harms such as trafficking, bondage, slavery-like working and living conditions, and HIV/AIDS. This is the “quintessential knot” in the nexus of vulnerability where prevailing vulnerabilities of age, gender, and socio-economic status forge a complex relationship with newer vulnerabilities, such as widespread and unprecedented insecurity of food and livelihood.

This nexus of vulnerability is increasingly cemented by the “illegality factor,” where practically everything about the victim of trafficking is covered by a shroud of illegality. It may seem that the discussions on legality of work and freedom of movement are irrelevant for minors because, in principle, they should not be migrating as jobseekers. However, the reality is that minors, perhaps more than anyone else, are marked most by the illegality factor because they too are an integral part of the vast pool of mobile jobseekers. Their inherent vulnerability as minors is often exacerbated several-fold by the formal and informal sanctions against child labor. As far as women are concerned, we do have enough statistics to show that, especially in Asia, a majority of the migrants today are women, moving not as part of a family unit but in their independent capacity (Asis 2003; Sanghera 2003).

The illegality factor taints almost every aspect of the trafficked person’s life. Hence, the work done by this trafficked person is often considered “illegal” in the informal sector—her age may be below the legally stipulated age of employment; her status within the country of

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residence may be undocumented; the conditions of work under which she labors may be illegal or not up to legal standards; the hovels, slums, or brothels in which she resides may be unlicensed or exist on squatted land; and several of her partners in business or life may be defined as

“illegal,” such as agents, pimps, madams, other sex workers, children, and siblings. (While both females and males are victims of trafficking, the term “her” is used here to foreground a gender approach, as well as to underscore the specific vulnerability of girls and women.) In being compelled to lead “illegal” lives, victims of trafficking are simultaneously converted into criminals. Their illegalization keeps them from accessing most of the freedoms and rights that are extended to all as human beings. These trafficked persons invariably live hidden and invisible lives. Much of their energy is spent upon averting either state agents such as law enforcement officers from apprehending them, or non-state agents such as their employers and exploiters from squeezing them further.

Any strategy to address the issue of trafficking of persons from a rights-based perspective must address their illegalization and criminalization. A preventive strategy in this regard entails exploring options for legal employment as well as ensuring that existing forms of illegal work are made consistent with legally stipulated standards of labor. With special regard to minors this discussion enters a controversial arena since child labor is a contentious issue. However, in principle it has been seen that in order to remove the illegal status of a victim and empower her, it is vital to simultaneously address all those locations of her existence that imbue her with this illegality and ultimately render her a criminal in the eyes of the law. In addition to employment, it is also crucial to address the issue of mobility and the right to freedom of movement. This is tied in integrally with questions of migration and the rights of migrants. In the context of transborder movement of people and border controls exercised by nations, questions regarding the illegality of migrants are complex ones. Nonetheless, concerns related to rights of a person regardless of citizenship and nationality remain to be taken up in a systematic fashion within the dominant anti-trafficking discourse. At the same time, the debate on the rights of young people to migrate has been kept largely at bay.

UNPACKING THE MYTHOLOGIES OF TRAFFICKING

Naming and Defining the Problem

Until the finalization of the UN Trafficking Protocol Supplementing the UN Convention Against Transnational Organized Crime at the end of

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the year 2000, there was no comprehensive international definition of trafficking whose basic elements were acceptable to State parties and key stakeholders. Therefore, until recently the term “trafficking” was employed to describe varied and disparate phenomena, processes, and outcomes.

Historically and most commonly, trafficking has been conceptually conflated with prostitution and illegal migration, and more recently with the commercial sexual exploitation of children (CSEC). In fact, the reason for equating child trafficking and CSEC can be logically traced to the practice of equating trafficking in women and children with prostitution over the past several decades. It is not a coincidence that a majority of the anti-trafficking laws in most countries are also prostitution laws, which seek to variously criminalize or regulate the sex trade.

A commonly agreed upon definition of trafficking is now contained in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime, which was adopted in 2000.

The UN Convention came into force in September 2003, and the Trafficking Protocol in December 2003.

In the recent past, the need to expand the definition of trafficking to include purposes other than prostitution, such as forced labor, forced

[marriage, and slavery-like practices,⁴ has also been recognized. This is](#)

reflected in the new UN protocol on trafficking. An acknowledgement of the key understanding that trafficking is a problem of human-rights violation, and not of law and order or public morality related to prostitution, is of recent origin, and gaining currency in some quarters. However, despite this growing realization, in actual practice crime prevention and concerns with public morality continue to be foregrounded as the core of the anti-trafficking discourse.

TRAFFICKING, MIGRATION, AND PROSTITUTION

The dominant trafficking paradigm rests upon an absence of the critical distinction between trafficking and migration on the one hand and trafficking

and prostitution on the other. What are the implications of conflating and collapsing the categories of migration and prostitution with trafficking? And what are the implications when these concepts are often value-loaded, with an inherent bias that marginalized people who migrate are vagrants, and women who migrate into the sex industry are sexual delinquents?

Curbing Migration to Prevent Trafficking

Equating trafficking with migration has led to simplistic and unrealistic solutions within the mainstream anti-trafficking paradigm. As a result,

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in order to prevent trafficking there is a move to stop the migration of those who are considered vulnerable to trafficking. Even when curbing migration is not a stated programmatic focus, an inadvertent impetus is to dissuade women and girls from moving in order to protect them from harm. Hence, conflating trafficking with migration in an unproblematic manner results in reinforcing the gender bias that women and girls need constant male or state protection, and therefore must not be allowed to exercise their right to movement.

Curbing migration has not and will not stop trafficking. A demand on the part of some practitioners to implement greater border control and surveillance on the Indo-Nepal border for instance, by introducing passports or other measures, merely served to drive the activity further underground, and make it still more invisible (Sanghera and Kapur 2001).

This outcome has been repeatedly underscored in all those instances where states have proceeded to enforce increasingly stringent immigration control as a response to heightened trafficking in persons and narcotics. Borders cannot be impermeable, and stricter immigration measures have merely resulted in pushing the trafficked persons further into situations of violence and abuse, and rendering them more inaccessible.

Banning Prostitution to Prevent Trafficking

There has been a continued persistence among anti-trafficking players within the dominant discourse to conflate trafficking with prostitution.

By collapsing the process with the purpose, the abuse and violence inherent in trafficking is mistaken for the actual site of work and form of labor. Furthermore, trafficking for all other purposes is largely ignored, and targeting trafficking for prostitution becomes the principal agenda of anti-trafficking interventions, policies, and laws.

To provide protection and redress to women and girls who are trafficked, a clear distinction needs to be made between the abuse and human-rights violations committed during the entire process of recruitment, transport, and confinement via coercion to exploitative labor conditions on the one hand, and the form of employment or purpose of trafficking on the other. In the case of trafficking for the purpose of domestic work, forced marriage, or work in carpet factories, the objective of anti-trafficking interventions must be to target the abuse, forced labor, and violation of rights that is endured by those affected by trafficking and not to eradicate marriage as an institution, or domestic work and the carpet industry as sectors of employment. Similarly, attempting to eradicate the sex industry in a bid to prevent the harm of trafficking may be an unrealistic agenda. Not all victims of trafficking are prosti-

[tutes, nor are all prostitutes victims of trafficking.](#)⁵

Figures on the scale of trafficking are often derived from small-scale surveys based upon disparate methodologies, or sources such as

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police records, local information, or media reports which cannot be statistically representative or empirically sound. These calculations are based on many untested assumptions. Most data on the number of trafficked persons are based on speculation and projection. To date, there is no sound methodology to calculate the numbers of those who have been trafficked.

The United Nations estimates that, in the last 30 years, trafficking in women and children for sexual exploitation in Asia alone has victimized

[more than 30 million people.](#)⁶ There are few statistics which distinguish

the number trafficked according to the age of the victim. In South Asia it has

been noticed that several of the statistics on trafficked victims have remained unchanged over the years. To elucidate this point the case of Nepal would serve as a good example. The figure of 5000–7000 Nepali girls trafficked into India each year, with 150,000–200,000 in Indian broth-

[els, has remained unaltered over the past 15 years.](#)⁷

When trafficking is equated with migration on the one hand and prostitution on the other, then it logically follows that the number of victims of trafficking is equal to the number of those who have migrated or those who are engaged in prostitution. This logic operates particularly in the case of adolescent girls and women migrants, and not in the case of men. This practice has resulted in an extremely flawed methodology for conducting baseline surveys on trafficking in “risk-prone” and “affected districts.” Household surveys have been conducted in South Asia by well-meaning community-based organizations (CBOs) and researchers, for example, on the number of women and girls who are absent from their villages. These persons may have migrated voluntarily or under deception—however, there are no methodological variables to ascertain this information. Absence of women or girls is routinely considered tantamount to “missing persons,” and therefore, trafficked (Sanghera and Kapur 2001). In this context a pressing query begs a response: Why are female migrants considered to be trafficked by anti-trafficking stakeholders while male migrants are considered to be simply that—male migrants?

For all of the above reasons statistical data are highly questionable and contestable, and consequently the weakest link as far as the issue of trafficking in persons is concerned. And yet, statistics of trafficked women and children constitute one of the legs upon which the dominant trafficking paradigm stands. Victims of trafficking are presented as the fastest growing population under globalization, and the “trafficking problem” is portrayed as a formidable and heinous serpent, constantly tightening its coils around vulnerable women and girls of poor and marginalized communities, especially of the Third World. A statement by a Third World activist aptly sums up this fear: “Because everything becomes marketable, and everything becomes a commodity in the new world of globalization, men can travel thousand of miles just to buy

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girls from poorer countries” (Shifman 2003). In this dominant frame, men prey upon women, the rich countries gouge out resources, including women, of the poorer ones, poor women are not human beings but merely commodities, and on and on... This is the trope and the principal refrain of the saga of unmitigated victimization of the dominant discourse on trafficking.

Equating Children with Women

The UN Protocol on Trafficking and the US Trafficking Victims Protection Act 2000, as well as a majority of the major documents and laws addressing the issue of trafficking, fail to make a distinction between the trafficking of women and children. In commenting upon the SAARC

(South Asian Association for Regional Cooperation) Draft Convention on Trafficking, which clubs children and women together, the previous UN Special Rapporteur on Violence Against Women stated, “The legal regime surrounding women should be based on a framework of rights and the concept of coercion when it comes to trafficking. The legal re-

[gime with children must be completely different” \(Coomaraswamy 2000\).](#)⁸

The issue of consent for children with regards to certain arenas of work, including prostitution, is deemed irrelevant. This is in accordance with the

Convention on the Rights of the Child (CRC), whereas treating women like children or in accordance with similar norms infantilizes women and denies them both their right to autonomy and to make decisions.

“Some women may have been trafficked while they were under age. In such a case a woman should be entitled to a legal remedy for any harm she may have endured as a child, whether it is in the form of child sexual abuse, slave labor, or coerced work while still a minor. Providing such remedies is different from setting up a legal regime that treats all women like children” (Sanghera and Kapur 2001, 24).

Why are women and children clubbed together in anti-trafficking legislation and the dominant trafficking paradigm when in all other instances, including labor laws, great care is being taken to separate child labor from adult labor? The Convention on the Rights of the Child is a clear statement on the ideological, strategic, and operational need to make distinctions between children and adults. This distinction is based on the principle that the development of children as human beings is a process and is not complete so long as they are minors. Children are deemed “innocent” and in need of special protection and assistance in making decisions. It is believed that minors cannot be expected to act in their own best interest as their ability to exercise full agency is not yet entirely developed.

The category of children with regards to “consent” will be complicated in a subsequent section of this paper; however there should be no

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dispute over the fact that women, as adults, have a full right to all their freedoms, including the freedom to exercise their agency and to seek a livelihood. Why then are they clubbed together with children in anti-trafficking laws? The fact that a woman may have been trafficked as a minor in the past does not justify her continued treatment as a child past the age of majority.

POST-FACTO NATURE OF THE CRIME OF TRAFFICKING

One of the key problems in understanding and dealing with the problem of trafficking is that it is deemed a crime only after it has happened.

Herein lies its operational and conceptual complexity. There are three interlinked core elements involved in the operation of trafficking based upon its definition: (i) Movement of a person; (ii) under deception or coercion; (iii) into a situation of forced labor, servitude, or slavery-like practices (GAATW 2001).

The first of these elements, namely movement, involves both recruitment and transportation of the person. In present times, many trafficked women migrate voluntarily or willingly in their desire to better their life situation. Therefore, agents or traffickers do not encounter much difficulty in recruiting or transporting their victims within or across borders.

In fact, it may be said that most victims actively collude in their own trafficking through cooperation with traffickers during the process of transportation. The traffickers pose as well-wishers offering to deliver the innocent persons into lucrative situations of work or marriage. Hence, the first phase of trafficking is achieved oftentimes with little coercion or force; various forms of deception and false promises are employed in this phase.

Coercion, sometimes of an extreme nature, is evident at the point of destination in the trafficking process. At the destination end, the process of trafficking entails consignment to, and continued confinement in, the situation of forced labor, servitude, or slavery-like practices. At the point of destination the person who, during the process of recruitment and transport, is a willing collaborator and migrant, becomes a victim of trafficking. This chain process is characterized by the involvement of one or more agents/traffickers—recruiter, transporter, broker, employer—who derive profit through this activity.

Given the nature of the process of trafficking—namely, recruitment, transportation, and confinement—it is difficult to determine the crime during its earlier phases. At its commencement, trafficking is indistinguishable from agent-facilitated voluntary migration or smuggling. It can only be established as a crime once it has happened and the person has been trapped and confined to exploitative conditions. At the destination point the trafficking process enters its most clandestine and in-

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visible phase; it simultaneously puts on its criminal face. Just as trafficking

becomes a crime in its final stage, the jobseeker and willing migrant becomes a victim at the destination point. And as the crime of trafficking goes underground into invisibility, the victim of trafficking becomes increasingly inaccessible. It is critical to grasp that the process of trafficking, while transforming itself into a crime, simultaneously transforms the seeker of a better life into a victim. In fact, if her situation is suffused with

[illegalities,⁹ as argued earlier](#), then she is transformed paradoxically into both a victim and a criminal. And thus, in a desire to expand and enjoy her rights as a human being, the victim of trafficking might experience a brutal and systematic violation of her rights.

The complexity of the process of trafficking, where the crime can be ascertained only post-facto, complicates any endeavor to formulate an effective, rights-based response to address it at the point of origin and transportation, and indeed, poses a great challenge to all anti-trafficking advocates. To establish “intent” of trafficking and apprehend the trafficker or recover the potential victim during the phase of recruitment and transportation is fraught with immense challenges and pit-falls. In fact, it is extremely difficult to design apprehension or recovery interventions during this first phase of the process. Although there may be “suspicion,” there is a lack of a systematic or verifiable methodology to ascertain that the woman crossing the border is a potential victim and that her companion is a trafficker. Intense interrogation of the suspected “victim” has often proven to be extremely intimidating, and detention of her chaperone without adequate grounds of proof of the crime, unconstitutional. Therefore, a rights-based intervention especially during the phase of recruitment and transportation needs very careful consideration. And yet the dominant discourse on trafficking does not adequately acknowledge nor address these complications.

ORGANIZED CRIME GANGS OR THE GUY NEXT DOOR?

Who are the traffickers? The new UN Convention that deals with trafficking through one of its protocols is entitled the UN Convention Against Transnational Organized Crime. It is obvious that encoded within the title of the new convention is an understanding that trafficking of children and women is perpetrated by members of organized crime, and it is a transnational problem. There is certainly evidence to prove that in some instances in certain parts of the world, organized crime gangs are involved.

However, in view of the overall paucity of evidence on the issue of trafficking globally, it is near impossible to make a claim that trafficking is entirely or even largely a problem of organized crime. Neither is there enough evidence or data to establish the extent or nature of involvement

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of members of [organized crime in various countries](#).¹⁰ A number of tentative studies and case profiles from both Asia in general and South Asia in particular reveal that contrary to the commonly held impression of the existence of highly organized national and transborder networks of crime gangs, the perpetrators of trafficking in the form of recruiters and agents are primarily small-time operators functioning mostly in an individual capacity, and are based upon personal and sometimes familial sets of relationships.

Evidently, the definition of a trafficker is too broad and open-ended to be legally operationalized with ease. To establish the “intent” to traffic, until the crime is committed, is difficult. However, once the crime of trafficking is committed the trafficker(s), if apprehended, could be charged for a variety of crimes, including debt-bondage, fraud, assault and battery, rape, torture, abduction, sale of human beings, unlawful detention, murder, deprivation of labor rights, child abuse, and exploitation through enforcement of child labor. All countries have laws against these crimes, thus all countries do have some laws that can be used to prosecute traffickers. And while some traffickers commit all of these crimes, very few are prosecuted or punished for committing them. It has been observed that, more commonly, traffickers are tried for migration-related offences that are less serious and carry milder sentences. It has also been observed that in the case of trafficking into the sex industry, traffickers are prosecuted for laws relating to prostitution, such as procurement, rather than for the serious harm often inflicted upon trafficked persons, including physical, sexual, and psychological violence; physical incarceration; and debt-bondage and other forms of forced labor and slavery-like conditions.

RESCUE, REPATRIATION, AND REHABILITATION

A review of the dominant anti-trafficking paradigm and work reveals that the largest number of players are clustered around rescue and rehabilitation

activities, primarily in the arena of prostitution. Rescue operations conducted in conjunction with police authorities in various brothel areas are the anti-trafficking activity most highlighted by the media, as well as by anti-trafficking practitioners. It needs to be stated at the outset that the recovery of trafficked persons from situations of abuse, forced labor, and slavery-like practices is indeed a very legitimate and necessary anti-trafficking intervention. However, such an activity needs to be carefully designed, taking into account all aspects of holistic recovery based integrally upon a rights-based approach. A close analysis of interventions in this sector reveals that there is a marked absence of any clear anti-trafficking rescue and rehabilitation strategy. In addition, there is little rescue

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happening from other sites into which people are trafficked; an exception may be the greatly publicized case of boys who have been apprehended while being trafficked to the Middle East as “camel jockeys.” A few cases of young girls rescued from forced marriages have also come to light.

Notwithstanding these exceptions, there is no doubt that the most favored site for rescue operations continues to be brothels in major red-light areas.

Implicit behind these rescue operations are the assumptions that (i) all trafficked girls are to be found in the sex industry, and (ii) all prostitution, especially in South Asia, is confined to brothels in red-light areas of cities. Both these assumptions are not based upon a realistic understanding of either trafficking or prostitution. New research reveals that many women and young people are trafficked to sites other than the sex industry. At the same time sex trade in the region takes many diverse forms, including street-based prostitution, sex trade sites along major highways, casual sex service-provision in rental buildings, guest-house and hotel-based sex trade, tourist industry-based sex trade, call-girl operations, and independently run arrangements. The proportion of sex trade conducted through brothels in the region is unknown, but it is known that a myriad of other forms and arrangements exist within the sex industry.[11](#)

An assessment of rescue initiatives in Asia clearly shows that rescues are commonly conducted in brothels of big cities. There are few services planned or

implemented for women who may be trapped in other forms of prostitution. Almost all rescue operations are conducted through police-facilitated raids in which “seemingly minor-looking girls”

are picked up and consigned either to government remand homes or to shelters run by NGOs. The reason for this exclusive focus on brothels for rescue work is not difficult to comprehend—it is relatively easy to engage in such rescue operations, as the brothel is a distinct physical location which houses residents of a certain profession. In addition, the police, who are indispensable partners of NGOs in rescue operations, know the ins-and-outs of these locations, not the least on account of the fact that many of their members are allegedly the beneficiaries of the regular payoffs and commissions received from brothel owners. Therefore, all-in-all, the relative ease of rescue work in brothels, coupled with the high-publicity potential of this activity and the assistance of the police, has made this kind of rescue work a favored anti-trafficking activity. Demonstrable impact in terms of the numbers of women scooped out of brothels provides immediate proof of the anti-trafficking work, unlike prevention or reintegration activities which are extremely long-term, arduous, and consume vast amounts of money and time.

And yet, despite the focus on rescue of victims of trafficking from brothels, we need to ask ourselves whether there is any tangible reduction in the incidence of trafficking into prostitution? On the contrary,

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such highly publicized and single-focus activity might actually result in

[a change of venue on the part of traffickers for their activities.](#)¹² In addi-

tion, perpetrators of trafficking may end up devising more repressive forms of confinement which render the victims even more inaccessible.

However, in view of this discussion, it must not be concluded that comprehensive, rights-based recovery initiatives operations are unnecessary and therefore should not be conducted. This analysis merely alerts anti-trafficking advocates to diversify their interventions to other sites as well, while at the same time devising more innovative strategies for recovery.

Reintegration has been the most difficult stage within the anti-trafficking process, especially in the case of women and girls returning from the sex industry. The incidence of reintegration at the family and community levels has been low and painstakingly slow. Recognizing the nexus between sexual abuse of girls and their commercial sexual exploitation, reintegration within the family or community may not even be desirable when sexual abuse is perpetrated within intimate family settings. However, alternative forms of recovery and reintegration, which are both innovative and rights-based and can be emulated as models, have been slow in emerging. In addition, the development of noninstitutional support in terms of foster homes and alternative community care has not gone very far.

Therefore, in the area of rescue and reintegration in particular, there is an urgent need to think outside the box and to think beyond prescribed and existing templates of anti-trafficking interventions. Innovative, rights-based strategies must be developed for alternative recovery and reintegration programs.

GROPING IN THE “GREY ZONE”—THE PROBLEM OF “CONSENT”

This section of the paper attempts to enter a rather grey zone by complicating the categories of “child” and “consent.” By virtue of its very nature this discussion will consciously stray into a minefield of controversy for the purpose of pushing the boundaries of analysis and thinking. However, from this discussion the reader is cautioned against drawing simplistic conclusions and assuming that this paper (i) advocates support of child prostitution, or (ii) assumes that consent is without limits and boundaries.

According to the Convention on the Rights of the Child (CRC), a child is “every human being below the age of 18, unless under the law applicable to the child, majority is attained earlier.” No distinction is made in the convention between a four-year old and a seventeen-year-old. Both are defined as children and therefore, “need special safeguards

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and care, including appropriate legal protection” (CRC). Common sense, experience, and social research tell us that, in reality, the concept of

“childhood” varies according to social, cultural, historical, religious, and relational norms, as well as according to one’s personal circumstances.

Marriage confers adult status on a person. In many countries a girl is married off at a younger age than a boy, and often below the age of eighteen. Hence, in her particular social context, she acquires the status and responsibilities of an adult before she reaches eighteen years of age. If she becomes a mother as well, then her adulthood is further confirmed. However, pregnancy and adulthood are tied to marital status, and if this very girl were to become pregnant before being married she would not automatically be assigned adulthood. The legal age for sexual consent in many countries is below the age at which the CRC

deems a child to be an adult. Therefore many countries allow sexual activity and recognize sexual agency in young people below the age of eighteen years. Ironically, the legal age of sexual consent in many countries is also below the legal age of independent access to contraceptives, abortion, and sexual health services. Thus, young people may be accepted as sexually active but denied safe-sex measures.

In contrast to trafficking in adults wherein the question of consent is contested, there is a broad agreement that the issue of “consent” is irrelevant in the case of children under eighteen years of age when considering commercial sexual exploitation and hazardous forms of labor.

It is held that children cannot give consent in these sectors of work. One commentator points out the possibility that any minor who has reached the legal age limit for having a (part-time) job or having sexual intercourse—which usually is set below the age of eighteen, for instance at the age of sixteen or fourteen—could also agree to his/her exploitation in labor or sex (Vermeulen 2001). However, the author also mentions that even in the Netherlands, where the exploitation of prostitution in brothels has been decriminalized since October 2000, protection through criminal law against sexual exploitation has been fully maintained for all persons below the age of eighteen, irrespective of their actual consent or legal ability to consent to sexual intercourse at a lower age.

Trafficking of children, unlike that of adult women, does not need to involve means of coercion, deception, or any form of illicit influence, in order to meet the conditions of criminality. The UN Trafficking Protocol provides that the recruitment, transportation, transfer, harboring, or receipt of a child for the

purpose of exploitation shall be considered

“trafficking in persons” even if this does not involve any of the means set forth in the article, and that “child” shall mean any person under eighteen years of age.

It needs to be pointed out that what is deemed illegal under law may be socially and culturally acceptable in many instances. Hence, girls

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from traditional occupational groups, such as the Bedias, Devadasis, or Nats in India, who are engaged in sex entertainment and prostitution, may be socially acceptable but criminalized by law. Similarly Thai girls engaged in sexual activity to support their families may be socially honor-able but punishable under the law. On the other hand, girls having sex before marriage may be legally acceptable depending on the legal age of consent but socially impermissible. Social stigma and vulnerability are integrally linked to social status and privilege. It has been seen that in the mainstream reformist discourse the children who are the most disadvantaged, including poor and street children, are considered the most vulnerable. And yet, they are subjected to the maximum degree of institutional surveillance, the minimum of institutional protection, and severe legal-punitive action against sexual and economic activities undertaken mostly for self-preservation and familial responsibilities. These “most-vulnerables,”

including street children, are also the most stigmatized.

It must be borne in mind that millions of street children and youth may have no unit such as a family, nor any responsible person or institution to depend on. As such they are minors but non-dependents. Laws against legitimate employment of these young non-dependents leave them no alternative but to resort to occupations that are illegalized and criminalized and to work sites that are unprotected and underpaid.

An analysis of the legal and other initiatives reveals that under the dominant reformist-protectionist approach, protection of the “young-vulnerables” has not created an expansion of opportunities and choices for them. On the contrary, vulnerable young people have been criminalized for exercising autonomy in the

economic and sexual spheres, stripped of all powers to exercise agency and independent choices, reduced to deeper vulnerability due to lack of viable alternatives, rescued and confined in dead-end remand homes, rehabilitated into abusive situations, which they fled from in the first place, and above all, stigmatized.

To sum up this brief description of the complexities involved around the issue of consent and coercion in relation to the age of majority, some crucial questions emerge. I wish to reiterate that the argument forwarded here must not be assumed to advocate support for youth prostitution or labor. The objective is merely to complicate the discussion on “consent”

and autonomy with regards to young people. These questions become all the more pressing when one perceives the actual ground reality of many underage persons engaged in labor for survival, when often this labor may be exploitative. According to the UN Convention Against Transnational Organized Crime and the protocols supporting it, all youths under the age of eighteen years would be deemed trafficked if they ended up in sexual arrangements which were exploitative—even if it was marriage—or in exploitative work situations. Similarly, all such young people who were undocumented migrants could be considered traf-

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ficked, especially if they were also engaged in labor. And parents who consented to the migration of their children on the children’s behalf would be criminalized as traffickers, especially if the children ended up in exploitative situations. The fact that a number of terms such as youth, young persons, adolescents, minors, underage persons, children, etc., are in currency, and sometimes used interchangeably, underscores the complexity of this issue as well. The principal motive in generating this far-from-easy discussion with regards to minors and consent stems from the concern related to how best to promote the rights and agency of young people while ensuring that they stay out of harm’s way.

CONCLUDING COMMENTS

The inherent complexity of the issue of trafficking, combined with lack of data on the one hand, and a heightened commitment to urgently rectify the problem

on the other, has resulted in overenthusiastic responses in many instances. Such responses are predicated on the assumption that “tightening the screws” will alleviate the crime. However, contrary to their goal, several of these responses have not achieved the aim of promoting the human rights of those trafficked. The ambit of anti-trafficking initiatives is further weakened by the relative lack of rigorous indicators for evaluating the impact of interventions at various levels. A paucity of reliable data and the gap in devising a rigorous research methodology for procuring good data on trafficking continues to pose a major challenge.

A “tightening the screws” strategy, which has tended to underpin overenthusiastic and dominant responses to trafficking, is noticeable in the arenas of policy and legislation, rescue and repatriation, and interception of “seemingly potential victims” at border points during the process of transportation and migration. A number of increasingly stringent laws with draconian measures and harsh punishments have been implemented. At the same time, aggressive and intrusive rescue operations with little regard to the personhood, wishes, or rights of the trafficked person have been conducted. Judicial procedures which are not rights-based have been employed during trials, with little attention to witness protection in many cases. Evidence reveals that in some instances prevention initiatives at source have been tantamount to restricting women and girls’ right to freedom of movement, reinforcing thereby the patriarchal practice of keeping them trapped within the four walls of the home as a measure of protection. Surveillance and watchdog committees at the community level have gone overboard in their enthusiasm to police young girls and women, and in their intent to protect, have been responsible for violating the rights of the girls deemed to be

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vulnerable. Rehabilitation has sometimes meant nothing more than a change in venue of the victim’s incarceration from a brothel to a shelter.

The purpose of this analysis of anti-trafficking strategies and interventions, and the identification of gaps, is not to construct a dismal picture. Nor do I seek to demolish the work and commitment of well-intentioned practitioners. My attempt here is to merely put out a strong cautionary note that in forging ahead

on the beaten track of anti-trafficking work, it is vital to stop and engage in a systematic stock-taking of both the theory and the practice.

NOTES

1. The common refrain in most anti-trafficking fora is the ever-increasing and mounting terror of trafficking. The document prepared by the Government of India for the Yokohama Congress states that trafficking “has never before reached the proportions as in the world today, not under slavery, not in feudal times” (in *Protecting Children from Trafficking and Sexual Abuse: Initiatives in India*, Department of Women and Child Development, Ministry of Human Resource Development, Govt. of India, December 2001).

2. The profits accruing from the international trade of trafficking in persons are estimated to range between US \$5–7 billion annually (see Jonas Widgren, *Multinational Cooperation to Combat Trafficking in Migrants and the Role of International Organisations*, IOM Seminar on International Responses to Trafficking in Migrants and Safeguarding Migrant Rights, Geneva, October 26–28, 1994).

3. Communiqué of the Ministerial Conference of the G-8 Countries on Combating Transnational Organized Crime, Moscow, October 19–20, 1999.

4. See the Beijing Platform for Action, 1995, Strategic Objective D3 130 (b), which states, “trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages and forced labor.”

5. The misplaced conflation of trafficking with prostitution has a historical basis.

For decades, the problem has been defined by governments and advocates alike as “sex trafficking in women and children” or the “immoral traffic in women.” This belies a concern which stems from a protectionist agenda and in some instances, is based entirely on a welfare and charity approach where the “fallen need to be uplifted.”

6. <http://www.unicef.org/programme/cprotection/trafficking.html> .

7. The article which first published these statistics was written by Dr. I.S. Gilada of the Indian Health Association in Mumbai, and was presented at a workshop in 1986. Subsequently, a version of this piece was published in the *Times of India*,

2 January, 1989. These figures have since then been recycled by innumerable reports and articles on trafficking in Nepal.

[8.](#) Radhika Coomaraswamy, “Addendum, Mission to Bangladesh, Nepal and India on the issue of trafficking of women and girls” (28 October–15 November 2000), Integration of Human Rights of Women and the Gender Perspective: Violence Against Women, Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, in accordance with the Commission on Human Rights resolution 2000/45: GE. 01–10865 (E)

[9. See discussion under the section of this article on “The Nexus of Vulnerability and Illegality.”](#)

[10.](#) A study carried out by the IOM in Cambodia on the recruitment of girls and women for the purpose of prostitution leads to quite the opposite conclusion. Evidence from South Africa, many parts of Asia, and Latin America supports the finding as well that local-

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level operators and individuals are mostly involved in the trafficking of children. See the report by the organization Molo Songololo: *The Trafficking of Children for the Purposes of Sexual Exploitation*, South Africa, 2000. In Europe and to some extent in Southeast Asia, organized international criminal groups are reportedly more prevalent. Chinese, Japanese, and Vietnamese criminal networks, as well as Russian and Albanian gangs and the Italian mafia, are among the major traffickers of underage persons and women.

[11.](#) Ongoing research by CARE India reveals that in Mumbai, the core of the sex trade has moved out of brothels into beer bars and parlors in the recent past. It is estimated that currently, only about 10–20 percent of the sex trade in Mumbai is conducted out of brothels (conversations with the CARE India Assistant Country Director). Such patterns are emerging as well in other Indian cities, as well as in Nepal. In the state of Kerala in Southern India, there is no brothel-based sex trade; most of it is street-based or conducted through beer bars (based on information provided by the Foundation for Integrated Research in Mental

Health, Kerala).

[12.](#) Experience with ongoing raids for rescue of women and girls on the GB road brothels in 2002 in Delhi, India, clearly revealed that many brothel keepers shifted their businesses out of the brothel area into apartments and houses in general residential areas of Delhi.

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Cross-border Movements and the Law

Renegotiating the Boundaries of Difference

Ratna Kapur

The current moment of globalization is witnessing an extraordinary movement of people, legitimate and illegitimate, across national and international borders. These movements are exposing the porosity of borders, the transnational reality of migrant existence, and the contingent foundations of international law. And this global movement of people has created a panic across borders—a panic which is manifesting itself in the strengthening of border controls, tightening of immigration laws, and casting of the “Other” as a threat to the security of the nation-state. In this essay, I discuss how the issue of cross-border movements is being displaced onto a First World/Third World divide, which has the effect of keeping the “Rest” away from the “West,” and is premised on liberal exclusions and understandings of difference. I also examine how laws encounter with these constitutive “Others,” quite specifically the transnational migrant subject, which disrupts and disturbs the universalist premise of international law.

Over the past three years, there has been an extraordinary proliferation of law regulating cross-border movements, in the area of trafficking as well as people-smuggling. The issue of trafficking and clandestine cross-border movements is regarded as a major contemporary human-rights challenge by the United Nations Secretary General as well as the High Commissioner for Human Rights (Report of the Secretary General 25

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to the Commission on Human Rights 2002). This concern has been reflected in part in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereinafter, the Trafficking Protocol), supplementing the UN Convention Against Transnational Organized Crime, which came into force on December 25, 2003. A Protocol Against the Smuggling of Migrants by Land, Air and Sea, which came into force on January 28, 2004, was also adopted under the Convention Against Transnational Organized Crime. The Council of Ministers for the European Union, the Parliamentary Assembly of the Council of Europe, and the Parliamentary Assembly of the Organization for Security and Co-operation in Europe have all issued directives, recommendations, and resolutions on the subject of trafficking (Council of Europe 2000). An International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is the first convention to deal specifically with the issue of the rights of documented and undocumented migrant workers, and came into force on July 1, 2003. These initiatives all deal with the extraordinary movement of people, legitimate and illegitimate, across national and international borders, and have been brought into being with the support and advocacy of non-governmental organizations, women's groups, and other social-justice groups.

At one level there is an outward sense of progress, of something being done, of a social-justice project being pursued in the name of the human rights of these have-nots. Yet, this sense of progress is emerging as a somewhat disingenuous and illusory project. Indeed, the legal project pursued in the context of cross-border movements is perhaps the most explicit example we have to date of how our good intentions, passions, and progressive swords may have turned into boomerangs; of how international law's promise of progress, emancipation, and universalism has been exposed by these new global subjects as myopic, exclusive, and informed by a series of new global panics (Brown and Halley 2002, 4).

These panics include a panic about the survival of the nation, manifesting itself partly in legal responses that focus on strengthening border controls, tightening immigration, and casting the "Other" as a threat primarily to the security of the (First World) nation-state. There is also a moral panic that partly underlies responses to trafficking and also feeds the anti-sex work agenda of feminists, evangelicals, the religious right, and orthodox voices. And finally there is a

cultural panic that treats the “Other” as some form of cultural contaminant who is disrupting a nation’s social and cultural cohesion and destroying the authentic fabrics which constitute cultures. In this essay, I address how these panics are informing the legal responses to cross-border movements and today’s new global subjects—

the transnational migrant. Most of these legal initiatives have been taken ostensibly in the interest of the migrant, out of concern for the abuse,

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exploitation, or victimization they may experience. Yet an interrogation of the assumptions on which these laws are based exposes how they are invariably designed to shore up the borders of the nation-state, to maintain social and cultural cohesion, and at times, to return to some nostalgic dream of a long-lost golden era of cultural cohesion, family values, and a conservative sexual morality.

This paper addresses three areas of concern in the context of the legal regulation of cross-border movements. First, I set out the context in which cross-border movements are taking place. Secondly, I examine how international law’s current engagement with difference in the context of cross-border movements reflects the insecurity and instability that is being produced by the disruptive emergence of this new global subject, which is challenging the very identity of the sovereign state and the sovereign citizen. Thirdly, I discuss how recent legal responses to cross-border movements have been partly informed by the “War on Terror,” which has converged with the xenophobic discourse of the conservative right and turned it into a hostile, antagonistic fear of the “Other”

who is threatening the security of the nation. And finally, I propose some constructive ways in which we can engage with law and legal boundaries, to promote a more liberating and constructive response to the transnational migrant subject.

THE CONTEXT

According to the International Organization for Migration, nearly 150

million migrants are crossing borders in our world today—from rural towns to urban centers, from the periphery into the metropolis, from the global south into the global north (IOM, *World Migration Report 2000*, 3). These crossings are profoundly challenging some of the most basic notions of women's reproductive labor, family, community, nation, culture, and citizenship. Transborder and in-country movements and migrations are occurring for a plethora of reasons: the reconfiguration of the global economy, the ability to travel, displacement and dispossession of marginalized populations, the awareness through consciousness-raising that there are better options elsewhere, armed conflict, and of course the basic human aspiration to explore the world (Hollifield 1998; Weiner 1995). The global patterns of economics and trade have also increased the demand for low-wage labor, as well as the demand of poor countries for remittances from immigrants in the global north that assist in social welfare that the state is neither able nor willing to provide (Rittich 2000). The World Bank's *Report on Global Development Finance 2003* estimates that migrant remittances to developing countries reached almost \$80 billion in 2002 and that these remittances exceeded the net

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foreign direct investment for the first time (World Bank 2003; IMF 2002).

Poorer countries thus have little interest in controlling outward movement, legal or illegal (IOM 2003; Buch, Kucklenz, and Le Manchec 2002).

Although migration is a fact of a globalized economy, this movement has yet to be adequately addressed within the discourse of market management or international migration or labor law. It is addressed primarily in and through the international legal order by initiatives dealing with trafficking, human smuggling, law and order, border controls, security, and sexual morality. The impact of these different initiatives on cross-border movements is mediated by gender, class, religion, and sexual and marital status. The failure of international law to adequately address the reality of the migration phenomenon has given rise to a growing market for clandestine migration services under a migrant-mobility regime (Sanghera 2002, 6). The clandestine regime is produced in part by the failure of States to recognize the need for marginalized groups to migrate and to facilitate such movement through the provision of safe, legal passage. At the

same time there is an increasing demand for cheap, exploitable labor that is being produced by market processes (Ghosh 1998, 53). The emerging legal regime with its focus on border controls, security, and law and order is in part producing a clandestine migrant-mobility regime which consists of providing a host of “services” to those who cross borders, including the facilitation of smuggling, illegal migration, and underground travel, and the provision of false passports, visa permits, and identity papers (Beare 1997, 22). The regulatory edifice of the law with its punitive consequences is being confounded by the emergence of this clandestine migrant-mobility regime.

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The international legal responses to cross-border movements are based on three assumptions about these new global subjects. First, they are either weak, submissive, and incapable of looking after themselves—

that is, they are victims; secondly, they can be assimilated and brought into the mainstream; and thirdly, they are capable of the most terrifying violence, and must be incarcerated, detained, or even eliminated.

Trafficking

Anti-trafficking initiatives have been adopted or enacted at the international and domestic levels at an extraordinary rate over the past few years, and the impetus behind these initiatives stems from a variety of concerns and locations. In some contexts, the trafficking agenda has come to be increasingly influenced by a conservative sexual morality.

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For example, the evangelical right in the United States specifically called on George Bush to foreground the issue of trafficking in his speech to the United Nations General Assembly on September 12, 2003 (Bumiller 2003). In other contexts, a protectionist approach toward women informs the trafficking agenda, which results in casting women as victims and justifies at times protective detention (Kapur 2002). Such initiatives are being enacted ostensibly and primarily for the protection of women who are perceived as vulnerable to the designs of traffickers and criminal networks which force women across borders

primarily for the purpose of engaging in sex work and for sexual exploitation. However, it is extremely difficult to determine the real dimensions of the trafficking phenomenon due to the lack of both qualitative and quantitative research in this area. Most of the information currently available is anecdotal and based on small-scale surveys and studies (Wijers and Lap-Chew 1997). There is also a tendency to accept unverified statistics and

[data that are available without further interrogation.1](#)

These questionable statistics have been combined with other confusions between trafficking, migration, and sex work. In contemporary discourse, human trafficking has come to be variously and yet integrally interwoven with migration—mainly illegal—clandestine border crossing, and smuggling of humans. On a parallel plane, trafficking in women and girls is resoundingly conflated with their sale and forced consignment to brothels in the sex industry. The conflation of trafficking in persons with various manifestations of migration and mobility on the one hand, and with prostitution and sex work on the other, lies at the very core of the confusion that underpins the contemporary discourse on trafficking of women and girls globally, regionally, and nationally.

Equating trafficking with migration leads to simplistic and unrealistic solutions—in order to prevent trafficking there is a conscious or inadvertent move to stop those who are deemed vulnerable from migrating. Even when curbing migration is not a stated programmatic focus, an inadvertent impetus is to dissuade women and girls from moving in order to protect them from harm. Conflating trafficking with migration results in reinforcing the gender bias that women and girls need constant male or state protection from harm, and therefore must not be allowed to exercise their right to movement or right to earn a

[living in the manner they choose.2](#)

Secondly, curbing migration will not stop trafficking, but merely

[drive the activity further underground, and make it more invisible.3](#)

This lesson has been learnt from states that have proceeded to enforce increasingly stringent immigration controls as a response to heightened trafficking in persons and narcotics. Borders cannot be impermeable, and stricter immigration measures have resulted in pushing the victims further into situations of violence and abuse.

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Thirdly, when no clear conceptual or operational distinctions are drawn between migration and trafficking, and in fact, when migration is considered equal to trafficking, then it logically follows that the number of victims of trafficking is equal to the number of those who have migrated voluntarily (Kaye 2003). This logic operates particularly in the case of adolescent girls and women migrants, and not in the case of men. This practice has resulted in an extremely flawed methodology for conducting baseline surveys on trafficking in “risk-prone” and “affected districts” in different South Asian countries (Asia Foundation 2001, 28).

If women are not present in a locality or district they are invariably deemed to have been trafficked away. Hence, even women’s consensual migration comes to be viewed primarily through the lens of trafficking

[\(see also Sanghera in chapter one\).](#)

The trafficking initiatives are also characterized by racial and gendered dimensions. The discourse often reproduces a First World and Third World divide, with the assumption that the problem exists over “there” in the Third World, or postcolonial world, and proposes strategies that reinforce the image of a truncated, seriously battered, culturally constrained, and oppressed subject that needs to be rescued and rehabilitated by a civilizing West (Mohanty 1991). Both governmental and non-governmental initiatives reinforce the images presented in the media that promote stereotyped construction of the trafficked victim as foreign, innocent, and ignorant (Doezema 2001). Simultaneously these images vilify Third World governments and single out alien criminal gangs. This image, and the dichotomous understanding on which it is constructed, fails to comprehend the complex reality and nature of trafficking. Trafficking needs to be understood within the broader context of globalization and the increase in female migration from the Third World, and as a part of the repressive consequences of anti-trafficking strategies that are constructed along binaries and stereotypes of the Third World.

And finally, there has been a continued persistence among anti-trafficking players to conflate trafficking with sex work/prostitution

[\(Hughes and Roche 1999\).4 By collapsing the process with the purpose, the](#)

abuse and violence inherent in trafficking is mistaken for the actual site of work and form of labor. Furthermore, trafficking for all other purposes is largely ignored, and targeting trafficking for prostitution becomes the principal agenda of anti-trafficking interventions, policies, and laws. This dimension of the issue has recently been challenged by the Trafficking Protocol, which emphasizes that there are several sites of exploitation, and that trafficking is not confined merely to prostitution or sex work.

The focus of anti-trafficking initiatives at the domestic, regional, and international level is rarely on providing women-who-move with human rights—the tools that are critical to fighting abuse, violence, and harm they may experience in the course of movement. The inability of States to control their borders and fears of security have led to an un-

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precedented cooperation between nation-states to share information and develop strategies to improve border controls and strengthen law en-

[forcement \(Advisory Council of Jurists 2002, 8\).5 The issues of traffick-](#)

ing and clandestine movement are regarded especially by powerful countries of destination as a problem of migration, law and order, and transnational organized crime, rather than an issue of human rights.

The fact that the Trafficking Protocol was negotiated within the framework of the UN Convention Against Transnational Organized Crime and outside the human-rights system highlights the criminal-justice and security approach and States' interests in maintaining border integrity.

The failure to foreground the human-rights aspects of trafficking has resulted in further pushing the activity underground, and centering the security of the State at the cost of the security of the migrant subject.

Assimilation

A second legal response is to attempt the assimilation of those who cross borders. The strategy of assimilation is a familiar device by which to deal with those who are different. During the period of the colonial encounter, assimilation was advanced through the educational curriculum, where the native subject learned to mime, and walk and talk like an “Englishman” (Vishwanathan 1989). Strategies of assimilation remain present even in the current moment. States throughout Europe are enacting new citizenship and nationality laws to enable these subjects to be part of the universal project of rights and acquire legitimacy through the process of assimilation. One example is the recently enacted British Nationality, Immigration and Asylum Act 2002, which targets the transnational migrant subject through new cultural, emotional, and citizenship criteria. The primary objective of the Act is to build social cohesion and a sense of British identity in “an increasingly diverse world”

(UK Home Office 2002, 11). It thus requires that people who want to become UK citizens take a compulsory English-language test and an exam on the ways of British life, British society, and British institutions (UK Home Office 2002, 32–33). These measures are justified by the Home Secretary in the following terms: “Our future social cohesion, economic prosperity and integrity depends on how well we rise to the global challenge of mass migration, communication and flight from persecution” (UK Home Office 2002, 3; Hodge 2002; Cattle 2003).

Another objective of the Act is to meet the economic challenge partly by ensuring that people who want to work in the United Kingdom can do so without entering into the country through illegal routes. These two challenges are to be confronted under a policy of “managing migration”

(UK Home Office 2002, 19). Managing migration is designed to set up a system of entry into the country that is orderly and organized. It is also directed toward assisting in the integration of migrants into the British

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economy and society in ways where they will be welcomed by the existing population. These migrants are to be managed in the crossing of borders, as well as in terms of their identity construction once they have crossed the borders.

Another recent example of assimilation is the proposal to ban headscarves in France—which, though taken in the name of secularism, is but another shift by which to pressurize the minority immigrant community to conform to the practices of the majority (Sciolino 2004). These assimilationist moves are also prevalent in India, where Muslims and Christians, who are constructed as outsiders or foreigners because their holy lands lie outside of India, are being pressured by the Hindu Right to surrender their identities; surrender their places of worship, educational spaces, and even customary practices; and merge with the majority; read “Hindu majority” (Kapur and Cossman 2001).

These measures provide the “Other” with an opportunity to be embraced by the universal project, through his/her willingness to assimilate. It provides the possibility for the “Other” to metamorphose into someone who is familiar and recognizable. And access to rights and benefits is contingent on the ability of the transnational migrant to reinvent himself/herself, to become recognizable, comprehensible, and hence, non-threatening.

Demonizing the “Other”

Finally, there is the legal response that promotes incarceration, detention, even annihilation or elimination. In these contexts, the migrant is cast as a transgressor, incomprehensible, and existing completely outside of the framework of liberal democracy, and is defined as a threat to the nation-state and as backward, uncivilized, and dangerous. We find these responses present in the explicit policy of incarceration of asylum-seekers in Australia, illustrating how the migrant subject is being transformed into a manipulative, dangerous, and contaminating force against which state and individual sovereignty must be protected (McMaster 2000; McMaster 2002). In the United Kingdom, the Home Secretary recently proposed that the children of rejected asylum-seekers be taken from their care as a way to pressurize them to leave (Hinsliff 2003). The proposal does not reveal the double objective of the UK government in quietly allowing the immigration of the economically valued while ensuring the politically oppressed to be treated as criminals and despised.

However, this approach is not confined to the West—it has become an increasingly effective tool in the hands of countries in the South, including Malaysia, Thailand, and even India, where the right wing is intent on eliminating or removing those who do not conform to the new cultural-authenticity, nationalist agendas. One example is the proposal

by the Bhartiya Janata Party, the political wing of the Hindu Right which led the coalition government from 1999–2004, to deport undocumented Bangladeshi migrants from India—they number anywhere from 13 to 20 million people. The argument time and again is that these migrants pose a potential threat to the security of the nation-states (Samaddar1999).

There is at the same time a clear distinction drawn by the Hindu Right, between Hindu and Muslim migrants (Kaur 2003). Hindu migrants are referred to as refugees; that is, those who are in need of State support and regarded as victims of intolerance in a Muslim country, namely Bangladesh. In contrast the Muslims are referred to as infiltrators; that is, they are regarded as aliens suspected of crossing the border with the objective of threatening the security of the Indian (read “Hindu”) nation, even though in fact most of them are economic refugees.

THE GLOBAL WAR ON “TERROR”

The situation of those who cross borders has been aggravated by the recent global “War on Terror.” The issues of trafficking and migration are now being taken up within the overarching concern with security of the nation and the global War on Terror. The War on Terror has acquired a supernatural life and existence outside of the international legal order, while simultaneously being pursued in and through the processes and institutions of the international regime. The UN Security Council and the General Assembly have been deployed to foreground the security and sovereignty of some nation-states through the abrogation of the security and sovereignty of other nation-states. The legal mechanisms endorsed in pursuit of this endeavor have resulted in the enactment of laws at the domestic and international level that have further cauterized cross-border movements, and justified going after anything and anyone one does not like.

Numerous countries have passed regressive anti-terrorism laws that expand governmental powers of detention and surveillance in ways that threaten basic rights (Amnesty International 2004). There has been a continuing spate of arbitrary arrests and detentions of suspects without due process (Human Rights Watch 2002). For example, in the United States, suspects have been charged or

brought before a court in only a handful of cases. Hundreds remain in detention without charge at Guantanamo Bay, in military custody inside the United States, or at other U.S. bases or undisclosed locations around the world. Almost every “alien” entering the U.S. is suspect, though in varying degrees, subject to fingerprinting and photographing at ports of entry. In many European Union countries, new laws and policies have undermined fundamental human-rights protections, including the right to seek asylum

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and prohibitions against arbitrary detention and torture (ECRI [Denmark] 2001; ECRI [Austria] 2001). In India, the Prevention of Terrorism Act has been used against political opponents, and quite specifically religious minorities. In Indonesia, new legislation and presidential decrees threaten fundamental rights, invoking broad definitions of terrorism that could be used to target political opponents. What is most troubling is how anti-terrorism has now come to structure militarized reaction, not war anchored in national sovereignty.

These legal responses need to be read with the fact that, globally, we are witnessing a heightened anxiety about the “Other,” who is perceived as a threat or someone who is dangerous to the security of the nation. The boundary line of difference is being redrawn along very stark divides—between friend and enemy, those who are good and those who are evil. Although these concerns are most explicitly voiced by the extreme right or religious right, less noticed is the more uniformly pervasive emergence of similar forms of conservatism within mainstream discourses. The

“alien migrant,” here and there, has become one of the primary casualties of the failure to define either the purpose or limits of the War on Terror.

This failure forces migrants to continue to move through illicit channels, and remain vulnerable, stigmatized, and illegitimate.

The new War on Terror has created space for a more strident and alarming response to the global movements of people, reducing it at times to nothing more than an evil threat. And once again this new war is not being pursued only in the United States—it is rather alarming how enthusiastically it is being embraced by states in many different parts of the world. The breadth and scope of this war

remain undefined and ambiguous. It would include a situation where, if terrorism was defined as a transnational crime, then by merely committing the crime of seeking illegal movement and illegal entry these people could be defined as terrorists. Because the smugglers offer travel services to undocumented migrants, they would easily fall within the category of transnational organized crime, criminals, and potential terrorists. These simple equations again lead to a disjuncture between reality of the illegal migrant and the issue of terrorism.

The War on Terror has resulted in legal reforms that alienate those who have been cast as the “new enemy” and justifies resorting to punitive measures on the grounds that these people are evil or dangerous and not entitled to due process or rights. The conflation of the migrant with the terrorist is not new, but it has received greater attention since September 11; it has afforded more space for the representation of the “Other” as a fanatic and dangerous and opposed to freedom (Porras 1994); and it has pushed us further away from addressing the complexity of cross-border movements and the equally complex legal and political responses required to address the issues raised by such movements.

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The space for the migrant is being eroded through the discourse of trafficking and through the discourse of terrorism and threats to the security of the nation. Yet criminalizing or victimizing those who cross borders forces these people to continue to move through illicit channels, and to remain vulnerable, stigmatized, and illegitimate. It seems unlikely that the security of what is left of the nation-state can be achieved at the cost of the security of the alien migrant. Indeed it will only serve to encourage the construction of a paradox, where the security of the alien migrant is perhaps less threatened by people-smugglers and clandestine migrant-mobility regimes than by the current international system of protection offered to people who move as migrants, refugees, or asylum-seekers

TOWARD RENEGOTIATING BOUNDARIES

The legal interventions in the lives of the transnational migrant have been articulated primarily from the perspective of the host country. The voices of the migrant subject are omitted from these conversations and yet these are the voices that can assist in untangling the confluences and confusions that are taking place

between trafficking, migration, and terrorism in the international and domestic legal arenas.

At a practical level we need to take up the issue of cross-border migration within the framework of migration and globalization. This means doing much more to publicize and lobby for the Migrant Workers Convention (MWC), especially at a time when the Global Migration Commission is beginning its work in Geneva. The MWC is, however, full of ambiguities and incapable of addressing the full range of human-rights concerns implicated in cross-border movements. Although the convention affirmatively grants recognition to the rights of the migrants (a welcome change to the earlier attempts to address the issue of migration), it fails to consider migration from the point of view of the mi-

[grant.6 It is critical to develop guidelines in relation to the MWC that](#)

would foreground the rights aspects of the convention, and build a framework for interpretation of the convention's provisions.

Secondly, the human rights of migrants must also be located in the vortex of human-rights norms and read against the spectacular array of rights that already exist in the form of the ILO conventions, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, and the two covenants on civil, political, and economic, and cultural and social rights.

Female migration also needs to be more adequately addressed in law. Women's cross-border movements continue to be addressed primarily within the framework of trafficking, victimization, and a

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conservative sexual morality. The agency of women needs to be foregrounded and their complex subjectivity consciously addressed in the legal and policy approaches being pursued at the national and international levels. Women's choices to cross borders need to be viewed within the context of empowerment and their search for better economic market opportunities. Their movement must be linked with migration, and the harms they experience in the course of movement specifically addressed.

Women's consent needs to be located in the matrix of the global economy, market demand, and cross-border migrations. Currently, their cross-border movements are largely located and addressed within normative understandings about women's sexuality, the security of the nation, and criminal law. A woman's choice is reconfigured through international legal processes, and she is either rendered a victim, to be repatriated to her home country; or a criminal, a trespasser, to be prosecuted along with traffickers and terrorists for having exposed the porosity of national borders. Legal barrier methods fail to attend to the complex factors that induce migration, and instead target the individual as being exclusively responsible for the problem of transnational migration. The receiving country is not implicated in this migration phenomenon, and is justified in resorting to methods of containment and confinement. These punitive measures constitute migrant women as outlaws, and compel them to live illegal lives. The international legal order has failed to facilitate women's freedom of mobility and safe migration, especially, though not exclusively, from the South to the North. A woman's consensual movement is rendered illegal, through the foregrounding of the security of the nation-state, the conservative sexual morality that informs anti-trafficking laws, and the xenophobic responses to global movements that increasingly inform immigration laws.

Regardless of why women move, their assertion of the right to mobility, self-determination, and development must not be confused with the violence, force, coercion, abuse, or fraud that may take place in the course of migration or transport. The crime rests in the elements of abuse and violations that are committed against women along the continuum of women's migration, and not in the movement or mobility per se.

At a normative level, there are certain shifts that also need to be made. Firstly, what is most evident from even this rather brief evaluation of the legal regulation of cross-border movements is how the interests of those who cross borders and states are opposed to one another. The migrant is regarded as either a terrorist, or as a victim, rather than a complex subject who is affected by global processes and seeking safe passage across borders. These subjects are exposing the need for us to think about law and rights in ways that are not confined to the boxes of sovereignty, the nation-state, and the autonomous subject of liberal rights discourse.

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The liberal state and the liberal subject are based on the idea of fixed borders, with clearly identifiable interests and identities. Yet globalization, which produces the challenge of migration and non-state actors to the legitimacy of the borders of the sovereign state and the autonomous subject, indicates otherwise. The complexity of new global formations and the dynamic character of transnational migrants challenge any notion that the state and individual are hermetically sealed and capable of exercising control through self-contained power (Brown 2001). The inability to distinguish those who constitute national subjects from those who are alien or foreign is blurred because of the proliferation of races, cultures, and ethnicities within national borders. It is difficult to locate a distinct national entity with distinct borders and a distinct, clearly delineated national subject. Social cohesion, unity, and sovereignty are all becoming blunt in the face of a more complex and integrated world and global economy and the challenge posed by the transnational migrant subject.

The role of law, at the international and domestic level, should be to address how broader transnational processes affect flows or movements of people and are an integral feature of globalization. This in turn requires radical rethinking and a renegotiation of legal and normative boundaries. As long as these issues are not viewed through the complex lens of globalization, market demand, and the (in)security of the nation-state, the rights and legitimacy of these people will remain unaddressed or compromised, and contribute to the growing instability of both the host country and this itinerant population. Cross-border movements have been caught within the framework of a “War” fought along the simple binaries of good versus evil, civilization versus barbarism. A response to border crossings cannot be adequately addressed through such binaries. Indeed this myopic response will do little to discourage the illegal crossing of borders or the determination of those who want to move.

Current legal strategies have produced responses that have not advanced the rights of the transnational migrant subject, nor produced a liberatory politics or progressive end. Engagements with international and human-rights law require a monitoring of the way in which rights are introduced, pursued, and implemented. Good intentions—to protect the migrant, and specifically women, from harm—are not sufficient for pursuing a rights strategy, and can indeed reinforce dominant assumptions about the “Other” and protectionist and patronizing assumptions about women, especially those who move from the global South.

The international and human-rights legal terrain and their respective institutions are contested, non-democratic, and informed by economic, military, and political considerations. We cannot abandon these spaces of engagement; we simply have to learn how to engage with them differently.

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Cross-border movements must be addressed against the broader canvas of transnationalism. Transnational movements require a transnational response and analysis—they cannot be caught within older frameworks. If it is possible to invent a response in the course of twenty-four hours that allows a state to invoke its right to self-defense against a terrorist, non-state actor, then it is surely also possible to pursue a vision by which law centers the transnational migrant, rather than the State. The transnational migrant is living the global reality, forcing us to revisit current legal responses to cross-border movements, and to acknowledge the fact that people will move illegally if legal means are not made available to them.

NOTES

1. For example, the Coalition Against Trafficking in Women, Asia Pacific, sets out the numbers of women trafficked in a number of countries, without citing any research or sources of their statistics: See Coalition Against Trafficking in Women—Asia Pacific at [http://](http://www.catw-ap.org/)

www.catw-ap.org/. Similarly, the 1995 Human Rights Report on Trafficking between Nepal and India states that “At least hundreds of thousands, and probably more than a million women and children are employed in Indian brothels.” (Human Rights Watch, *Rape for Profit: Trafficking of Nepali Girls and Women to India’s Brothels*, 1995: 1). This same group’s report on trafficking between Burma and Thailand states that “there are an estimated 800,000 to two million prostitutes currently working in Thailand” (Women’s Rights Project, Human Rights Watch, *A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand*, 1993: 1).

2. Policies that appear to be initiated for the *benefit* of women often contribute to further victimization and infantilization of female migrants. For example, in the early 1990s, Bangladesh, India, and Indonesia imposed minimum age limits for

women workers going abroad for employment. In 1998, Bangladesh banned women from going abroad as domestic workers. In 2002, the government of Bangladesh announced that it was considering removing the ban; however, to date the ban appears to have remained in effect. In 2003, the Indonesian government similarly announced the imposition of a temporary ban on female migrant workers. See Irene Fernandez, *Ban on Female Workers by Indonesia is not the Solution*, March 3, 2003 (online) accessed May 27, 2004. Available at <http://www.december18.net/web/papers/view.php?paperID=672&menuID=41&lang=EN>. In the same vein, although not entirely prohibiting migration by women, the Nepal Foreign Employment Act, 2042 (1985) prohibits issuance to women of employment licenses to work overseas without the consent of the woman's guardian. Similarly, the government of Burma, reacting to a publication of a report by Human Rights Watch about the trafficking of Burmese women and girls into Thailand's sex industry, imposed rules prohibiting all women in this area between the ages of 16 and 25 to travel without a legal guardian (Brenda Belak, "Migration & Trafficking of Women & Girls," in *Gathering Strength: Women from Burma and Their Rights* [Images Asia, Thailand], June 2003 [online] accessed May 27, 2004. Available at <http://www.ibiblio.org/>

[obl/docs/GS12.migration-and-trafficking.pdf](http://www.ibiblio.org/obl/docs/GS12.migration-and-trafficking.pdf)).

3. Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration, and violence against women, E/CN.4/2000/68, 29 February 2000; see also Population Council, *Trafficking and Human Rights in Nepal: Community Perceptions and Program Responses*,

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Joint research summary of Horizons and Asia Foundation, Washington, D.C, and Delhi, 2001, accessed May 27, 2004. Available at [http://www.popcouncil.org/horizons/ressum/](http://www.popcouncil.org/horizons/ressum/traffickingsum1_key.html)

[traffickingsum1_key.html](http://www.popcouncil.org/horizons/ressum/traffickingsum1_key.html).

4. For example, in Nepal, the Ministry of Women, Children and Social Welfare's draft of the Traffic in Human Beings (Offences and Penalties) Bill, 1999, came

under criticism for failing to distinguish trafficking from a number of sexual offences, including prostitution, pornography, and sexual abuse. Similarly, in Thailand, the Measures of Prevention and Suppression of the Trafficking in Women and Children Act, 1997, prohibits the selling, buying, luring, sending, receiving, detaining, and procuring of women and children to perform sexual acts with or without the consent of the women or child. The South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution was adopted by SAARC in January 2002. The issue of trafficking is specifically linked to prostitution, and trafficking for purposes other than prostitution remains unaddressed in the convention. Furthermore, in several of these initiatives, the consent of the woman is deemed irrelevant, thus conflating consensual and non-consensual movement, treating all movement of women as involving trafficking.

5. Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, UN Doc E/CN.4/2000/68 at para 54.

6. See the United Nations Press Release, “Convention on Protection of Rights of Migrant Workers to Enter into Force Next July,” March 19, 2003, which states that “[t]he Convention reflects an up-to-date understanding of migratory trends *as seen from the point of view of both States of origin and host States* of migrant workers and their families.” (emphasis added)

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Miles Away

The Trouble with Prevention in the Greater

Mekong Sub-region

Phil Marshall and Susu Thatun

Despite significant and growing efforts against human trafficking on a local, national, and global scale, most practitioners believe that the scope and magnitude of the problem continues to increase. The Greater Mekong Sub-region (GMS), covering Cambodia, Lao PDR, Myanmar, Thailand, Vietnam, and Yunnan Province in China, is no exception. Several regional initiatives and numerous local and national programs have yet to show strong signs of impacting on the problem.

This paper examines the response to trafficking in the region and suggests that this response to date has been undermined by three interrelated shortcomings in how the issue is conceptualized and understood.

These are: lack of acknowledgment and understanding of a “push-down, pop-up phenomenon” that is taking place around trafficking; faulty construction of the concept of prevention (including misunderstanding of what is being prevented); and inaccurate assessment of the root causes of trafficking. Taken together, these shortcomings serve to focus attention on migration—particularly cross-border movements—rather than on the fundamental abuses of women, men, and children that trafficking involves. While the analysis is based on the authors’ own experience and knowledge of the GMS, it is submitted that the problems underlying-43

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ing the response to human trafficking in this part of the world are present, to a greater or lesser degree, in all other regions.

PUSH-DOWN POP-UP

There is now growing acknowledgement of the displacement, or *push-down pop-up* (PDPU)¹ [effect surrounding trafficking. This name is used](#)

to describe a phenomenon whereby the problem is reduced or pushed down in one place, only to emerge somewhere else. Trafficking is a dynamic

phenomenon and traffickers can quickly adjust to changing environments, in particular, but not only, by shifting the geographic focus of their activities. Evidence of PDPU raises questions about the efficacy of a range of current programs and its acknowledgement is fundamental to developing more effective interventions.

The push-down pop-up effect manifests itself in several different ways.

One relates to the vulnerability of communities as a whole. Research from South Asia (Horizons Project 2001) has indicated that some community-level trafficking interventions which appear successful on the surface may simply be moving the problem from one community to another—that pushing the issue down in one community may lead to it “popping up” somewhere else. These findings are consistent with analysis in the GMS, particularly as it relates to the sex trade in Thailand. With notable but insufficient measures to reduce demand for children, there are reports that successful programs to prevent Thai children from Northern Thailand entering the sex trade are displacing the problem to ethnic minority children, and to the neighboring countries of Lao PDR and Myanmar.

A second version of this PDPU effect relates to individual vulnerability, and concerns rescue and return efforts. Rescuing a person from a situation of exploitation has high “feel-good” value and lends itself to positive media coverage (and, by extension, fundraising efforts). Given problems with raids of establishments into which people are trafficked, including the rescue of those who do not wish to be rescued (see below), many agencies understandably prefer to focus on rescuing individuals without necessarily taking action against the establishment.

However, unless strong, deterrent action is taken against those involved in the exploitation of the trafficked person, it is extremely likely that she or he will simply be replaced. Where the rescue has been undertaken by buying a person out of their trafficking situation, this actually helps to perpetuate the business, providing what amounts to working capital to the traffickers to recruit more people. In at least one country in the GMS, Thailand, this last approach has reportedly generated a new type of business, with brothel owners offering to sell trafficked persons to potential “saviors.”

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A corollary to the PDPU effect is found at the community level, with regard to repatriation. Considerable resources have been put into this area to date and the services offered to those trafficked in places such as Thailand are certainly a vast improvement on the summary deportations of trafficked persons as undocumented migrants that continue to take place in many countries. However, the ultimate value of repatriation efforts may be limited unless they are accompanied by measures that make a significant impact on the economics of the trafficking business. The success criterion for repatriation efforts is generally that the person returned is not re-trafficked. This is often confused with a person not leaving their community again, rather than a person regaining control over her life. Leaving that aside, however, the fact that a person is not re-trafficked is often more an indication that the traffickers have simply taken somebody else in their place. For example, there has been a systemic and compassionate repatriation of more than 500 Cambodian children taken to Thailand in organized begging rings. Despite more than two-thirds of these returned children remaining in their communities over a one-year period (IOM and MOSALVY

2003), this program has failed to have a noticeable impact on the overall number of Cambodian child beggars in Thailand.

A third example of the PDPU phenomenon is the targeting of small-scale people-movers as part of anti-trafficking campaigns, often reflecting a tendency to conflate traffickers and smugglers. (This is covered in more detail below.) These people are mostly women and generally poor.

A significant number have been trafficked themselves, while others are unaware of exploitative intentions behind the larger process of which they are a part (ARCPPT 2003, [3]).

It is worth noting that in Myanmar, the local term for those involved in the movement of people across borders is the “carry.” While some of these carries are directly complicit in an end outcome of trafficking, most are not (UNIAP 2003 [1]). In fact, these people are seen as providing an important community service in helping members of the community cross the border to Thailand. There, they are able to help potential migrants to fill the demand for an estimated one-and-a-half-million genuine jobs (Martin 2002), for which there is currently no way to migrate legally.

Regardless of their level of complicity, however, it is clear that these people—the primary focus of the limited law enforcement efforts to date—are generally small links in the trafficking chain. Just as the supply pool of potential victims is very large, so too is the pool from which potential people-movers can “pop up,” including communities denied

[opportunities for legal employment, such as ethnic minority groups.² In](#)

the GMS context, making such people the primary focus of law enforcement efforts has therefore had little impact on the trafficking problem.

Further, it has also served to take the spotlight off those who have

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perpetuated the most exploitative aspects of the trafficking process, and those who have obtained the greatest financial benefit.

These PDPU effects have significant implications for the response to trafficking, particular in terms of the broad area that is generally known as prevention. This paper will now briefly examine three main approaches to prevention and the rationale behind these, and suggest an alternative way of looking at preventing trafficking.

THE PROBLEM WITH PREVENTION

Many trafficking programs focus on “prevention,” often at the community level in places that are known or thought to be vulnerable to trafficking. The rationale behind many of these programs appears to be that if people don’t move, they can’t be trafficked. These programs generally look to address issues of vulnerability, which are most commonly held to be poverty, lack of education, and/or a lack of awareness about

[trafficking and the risks of migration. In the following section, we dis-](#)

cuss three common responses based on this analysis—poverty alleviation, awareness raising, and tougher border controls.

The Poverty Alleviation Response

Where the problem is taken to be one of poverty, trafficking prevention strategies generally cover poverty alleviation and alternative livelihood activities such as skills training, microcredit, and employment creation. It is certainly true that many people do leave their communities because they cannot meet their basic needs, be it in terms of food and water supply, or in terms of human security. However, it does not necessarily follow that such basic issues of survival should, first and foremost, be characterized as a trafficking problem. From a wider perspective, programs to address these issues are worthy in and of themselves and they certainly have a role to play in anti-trafficking responses. Yet with regard to the prevention of trafficking, where it occurs—as in the GMS—within a framework of substantial out-migration, there are a number of concerns.

First, research from all over the world indicates that it is generally neither the poorest of the poor, nor the least educated, that migrate.

Those who struggle to cover subsistence needs do not have ready access to money or collateral to help pay for travel to another country, and usually stay close to home (see, for example: Harris 2002; Stalker 2000).

They are less likely then to be cross-border migrants. Within the GMS, this is borne out by recent research including a study in the Kayin State, Myanmar, which found that of over 300 migrants interviewed, more

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than two-thirds came from middle-income and better-off families, while just 2 percent of the migrants came from families categorized as very poor (UNIAP 2003, [2]). Information gathered from the interview indicated that those in the poorer categories, more or less in the state of

“absolute poverty,” had little means to facilitate the process of migration. Similarly, out-migration from poorer ethnic minority groups in Lao PDR is very small compared to that of the lowland Lao population, and there is further evidence that those who migrate among lowland Lao are not the poorest (ARCPPT 2003, [2]).

The situation is similar with regard to education levels. The Myanmar survey also notes that the level of formal education for migrant workers is concentrated, not at the bottom levels, but at primary and secondary levels. Household interviews and focus-group discussions indicate that people with no education often lack the confidence to take the risks identified with migration. Again these findings are consistent with evidence from Lao PDR (Chamberlain et al. 2001) and from other parts of the world (Harris 2002).

One inference from this information is that an increase in people's level of income and education might actually increase the incidence of migration, and again there is some evidence to back this up. Research by the International Labor Organization-International Program on the Elimination of Child Labor (ILO-IPEC) in Lao PDR, for example, suggests higher than average migration levels among villages that have been the focus of international development activities. Higher incomes bring raised expectations and through television, romanticized images of foreign places. Some young people leave home because friends come back with money, and others simply out of boredom due to an absence of meaningful opportunities at home. Similarly, many of the skills learned by those in employment-creation programs in rural areas can actually bring more effective reward in the cities and hence add to the impetus to migrate. Some microloan schemes also contribute to migration, either by providing the means, or by creating pressure to repay the debt. If the rationale of programs is to reduce trafficking by reducing migration, it seems possible that some of the poverty alleviation interventions might therefore actually be having the opposite effect.

There is also another flaw in the assessment that poverty, at least in absolute terms, and lack of education lie at the heart of the trafficking problem; that they are, as is often quoted, its root causes. Neither factor, taken alone or together, is able to explain why, as is widely held to be the case, trafficking would have been rapidly increasing over the past decade or so. In the same period, levels of absolute poverty have been falling, and education levels have been rising (UNDP 2002). Even the addition of a myriad of issues around gender equality and relations,

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while helping to explain some of the factors which contribute to trafficking, fails

to provide significant justification for the apparent substantial increase in the trafficking problem.

Further, the attribution of trafficking to poverty fails to explain why some places, such as Thailand, are both points of destination and points of origin for trafficking. Rather, it seems clear that the problem of relative poverty (inequality) is more relevant to trafficking. Addressing the issue of inequality is likely to take generations and, in fact, may prove to be an impossibility within the current global political and economic structures. Growing inequality has been a key feature of globalization. This is not surprising. The process of globalization is distinguished by increased focus on “competitive” markets. Such competitive markets tend to be characterized by considerable inequality in incomes and wealth, favoring strong and established businesses on the one hand, and encouraging location of businesses in areas with the lowest labor standards on the other (Marshall 2001). It is this inequality, this disparity that is the main driving force behind migration. Most people would prefer not to travel too far from home. If there were no expectation that better opportunities were available elsewhere, there would be little cause to migrate.

The Awareness-raising Response

A second approach to prevention is raising awareness about the risks of trafficking. The rationale behind awareness-raising programs is essentially that people are trafficked because they are unaware of the dangers. If people are educated about the risks, then, this reasoning goes, they will be much less likely to leave home. The most obvious thing to be said about this activity is that, to be useful, it needs to take place in tandem with alternative-livelihood options. It is no good discouraging people from moving if they simply do not have a realistic choice.

Most awareness-raising campaigns are couched in terms that migration is highly risky. The biggest problem with this message is that evidence does not generally support it. Notwithstanding the many horror stories and the hardships faced by many migrants—those who have been deceived, coerced, or forced into a trafficked situation, those who have died in the attempt to migrate for a better life—the majority of people who migrate, even from poorer communities, appear to improve their lives by doing so. In addition, any messages will be set against not only an individual’s perception of their existing situation but against other information they have collected. It would seem of little use to tell a young

person from Lao PDR that if they go to Thailand they are likely to be trapped on a fishing boat or locked in a brothel, if their friends have come back with money in their pockets and tales of adventure, true or otherwise.

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Like poverty-alleviation and alternative-livelihood activities, awareness raising is important, and if properly done, can greatly reduce vulnerability, particularly where the recruiters in the communities concerned are highly complicit in the end outcome of trafficking. However, as with any intervention, programs based on raising awareness must realistically aim to provide honest information and genuine choices. This will require such programs to allow for the possibility that people may still choose to migrate and to equip them with skills that will be useful if they do so. In recognition of this, many organizations in the GMS are now incorporating awareness raising into a broader life-skills package.

This often includes providing young people with a realistic assessment of the risks of migration, while equipping them with skills in areas such as HIV/AIDS prevention to reduce their vulnerability if they decide to move. It is important to note that many communities do in fact develop their own coping mechanisms over time, independently of outside intervention, to reduce the risks of migration, identifying safe routes, good employers, mechanisms to remit money, and ways of dealing with difficult situations.

Importantly also, while at least one UN organization, the UN Office on Drugs and Crime, has attempted to develop a global awareness-raising campaign, it should be obvious that awareness-raising messages need to be highly contextualized and based on an understanding of local situations. In fact, somewhat ironically, given that it is the communities' awareness that practitioners are trying to raise, it is our own understanding of local situations, and in particular, the decision-making processes behind decisions to migrate, that is often lacking. One of the reasons for this is the tendency of many governments, Western and otherwise, to deport the evidence by sending trafficked persons home as undocumented migrants. Failure to identify trafficked persons as such not only ignores their basic rights but also detracts significantly from the information we could be collecting to assist in better targeting our responses.

When more information is available we may well find that, far from lacking an understanding of the situation, people and communities often have more knowledge than is realized. For example, one survey in Northern Thailand examined how women from certain communities ended up in debt bondage in the Japanese sex trade (Sobieszczyk 2002). Contrary to the initial expectations, most of these women were not ignorant, either of the work they would be doing, or of the risks involved in such debt-bondage arrangements. For many, however, debt bondage at the point of destination was actually seen as a risk-minimization strategy, as the cost of a failed attempt to reach Japan was borne by the employer. Should a woman borrow the necessary US\$5,000 or so locally and be turned back, she would return to the community with a huge debt and no way of paying this off, other than attempting to migrate

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again. Further, those concerned would have preferred to migrate for other work if this had been viable. *The major risk factor here is not a lack of knowledge but the lack of legitimate and safe opportunities for labor migration.*

As with alternative-livelihood options, appropriate and accurate awareness-raising activities are an important component of a holistic response to trafficking. It is clear though that raising awareness of the dangers of migration and trafficking will not stop people moving, particularly when reports of these dangers are not consistent with their own experiences. Activities such as poverty reduction and awareness raising therefore fall much more accurately under the heading “vulnerability reduction” than under “prevention.”

At the same time, it stands to reason that, in addition to providing alternatives to migration, and advising people of the risks, migration needs to be made safer. And yet, much of what is being done in the name of anti-trafficking programs is actually making migration considerably less safe.

Prevention through Tougher Border Controls

The rationale behind increased border controls is an adjunct to the idea that if people cannot move, they cannot be trafficked. It supposes that if fewer people can be smuggled across borders, fewer people will be trafficked. Just as the assignation of poverty as the root cause of trafficking allows many development

agencies to continue with existing programs under an anti-trafficking banner and funding source, the border-control theory has the compelling advantage of allowing destination countries, particularly some of the donor countries, to pursue anti-smuggling policies under the guise of trafficking prevention—using trafficking as a kind of “Trojan horse” for tougher controls on migration. This can be clearly seen, for example, in the Asian Ministerial Regional Conferences on People Smuggling, Trafficking in Persons and Related Transnational Crime, and even in the UN Trafficking Protocol itself. The first of the above conferences, in 2002, was attended by forty-three ministers from thirty-seven countries of the Asia-Pacific Region.

Two high-level meetings to date have seen an almost complete conflation of trafficking and smuggling, symbolized by the coining of the term

“victims of smuggling.” The follow-up work to the conference continues to highlight the supposed importance of tougher border controls to reducing trafficking. The main difficulty with this approach is that it is demonstrably incorrect.

Empirical evidence indicates that moves to restrict the movement of people assist trafficking, rather than hinder it. This evidence comes from all parts of the world. Tougher controls on the US-Mexico border, for example, has diverted the flow of migrants away from established migra-

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tion routes to the most dangerous and least populated areas, such as the Arizona desert, or to more organized forms of smuggling. This has not only led to a rise in organized crime, but has resulted in a large increase in the number of deaths associated with crossing the border, reaching an average of almost one a day in 1999 (Harris 2002). The situation is similar in Europe; the death of 58 Chinese would-be immigrants en route from Belgium to the United Kingdom in 2000 is the most well-known, though not numerically the worst example of the tragedies that occur as people seek to find a better life. In the GMS, the situation and vulnerability of migrants likewise worsens whenever border controls are tightened. A recent “closure” of Thailand’s border with Myanmar, for example, did not stop people crossing the border but it became more dangerous and

potential migrants were forced into using more organized criminal groups. One of the consequences was that the cost for crossing the border increased from some 50,000 Kyats (US\$50) to over 100,000 (US\$100), doubling the level of potential debt faced by the migrant and therefore the time needed to pay this off (UNIAP 2003, [2]).

Tougher migration policies also impact on families. In Thailand, as elsewhere, during times of greater tolerance for migrant workers, families have been able to migrate together, reducing vulnerability on a whole range of fronts. However, crackdowns on migrants often lead to a host of vulnerable situations, such as separation of families, with parents being deported to their home countries while children remain in the country of destination, or children being unable to access education and taking highly exploitative jobs in the shadow labor market. Ironically, evidence from the GMS and elsewhere indicates that *tougher border controls, rather than encouraging migrants to remain in the country of origin, tend to encourage migrants to remain in the country of destination*. Once the border crossing has been undertaken, it is often too risky and/or too expensive to make a visit home.

A further example is on the Chinese side of the China-Vietnam border, where conflation of smuggling and trafficking has led to indiscriminant deportations of Vietnamese women as undocumented migrants, regardless of their personal circumstances, in the name of anti-trafficking interventions. In many cases, these circumstances involve consensual marriage to a local man and a family. As well as separation from the husband, deportation (whether from forced or consensual marriage) inevitably involves separation from the children, who are not recognized as Vietnamese citizens under Vietnamese law.

Other, more specific forms of movement restriction have been attempted as a response to trafficking. One such policy, attempted in several countries in Asia, is to restrict the movement of young women. Again this serves primarily to push already vulnerable young women into more dangerous forms of movement. It is also a further discrimination against women, who are often already heavily discriminated against in migration policy.

Most legal migration channels are strongly biased toward work that is traditionally done by men, while two very common areas of migration for women, domestic and entertainment work, have very little protection under labor laws. Another approach is to restrict movement from the village by imposing sanctions such as fines. However, as Ginzburg (2002) notes, the relatively heavy fine in some communities in Lao PDR sends mixed messages. On the one hand, it says, “what you are doing is wrong,” while on the other, “it is easy to make money across the border.”

Added to evidence that tighter border controls exacerbate trafficking, there is also evidence that the converse holds true, that liberalized border controls can have an opposite effect. In the European Union, new visa-free entry enjoyed by women from EU-candidate countries (Hungary, Poland, Czech Republic, Slovenia) has reduced the level of exploitation of those in the sex trade to similar levels to local women (Davies 2003). Women from outside this region (notably Albania, Romania, and Moldova) are still subject to much worse degrees of exploitation. As noted above, it is also risky and expensive for the latter group to go home and those with freedom of movement are actually spending less time in the destination countries than those without it (Davies 2003).

Although the existence of legal migration channels in itself does not preclude trafficking, the need for many migrants, and asylum-seekers, to resort to irregular forms of movement greatly increases their vulnerability. Current migration policies have created an underclass of people with little or no access to basic rights, and therefore limited access to protection.

With regard to trafficking, it is the *vulnerability of migrants that is important, not the vulnerability of people to migrate*. While governments may have other justifications for border-control activities, anti-trafficking funds should clearly not be directed into this area.

PREVENTION, VULNERABILITY REDUCTION, AND THE ASSIGNMENT OF RESPONSIBILITY

While it should be clear that tougher migration policies contribute to the existence of trafficking rather than its prevention, and thus have no place in anti-trafficking programs, there clearly remains a role for poverty-alleviation and

awareness-raising activities. However, neither basic analysis nor available evidence suggests that these are more than a partial solution. Even when these programs work in themselves, increasing incomes and opportunities in villages, and through this reducing the vulnerability of individual communities, this does not mean that we are reducing trafficking in absolute terms. Recruiters are not passive agents—they will target the most vulnerable communities, and the most vulnerable within communities—children from broken homes are known to be at greater risk, for example, but so are children from larger fami-

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lies (Aye 2002). Again there is a push-down pop-up effect. The supply pool is huge, with more than half the world's population earning under US\$2 a day, less than the earnings of an average European cow under the current system of massive agricultural subsidies. We may have reduced vulnerability in a particular community but it does not necessarily follow that we have prevented trafficking.

On the surface, the distinction between the terms *prevention* and *vulnerability reduction* may seem like a question of semantics. However, there is more to it than that. The current use of the term prevention generally assigns responsibility for dealing with gross violations of persons to places hundreds or thousands of miles from where these violations are taking place.

It thus tends to imply that the five-year-old Khmer child being forced to eat the flowers he cannot sell on the streets of Bangkok is primarily the responsibility of Cambodia; that Thailand is to blame for the young Thai woman suffocating on her own vomit in an Australian detention center after years of forced prostitution; that Vietnam is responsible for the young Vietnamese girls and boys forced into the sex trade in Cambodia, for use by both local and foreign child sex offenders.

The assigning of responsibility for trafficking in this way is reflected in, as an example, the US State Department's annual "Trafficking in Persons (TIP) Report." This report divides countries into three tiers according to their efforts to comply with minimum standards for the elimination of trafficking. Tier One is the highest, denoting full compliance, while Tier Three is the lowest, and those

countries in Tier Three face sanctions. In the 2002 TIP report, there were eighteen countries in Tier One, seventeen of which are destination countries, with Colombia the only sending country assigned to this tier. Several of these Tier One countries have few or no services for trafficked persons.

Such an implicit apportioning of responsibilities perhaps helps to explain the overemphasis on the movement aspects of the trafficking process, taking the focus off the gross exploitations of people that are often taking place with impunity. The implication that trafficking can be

“prevented” at its source also tends to take the focus off what governments really need to do to disrupt the economics of the trafficking business—much of which must take place at the point of destination. While countries develop elaborate anti-trafficking plans, attention is diverted from core issues, such as increasing protection and access to justice for vulnerable groups and appropriate targeting of law enforcement to remove the impunity of those who benefit most, coupled with and complemented by measures to reduce community tolerance for the abuses which currently persist.

Such a construction also takes the focus off the highly restrictive migration policies operated by most destination countries. While there is much evidence that bringing migration policies more closely into line with

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labor market realities would be the single greatest step a country could take against trafficking, this is generally lacking from most anti-trafficking strategies. Extraordinarily, despite the potential serious implications of the US TIP report, in terms of possible sanctions for countries that do not match up to certain minimum standards, a realistic migration regime is not even one of the criteria.

It is worth noting that, within the broad field of international development, this apportioning of responsibility is not confined to trafficking.

Pupavac (forthcoming) has noted a similar tendency in the area of human rights more broadly, noting that:

in effect, it is the weaker, poorer societies of the South, which are held morally

culpable for the harsher conditions prevailing there, and whose populations become objects of corrective interventions by the international community of the more powerful prosperous Northern states... While the international human rights regime's imperative to secure the good is undermining universal equal rights, it is not securing global justice. The prospects of securing justice globally are effectively deferred, since the international human rights model fails to address the inequalities between the North and actually reinforces them.

Recently we have also seen poverty reduction strategies becoming popular as part of the donor countries' approach to development assistance.

Again, however, such strategies tend to focus on conditions within lower-income countries. Ignored are key global issues such as the removal of agricultural subsidies and other trade barriers, and more realistic and fairer migration policies, each of which would have much greater im-

[pact. The next section discusses the migration issue in more detail be-](#)

cause of its direct impact on trafficking.

MIGRATION AND DEVELOPMENT

Harris (2002) notes that "seeking to end migration has nowhere been successful, but it is least successful for open economies with a strong demand for unskilled workers and few on offer." The International Labor Organization goes further, asserting that:

tighter border controls have not halted migratory flows nor have they had projected results in reducing the number of workers crossing borders.

Instead they have put more pressure on those who migrate. With few options available for legal migration in the face of strong pull-push pressures, irregular migration channels become the only alternative, and one which presents lucrative "business" opportunities for helping people

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arrange travel, obtain documents, cross borders and find jobs in destination

countries. (Taran and Geronimi 2002)

In other words, as with any market with sufficient supply and demand (other examples include drugs, alcohol, and commercial sex), the record of direct control through law enforcement is not convincing. Rather, current controls provide ready-made conditions for criminal activity and serve to greatly increase the vulnerabilities inherent in the migration process.

Like all forms of organized crime, trafficking is a business arising out of a response to market forces. If we really wish to prevent this crime, we need to look at how to undermine this market. This would mean developing an international migration system which facilitates the movement of labor to places of legitimate demand, crowding out many of the opportunities for smuggling and trafficking and providing protection for the rights of migrants. And yet, while most developed countries extol the virtues of unfettered movement of capital, technology, and information across the globe, very different rhetoric and policies are used when it comes to the freedom of labor movement. The irony about this is that more liberalized migration policies benefit not only sending countries, but also receiving ones. In the GMS, for example, the ongoing prosperity of Thailand in particular remains heavily dependent on continued cheap labor from neighboring countries. As noted above, one arguably conservative estimate in 2002 suggested that at least 1.5

million foreign workers were required. Demographic factors will also continue to lead to spatial differences in demand and supply. Developed countries, with ageing populations, will require more and more migrant labor, while differing sex ratios between neighboring countries (there are significantly more women than men in Cambodia and Vietnam, the opposite is true in China) will continue to encourage an increase in cross-border marriages. The increasing number of women desiring to maintain careers outside of the home will continue to increase the demand for foreign domestic labor.

A more liberalized migration regime would also benefit the sending countries in the forms of remittances and more frequent circulation of labor, with the accompanying opportunities for skills-sharing. Rubens Ricupero, Secretary-General of the United Nations Conference on Trade and Development (UNCTAD), has called migration “the missing link between globalization and development,” (see IOM 2001) while in 1992

the United Nations Development Programme (UNDP) estimated that the potential benefits for a more liberalized migration regime could be in the order of \$250 billion a year, an amount which dwarfs current aid flows (UNDP 1992).

Migration from areas of lesser to greater opportunity has in fact long been recognized as an important part of development, even a spe-

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cific phase of the development process. In fact, the World Bank's first report on China in the early 1980s highly criticized the Government of China's tight controls on the internal movements of its people as locking them into poverty (Harris 2002). Such migration patterns will continue to play an important part in economic development and poverty reduction, but in an increasingly globalized world, will naturally extend beyond national borders.

While a more appropriate and equitable migration system is a long-term goal, there is growing acknowledgment that more could be done in the shorter term about providing legal, well-monitored alternatives to irregular migration. This is something that governments within the GMS are starting to work on, with support from agencies such as the International Organization for Migration (IOM), ILO-IPEC, and the UN

Inter-Agency Project on Human Trafficking (UNIAP). Recent labor migration agreements between the Government of Thailand and the Governments of Cambodia, Lao PDR, and Myanmar, respectively, present an important step along the way, laying the groundwork for increased recognition of the rights of migrants.

PREVENTION AT THE POINT OF DESTINATION

A more realistic and equitable migration regime is a central component of an effective response to trafficking. Apart from the benefits to both sending and receiving countries, this will greatly facilitate the protection of the rights of migrants, allowing for migrants to organize supportive networks and obtain access to legal recourse and justice without automatic repatriation/deportation. There is also evidence that a spin-off of a more liberal regime would be a reduction in the pressure on the refugee system as many refugees are highly

skilled and would have the opportunity to help themselves by finding their own employment, by-passing the cumbersome asylum-seeking procedures (see Hayter 2000).

At the same time, as amply demonstrated by the experiences of women and men from South Asia in the Middle East, regularized and legal migration channels in themselves do not necessarily provide a guarantee against cross-border trafficking. Nor is migration policy a significant factor in internal trafficking, which is prevalent in many countries in the GMS.

Thus, while the undocumented nature of much migration lies at the heart of much migrant vulnerability, it is not the sole cause of that vulnerability. Further, it does not account for why people take advantage of that vulnerability to place and maintain others in situations of gross exploitation. Reducing this exploitation means moving the focus of prevention efforts to places where the exploitation is occurring—the

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destination communities. There are few efforts in this direction at the present time. Much more could be done in terms of improved law enforcement and increased access to rights for those trafficked, two concepts which are often seen as conflicting but are inherently complementary and are discussed below under the heading of criminal justice. More also needs to be done in working with destination communities.

Criminal Justice Responses

As noted previously, trafficking is a business, with the activities of traffickers motivated primarily by profit. Law enforcement therefore has a key role to play in changing the economics of this business by increasing the risks, in particular removing the impunity currently enjoyed by those at the end of the trafficking chain, and reducing the benefits. Yet in most countries in the GMS, the law enforcement response to date has been limited, and has focused on the irregular migration aspects of the trafficking process. This is understandable. While “supply-side” interventions such as poverty reduction and awareness raising tend to be relatively straightforward in their planning and execution, measures aimed at making trafficking a less profitable and more risky undertaking for all

beneficiaries tend to represent the “hard edge” of the response. Human trafficking must compete for attention with a range of other priorities, noticeably drug trafficking, which generally has a higher profile and higher rewards for those on the front line of law enforcement. Human trafficking is also by nature a particularly difficult crime to investigate.

In addition, there is the potential (and, in some cases, actual) involvement of law enforcement officials in this crime. Such involvement can be indirect (e.g., through corrupt practices such as overlooking trafficking cases in exchange for payment) or direct (e.g., ownership of, or involvement in, businesses into which people are trafficked). Growing inequalities, discussed elsewhere in this paper, help to fuel growing corruption, whether it be a poorly paid low-level policeman who is simply trying to improve the life of his family, or a high-level official who sees the “opportunity cost” of being honest go up exponentially as criminal groups are in a position to offer him larger and larger amounts of money.

These constraints are not an excuse for inaction. Much more could be done, particularly in countries of destination, where the worst abuses generally take place, and where law enforcement tends to be stronger.

However, as efforts to target the movement of people have been shown to facilitate crime and exploitation rather than to reduce it, a change in emphasis is needed. Law enforcement efforts need to move away from targeting movers to targeting exploiters. Obviously there is an overlap between the two. Some brokers or people-movers are highly complicit in the exploitation of those they are moving and need to be brought to

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justice. There is also a general need for people-movers to take more responsibility for the end outcome of the migration process. Distinctions need to be made between those who are complicit in trafficking, those who are ignorant or uncaring as to the end fate of those they are helping to move, and those who are effectively providing a service by providing access to genuine, safe employment opportunities.

Much more impact would, however, be achieved by focusing on those who own and manage the establishments in which people are abused, exploited, and kept

in slave-like conditions. This needs to be done in a way that undermines the profitability of the business. In this regard, more emphasis might be placed on the area of asset confiscation. While obviously in cases of violence, and with regard to less

“business-like” areas, such as domestic work, a prison term might also be appropriate, asset confiscation has three advantages. First, unlike detention, it requires a one-off action—in most countries it is more difficult for an influential person to recover an asset than to find their way out of prison. Second, the confiscation of assets is likely to provide more of a disincentive to other owners. Given that his purpose is to make money, the possibility of losing the entire business is likely to seem more immediate than the possibility of going to jail. Both of these directly undermine the “perfect business” of trafficking. Third, the assets used in confiscation can be used for anti-trafficking programs, including compensation of trafficked persons.

Hand-in-hand with better targeted and more effective criminal sanctions goes human rights. Criminals cannot adequately be brought to justice unless those affected have appropriate ways in which to bring their abuses to notice and have them acted upon. Also, effective law enforcement responses are currently heavily witness-dependent in all but a very small number of countries around the world. Sensitive, appropriate handling of witnesses is crucial to maximizing the usefulness of victim testimony and thereby to ensuring successful prosecutions. Yet few countries provide mechanisms for trafficked persons to help themselves in any way.

Even where this is possible, the end outcome of such an action will inevitably be that the person concerned, whether or not they are acknowledged as trafficked, ends up having to return to their country of origin.

Services for trafficked persons in Thailand, for example, compare favorably throughout the world. The Royal Thai Government has a generous interpretation of what constitutes a trafficked person, once their case is identified, and provides a range of services at special welfare homes. However, even in Thailand there are few ways for trafficked persons to come to notice. Most do so after being arrested as an undocumented migrant and placed in an international detention center.

Once there, if they are fortunate, their debriefing will identify them as a

trafficked person and they will be removed to a welfare home. They are

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not sent home until their families have been traced and an assessment carried out as to the likelihood of a successful integration back into their communities.

While this process is generally referred to as repatriation, it is worth noting that, like in almost all other countries, it is only voluntary if the person actually wants to go. Trafficked persons are repatriated whether they wish to be or not. This is not repatriation, but deportation. Many trafficked persons, like other expatriates, do not wish to return home, often for the same reasons they left in the first place. They simply wish to escape their immediate situation.

The other main form of identification of trafficked persons is rescue from an entertainment establishment or brothel. Well-targeted raids, followed up by strong deterrent action against the owners and managers of the establishments, are an important intervention. In the current policy context, however, there is a problem that raids rescue people whether they want to be rescued or not. Few establishments consist solely of trafficked women and girls. Raids in Thailand have rescued migrant women working in a non-[forced situation](#).³ A line is drawn at eighteen—based on international conventions to which those affected, never having had a vote, are hardly party—and those under it are automatically identified as trafficked and go through the welfare channels.

Those over eighteen are generally charged, sometimes placed in prison (where they may be abused), and deported. While a strict upholding of the law, this is not exactly a humanitarian intervention.

Few methods currently exist which recognize the agency of trafficked persons or witnesses of this crime by providing avenues to bring these events to notice and seek redress. More mechanisms are required, such as hotlines with access to interpreters and linked to nationwide service networks to support trafficked persons. At the same time, it must be recognized that it is often difficult to separate the rights of trafficked persons from the rights of all migrants. A young foreign woman locked in a brothel is an undocumented migrant and often involved in an illegal trade, until such time as somebody in a position of authority decides that she has been trafficked, something that may or may not

occur. At the time she most needs to access her rights as a trafficked person, she has often not yet been classified as such. There needs to be wider recognition, in principle and in practice, that the illegal nature of a person's entry into a country does not take away their basic human rights, regardless of whether or not they have been trafficked.

Community Attitudes

Perhaps more fundamentally, as our understanding of the issue evolves, it is becoming clearer that, while it is disparity that fuels much of the movement involved, it is the pervasiveness of racism, linked with gender

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and class distinctions, which is providing the underlying conditions for the gross exploitation of human beings which is trafficking. As Gallagher notes, "trafficking affects the least powerful groups within national societies including women, children, migrants, and stateless persons. Social practices and community attitudes towards these groups reinforce and extend their vulnerability to being trafficked and also serve to shape responses to this crime" (Gallagher 2002). Often the issue is marked with hypocrisy. Politicians and officials complain about the influx of foreigners while a foreign maid irons their shirts at home. Foreign development expatriates, most of whom share with undocumented migrants the desire to migrate in search of a better job and a more interesting life, express surprise that these migrants do not want to return home. Societal norms accept that good men have many sexual partners but good women do not, facilitating the development of the sex trade, and then stigmatizing and discriminating against those who work in this trade, denying them basic rights such as security, health coverage, and time off. Western governments bluster about the treatment of children in developing countries while doing little about, and sometimes even protecting, their nationals involved in the sexual exploitation of these children. At other times, discriminatory attitudes appear based more on ignorance, such as when the public erroneously complains that migrants are taking local jobs or when they fail to understand the role that migrants are playing in their own prosperity. Traditional beliefs, such as those concerning a child's responsibility to his/her parents, also play a role, as of course do those around gender, attitudes which are well documented elsewhere

(see ARCPPT 2003, [1]).

Much more attention is needed to the attitudes that enable people to distance themselves from others in a way that allows them to behave in such an exploitative manner, and to the systems that reinforce this.

Yet, while many resources are put into community campaigns to raise awareness of the risks of migration, there are few examples of campaigns tackling prejudice and discrimination at places of destination.

Reducing discrimination based on sex, ethnicity, age, and class, and the interrelationship between these, is obviously a long-term issue but one that should be near the forefront of any response.

As an example of what can be done working with destination communities, one small local NGO in Cambodia is working with local authorities and restaurant owners to reduce trafficking by monitoring conditions in each of the entertainment venues in the province. To complement these efforts, the NGO has engaged the wider community, developing a network of motorbike-taxi drivers, boat paddlers, and

“reliable neighbors” to report incidents relating to trafficking and sexual exploitation. This has brought some small but notable successes and

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suggests possibilities for larger such interventions. The Cambodian Ministry of Women’s and Veterans’ Affairs is also working on campaigns to address community attitudes regarding the treatment of children and the abuse of women in the sex trade. These are obviously long-term measures but would ultimately address the heart of much of the exploitation that surrounds trafficking.

CONCLUSION

It is generally acknowledged that the many anti-trafficking activities in the Greater Mekong Sub-region have failed to make a noticeable impact on the problem to date. While it is still relatively early in the response, activities would be greatly assisted by more clarity over both the underlying causes of the issue

and the efficacy of various responses. In particular, the current construction of prevention is not only empirically inaccurate, but enables destination countries to gloss over the lack of an authentic response to human-rights violations happening within their borders, while blaming countries of origin for the rational desire of their citizens to improve their lives.

The recategorization of many of the current prevention activities under the rubric of vulnerability reduction would make a significant difference to the way this issue is perceived. This needs to be accompanied by a general acknowledgment that increased border controls, per se, do not belong in either of these categories; that migration is an important and legitimate poverty/disparity reduction strategy, and that more realistic and fairer migration policies are central to a more effective local, national, and global response to trafficking.

In terms of specific action, priorities in the GMS, as elsewhere, are for the institutional and political changes needed to reduce the opportunities for trafficking to flourish. These include bringing immigration policies into line with labor market realities, creating channels for safe migration, and improving the terms and conditions of employment, particularly in the most vulnerable sectors of domestic labor, factory work, and entertainment.

In addition, law enforcement efforts must be refocused toward undermining the profitability of the business by targeting those at the point of exploitation, recognizing the central role that trafficked persons play in assisting with this process. Avenues must be created for those trafficked to access justice. And ultimately there must continue to be a challenging of attitudes about race, class, and gender that provide the enabling environment for this crime throughout the world.

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NOTES

[1.](#) The term “push-down pop-up” actually comes from drug trafficking, although it is more commonly known as the “balloon effect.” Its lack of acknowledgement by decision-makers in this area has helped lead to policies which have had disastrous effects on the lives of some of the most vulnerable communities in the world, including in some instances an increase in trafficking

(Feingold 1996). It is essential that the same mistakes are not made in the response to human trafficking.

2. See Lertharoenchok 2001 on the impact of Thailand's citizenship policies on these groups.

3. Several documented examples of this exist in Thailand. See, for example, Empower 2003.

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Reflections by an Anti-trafficking

Activist

Lin Chew

A GLOBAL START: SOME TWENTY YEARS AGO

In 1982 I joined a Dutch women's group that was attached to a local development education center, concerned with "Women and the Third World."

This was a way, I thought, to combine my own personal situation as a woman and migrant in the Netherlands with concern for the situation of women in my home region, Southeast Asia. The issue, which at that time offered an avenue for concrete action, was “prostitution tourism.” Women’s organizations, development NGOs, and various action groups, especially in the regions—for example, Southeast Asia—

where mass tourism was becoming the alternative paradigm for development, were awakening to the fact that not only the natural resources but also the human resources, namely the young women, of their countries were being traded for foreign exchange.

In the Netherlands there had been sporadic actions and publicity against tour organizations offering sex tours as package deals, sometimes with a “bride” included in the price. Travel brochures and advertisements which offered “exotic” women from Thailand and the Philippines as subservient and eager to please “rich white males” enraged us—by now a growing group of Dutch and Asian women. This was imperialism, sexism, and racism rolled into one; the issue symbolized 65

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Lin Chew

for us the total exploitation of womankind—sexual, economic, and cultural. When news of an organized sex tour to Thailand leaked out, we organized a demonstration at the airport when the tour was to leave.

Coincidentally, the then-Coordinator of the Foundation for Women (a non-governmental organization based in Bangkok), Siriporn Skrobanek, was studying in the Netherlands. Thus, immediate contact could be established and a demonstration was ready to meet the tour when it arrived at Bangkok Airport. This action launched the campaign against prostitution tourism and trafficking in women in the Netherlands and in Thailand simultaneously. In the Netherlands the action was a political success. The issue was quickly picked up, not only by a wide range of women’s, developmental, and solidarity groups, but also by state policy-makers.

In 1982, preparatory to the formulation of state policy guidelines to address the issue of sexual violence, the then-Ministry for Social Affairs in the Netherlands

organized a study conference to gather the opinions of women's organizations across the board. Violence in prostitution was one of the areas under scrutiny. As representative of my group, I participated in the conference workshop on prostitution, and succeeded in pushing through a demand for an official investigation into the phenomenon of what was perceived to be the reverse side of prostitution tourism: the trafficking of women into the Netherlands for prostitution.

In 1983, the "Global Workshop to Organize against Traffic in Women" was held in Rotterdam.[1 This was a significant point—the be-](#)

ginning of the international anti-trafficking activities. It was also significant for me, being quite new in this field, and as I greedily and actively participated, I was unaware of the tensions that were already underlying the whole organization of the workshop, namely, the tension between pro-prostitutes' rights advocates and some of the organizers of

[the workshop.](#)[2](#) At that workshop, the various manifestations of violations of women's human rights were identified and discussed, including the "trafficking" in women for work as domestics, as au pairs, as brides, and for prostitution; the focus, however, was on women from developing countries being trafficked into prostitution. I came away convinced that I was not against the women who worked as prostitutes, but that the patriarchal institution of prostitution should be dismantled.

The connection with "trafficking" was still tenuous and unclarified, but I took that in good faith—we would research, investigate, and expose how it all worked, starting in the Netherlands.

But soon I was to learn, through direct and regular contact with women in prostitution, that it was not possible to maintain a distinction between the "workers" and their "profession," and at the same time to maintain an unconditional attitude of personal acceptance and respect.

It also became clear to me, through many long hours of reflection and discussions with colleagues as well as women in prostitution, that the only way to break the stigma and marginalization of prostitutes was to

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accept the work that they do as exactly that—a form of work, with its own specificities of risks and benefits, but no more or no less special than other forms of work. Furthermore, with deeper understanding of the workings of the “patriarchal system” within social and personal relationships came the understanding that prostitution is not the only “patriarchal institution” that should be dismantled if at all possible. The specific fundamental character of the relationship between prostitute and customer—the rendering of sexual service in return for cash payment—also underlies any relationship where the exchange of sexual favor for any form of benefit (status, security, friendship, etc.) takes place.

And if one is honest, one has to admit that this exchange takes place, unspoken and camouflaged or open and blatant, in all forms of relationships, and more systematically than we would like to acknowledge. The

“institution of patriarchy,” therefore, is insidiously integrated into more social and personal relationships than just prostitution. However, only women in prostitution are being subjected to such extreme stigmatization and marginalization as the arch-collaborators with “patriarchy.”

The personal struggle for me was to overcome the mainstream moral hypocrisy into which I had been socialized, and to understand prostitution as one of the institutions within our contemporary patriarchal, socioeconomic system, next to, for example, marriage.

ANTI-TRAFFICKING ACTIVISM IN EUROPE

In 1985, the report of the “Investigation into the nature, global scale and channels through which women are trafficked into the Netherlands,”

commissioned by the Ministry for Social Affairs, as mentioned earlier, was published. The researchers could not come up with very concrete statistics to indicate the scale on which trafficking into the Netherlands was taking place, because there were no records in police files, and the issue had not been systematically addressed until then. Nevertheless they were quite convinced of the reprehensible nature of trafficking in women. The report concluded thus:

trafficking in women is definitely not a marginal phenomenon; . . . it transpires in a clearly criminal sphere, whereby deception, coercion and violence are used to transport women to the Netherlands, and to bring them into prostitution and

keep them in prostitution. The victim is in a situation of exploitation, in *violation of all basic human rights and of the right*

[to sexual liberty, physical and emotional integrity . . . 3](#)

This report signified important political recognition of the seriousness of the issue and opened the way to obtaining government support for the first initiative to address this issue in a systematic way. The Foundation

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Against Trafficking in Women (STV) was officially formalized and funded by the then-Directorate for Coordination of Emancipation within the Ministry for Welfare and Work Opportunities in 1987. At that time trafficking in women and minors was simply defined as unlawful in the Dutch Penal Code (Art. 250 ter), punishable by a prison sentence of not more than 5 years (in 1993 this was raised to 6 years). But although this legislation had been in existence for nearly a century, trafficking was not precisely defined and there were no guidelines as to what the punishable elements were; thus, there were very few cases listed under

“trafficking in women” in police and court files. In terms of strategy, litigation was one area where concrete action could be taken; legal proceedings against traffickers would serve three purposes: first, the victim could obtain some sense of redress if the trafficker was convicted; second, precedents of cases would help in clarifying the issues involved in trafficking and lead to more effective detection and prosecution of trafficking; third, the publicity around prosecutions would keep the issue in the public awareness and on the political agenda. For this, women who felt they had been victimized had to press charges. Most women we talked to were afraid of reprisals from the traffickers, and absolutely afraid that news of their predicament would reach their families back home. At the same time foreign women found working in prostitution by the Aliens Police were simply being sent back to their countries without any investigations being made into how they had gotten into the business in the first place. Needless to say, they did not even get time to recover, much less to consider pressing charges.

The first campaigns undertaken by STV—in 1987 and 1988—were thus aimed at refining the instruments for addressing trafficking in women at the level of

legislation and litigation. The first advocacy action was to obtain a ruling under the Aliens Laws to prevent migrant women who may have become victims of trafficking from being deported before investigations have been done. As a result, in August 1988, a special ruling was inserted in the Dutch Aliens Law. It was then called “paragraph B22” but in January 1994, with the passing of a new Aliens Law, this was changed to

“paragraph 1317.” This paragraph stated that if there was at the least suspicion of trafficking, a woman should be allowed time to consider pressing charges. When she had done so, she should be allowed to stay in the Netherlands until the whole juridical procedure had been completed. In 1993 this provision was extended to witnesses who were willing to testify for the prosecution in cases of trafficking.

The second necessary action was to sharpen the juridical definition of “trafficking,” in order to facilitate prosecution of traffickers. In 1989

the Attorney-General’s office formulated a new definition which stated that a person is guilty of *traffic in persons*: “who induces another into prostitution by violence or an act of violence or by threatening violence

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or an act of violence, or by using his ascendancy ensuing from an actual relationship or by misrepresentation, or who undertakes any action which he or she knows or could reasonably suspect, may bring the other

[into prostitution.”⁴ This definition introduced the element of the “de-](#)

pendency” of the victim-survivor as a reasonable basis to presume that trafficking has taken place.

The success of these campaigns was due to the fact that two women—from Indonesia and the Philippines—who had been trafficked into prostitution in the Netherlands bravely filed charges and persisted, in the face of slanderous character attacks and intimidation from the traffickers and their cronies. Their cases were exemplary: one illustrated the difficulties that victims of trafficking faced if they were to be sent home immediately, the other showed the reluctance of the juridical authorities to prosecute trafficking and the difficulties of successful litigation based on the then-inadequate definition of trafficking. They

were prepared to speak before parliamentary committees, and to face the media, albeit anonymously. The publicity and political value of these cases was crucial for the first successes achieved in the field of government policies.

The 1993 extension of the “1322” (now “1317”) provision to include witnesses was obtained after a successful lobby campaign to prevent a South American prostitute who had reported a case of trafficking from being evicted. She had gone to the police when she could not stand seeing her Polish colleague being physically assaulted and coerced, when she obviously was not happy working. In return she was held in the lock-up as an illegal alien!

INTERNATIONAL ADVOCACY: WOMEN’S RIGHTS ARE HUMAN RIGHTS

In Europe, the collapse of the Iron Curtain at the end of the 1980s released a stream of women—young and old, college graduates and rural emigrants—traveling westward, looking for that lucky strike, and often falling prey to the parallel stream of job and marriage agencies and brokers who offered their services to the uninitiated migrants, to circumvent the obstacles and complications of immigration laws and travel hazards.

Meanwhile, the Foundation For Women (FFW) in Bangkok, under the leadership of Siriporn Skrobanek, was also developing its anti-trafficking activities, which included research, legal advocacy in Thailand, and support of women who were pursuing prosecution cases, in collaboration with organizations in the countries where trafficking prosecutions were being initiated. By then the campaign in Thailand had expanded, and simultaneously, a network of organizations who were in some way addressing “trafficking” was growing in other countries in

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Asia. FFW was becoming the center of anti-trafficking activity, and it logically became the “host” of the Global Alliance Against Traffic in Women when it was formed in 1994.

The international advocacy campaign started with preparations for and participation in the World Conference on Human Rights in Vienna, June 1993. I

participated in the Global Tribunal on Women's Human Rights and read out a testimony on trafficking, describing the (anonymous) case of one of the clients of STV. The event was part of the international women's campaign for the recognition of women's rights as human rights. The strategy was to present concrete cases—many at firsthand—of different forms of violence against women and combine them with analyses based on the relevant human rights standards in order to get recognition that violence against women is a violation of human rights. It was tremendously successful! Trafficking was specifically mentioned. In the concluding statement, the Vienna Declaration and Program of Action states:

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and *international trafficking* are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international co-operation in such fields as economic and social development, education, safe maternity and health

[care and social support.5](#)

The inclusion of gender violence (including trafficking in women) on the human rights agenda was a political victory. It was a recognition that the subordinate position of women is construed and maintained by patriarchal interests, ideologies, and institutions, and therefore could be broken down. Strategically, nation-states could now be held account-able for their efforts, or lack of efforts, to suppress gender violence.

At the end of 1993, STV and the GAATW started to participate in the preparatory events leading up to the Fourth World Conference on Women as strategic lobbying moments. Participation in these activities helped to expand the international network, identifying partners working from the same principles of respect for human rights in order to form a strong lobby for pro-rights measures to prevent and combat trafficking.

GAATW WAS OFFICIALLY LAUNCHED

The Global Alliance Against Traffic in Women was officially launched in October 1994, in Chiangmai, Thailand. This happened during an International Workshop at Chiangmai University, attended by 75 women activ-

ists, social workers, researchers, policy-makers, jurists, and civil servants, coming from 22 countries and representing some 40 organizations. Significantly, the workshop concluded that national governments in both sending and receiving countries played a significant role in exacerbating the situation by (a) promoting “migrant labor export” without any regulations or supervision to protect the rights and welfare of the workers; (b) neglecting to secure the rights and protection particularly of women migrants in their respective states, thus rendering them dependent on “third parties” and middle-men; and (c) denying women migrants opportunities to work in the formal, regulated sectors by upholding repressive immigration and migrant labor laws.

GAATW now moved more and more toward a broader concept of trafficking than only for prostitution and started to advocate a *pro-rights framework* to analyze and strategize against trafficking in women. Sharing in this vision, member organizations of the Alliance in different countries are engaged in victim support work, running crisis centers, and providing education and information work in prevention projects, as well as advocacy for women migrant workers’ and sex workers’ rights, and for reform of legislation and policies to better defend the rights of women. The International Secretariat in Bangkok evolved into a facilitating and training center—initiating and coordinating research, refining research methodologies, and organizing human rights training sessions. The research findings as well as the experiences gathered through direct assistance given to victims of trafficking were valuable as a reliable foundation for input into international advocacy campaigns.

An important strategic tool developed by GAATW is the Human Rights Standards for the Treatment of Trafficked Persons (HRS). This formulation of the rights of trafficked persons and the responsibilities of states to guarantee and protect these rights has proven extremely useful in lobbying and, as well as training support workers, human rights advocates, lawyers, etc., in illustrating the human rights content of GAATW strategies.

HUMAN RIGHTS ARE ALSO WOMEN’S RIGHTS: TRAFFICKING IN WOMEN

ON THE WOMEN’S AGENDA

Two positive developments just before the Beijing Women's Conference were the adoption of the Convention on the Elimination of Violence Against Women by the United Nations General Assembly in December 1993, and the appointment of a Special Rapporteur on Violence Against Women in April 1994, in whose mandate "forced prostitution and trafficking" was included as one of the issues she should investigate. The supreme "lobby moment" of the last decade was the UN World

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Conference on Women in Beijing. The successful lobby of STV and GAATW in Beijing is reflected in the relevant texts of the Platform for Action (Section I, par. 230(n) and Strategic Objective D.3, par. 130(a–d).

The positive elements in these paragraphs are that states are called upon to use human rights instruments, which give a better guarantee that measures based on these principles will be more respectful of the rights of the women concerned. There is recognition that there are other manifestations of trafficking in women than that in the sex industry (thus, there are more forms of exploitation than "sexual") and that "forced marriages" and "forced labor" are root factors which must be addressed in order to eliminate trafficking. Unfortunately, the Beijing+5 assessment did not show positive improvement in the status of women in the world, not to mention in the combat of trafficking in women.

Immediately after the Beijing Conference, STV and GAATW started to implement the International Report Project. Strategically, this report was initiated as a response to a request from the Special Rapporteur (SR), Ms. Radhika Coomaraswamy, for information about the global situation concerning trafficking. This gave the conclusions and recommendations a special "status," as well as made sure that the SR could not ignore the recommendations made in the report. The report was significant in that it provided the factual and moral basis for reexamination of old concepts and standards in order to evolve new ones which are more relevant to modern realities. Most importantly, the report offered a working definition of "trafficking" which distinguished the process of recruitment and transportation under coercion from the conditions encountered at the actual site of work. This process of recruitment and transportation could, in principle, be for many purposes besides work in the sex industry. This

definition presumed acceptance of the sex industry as legitimate work, while at the same time de-linking the concept of trafficking from prostitution. On the other hand, the concept of “trafficking”

became more entrenched in the migration paradigm. This was a breakthrough for advocates who were trying to get away from traditional anti-prostitution concepts and to develop more rights-based strategies which would address the exploitative conditions of work of migrant women.

In her report to the Commission on Human Rights (March 1997), the Special Rapporteur acknowledged the main conclusions of the report, reiterating that “prostitution is an income-generating activity.” She noted the main issues that needed to be resolved among and by NGOs. Important was the lack of consensus within the international community regarding the definition of “trafficking.” Ms. Coomaraswamy noted two basic controversies that arose from the historical definition of trafficking as “the trade in women for the purpose of prostitution.” One revolved around the scope of the definition and whether it included or excluded contemporary forms of trafficking for domestic work, marriage, and sweatshop labor.

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The second controversy arose from the existence of two main positions regarding prostitution—one, the abolitionist position which is based on the moral rejection of prostitution and defines prostitution per se as abuse and prostitutes as victims to be rescued and rehabilitated, was diametrically opposed to the position of those who view prostitution as work and wish to see it regulated as such. At the same time, the failure of the 1949 Convention on the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others—because of its ill-defined and broad terminology, weak enforcement mechanisms, and its abolitionist perspective—gave rise to the need to reformulate international standards which would be relevant to the modern reality, and which included a new definition of “trafficking” as well as principles to guide national and international action. These controversies have persisted, and were a great obstacle in the ongoing negotiations in Vienna in 1999–

2000 over the formulation of a protocol on trafficking to supplement the UN Convention Against Transnational [Organized Crime.6](#)

The Special Rapporteur also gave examples of State strategies that not only were ineffective in stopping exploitation of migrant women, but could actually harm women and increase their vulnerability to exploitation. For example, the Philippines and Bangladesh had both placed bans on women leaving to work as domestic workers in the Middle East, following reports of the bad treatment they received from employers, but this did not stop recruitment agencies from seeking and finding other channels, albeit illegal ones. This increased dependency of women on these agencies, and thus also the danger of exploitation and abuse by them.

In her second report on trafficking in women, presented to the Commission on Human Rights in April 2000, Coomaraswamy again cautioned states to abandon their “paternalistic” actions, and instead to develop strategies that truly respect and strengthen the human rights of trafficked persons. She offered a new rights-based definition of trafficking, which de-

[rived from the Human Rights Standards⁷ definition and unequivocally](#)

criticized the 1949 Convention for its inability to protect the rights of women.

She explicitly recommended that States and the international community utilize the Human Rights Standards. Also at this session, the newly appointed Special Rapporteur on the Rights of Migrants presented her first report, in which she promised to work closely with the Special Rapporteur on Violence Against Women on trafficking issues.

THE BEGINNING OF A NEW MILLENNIUM: THE NEW TRAFFICKING

PROTOCOL

In December 2000, the long-awaited new international instrument on trafficking in persons was promulgated, in the form of the Protocol to

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Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (henceforth called the Trafficking Protocol), as a supplement to the

United Nations Convention Against Transnational Organized Crime. The most important aspect of the protocol is its definition of “trafficking in persons,” which emphasizes the use of “*threat of or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or (the abuse of) a position of vulnerability, 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.*”⁸

The Trafficking Protocol is a big step forward in that it offers a comprehensive description of what constitutes the crime of trafficking, so that prosecution of the crime is facilitated, and states which have signed the protocol can use it as a basis to enact national legislation to combat trafficking. An important aspect of this definition is that it names

“forced labor” as one of the characteristics of the situation of “exploitation” from which domestic workers should be protected: “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”

According to the *Annotated Guide*, a national legislation enacted on the principles of the protocol must have as the core of its definition the criminalization of the intent to recruit, transport, receive, or harbor someone in a situation of forced labor, slavery, [or slavery-like practices.](#)⁹ It is

not necessary to include all the “means” listed in the protocol definition, since it is clear that no one can consent to forced labor or slavery, making the listing of the coercive means with regard to these situations superfluous. At the same time, although the protocol focuses on the

“transnational” nature of trafficking, a national legislation can also include internal cases of trafficking.

TRAFFICKING AND MIGRATION

The relation of trafficking to migration is that trafficking is a crime that occurs in the context of the movement of people—both within and across national borders. Exploitation and migration are, of course, not essentially linked, but we are here trying to address the forms of exploitation which take place when people are on the move, and in general, it is those who are not from the privileged class,

gender, or race who face the most obstacles when they attempt to exercise independently their freedom of movement. It is the dependence of aspirant migrants on others to facilitate their movement which renders them vulnerable to any eventual criminal intentions of those who offer work opportunities in foreign countries and organize all the travel requirements.

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The activities of recruitment, transportation, transfer, harboring, or receipt of persons do not constitute trafficking in themselves when they are carried out in a proper manner; that is, when the worker is fully informed about the nature and conditions of work for which she/

he is contracted and under concrete and negotiated contractual agreements as to payments and other obligations of both parties. These activities are punishable when they are carried out “with the intent of”

placing or keeping a person in an exploitative situation, characterized by “forced labor or services, slavery and slavery-like practices.”

TRAFFICKING, CRIME PREVENTION, AND HUMAN RIGHTS

Trafficking as it is now defined in the UN Trafficking Protocol is a crime, which has a concrete and unambiguous description, under which forced labor in the domestic work sector can be prosecuted. With the proper and efficiently implemented national investigatory instruments—both legislation and mechanisms—in place, it should be possible for a court of law to determine the nature and extent of the criminal violations committed against the complainant. In such cases, the trafficking laws in place should also ensure that the protective and supportive mechanisms recommended in the Trafficking Protocol are available and accessible to the trafficked person.

The fact that trafficking is formally integrated into the sphere of the combat of transnational organized crime does not mean that it has nothing more to do with human rights. Serious crimes which violate the physical or psychological integrity of persons, or their life-security, are ultimately violations of human rights, and every society must take every step within the legal system that is operable to combat these violations and protect everyone whose rights are thus violated. It is a recognized principle of international human rights law, reflected in Article 2.3

of the International Covenant on Civil and Political Rights and Articles 2

and 3 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), that States have a duty to protect the rights of individuals to exercise their human rights, investigate alleged violations of human rights, punish violators, and provide effective remedies to victims of human rights violations. Conversely, for their sense of justice done, victims of violations should be encouraged to demand redress and reparation or compensation, for which it is necessary that the relevant legal mechanism, including the relevant legislation, exists

[and is accessible.10](#)

The issue then becomes one of the professionalism and efficiency of the local criminal justice system and its willingness to act upon the complaints of migrant workers in any labor sector. Upon this hang their

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rights to redress and compensation, and to protection from further exploitation and abuse. Human rights advocacy demands that action should be taken to reform and improve the workings of the whole judicial system since the rights to due process, to redress and restitution, are basic to the enjoyment of all human rights. Outside the realm of crime prevention, trafficking remains a priority subject of concern of the office of the UN High Commissioner for Human Rights, where a special task force on trafficking is functional. This office has recently submitted “Recommended Principles and Guidelines on Human Rights and Human Trafficking” to the Economic and Social Council (E/2002/100).

AND, WHAT NEXT... ?

I would like to see anti-trafficking work develop toward more active pro-rights action and advocacy. Real “prevention” of violations of rights of migrant workers through real freedom of movement across internal as well as external borders; transparent, non-discriminatory, and non-exploitative practices regarding recruitment, transport, and acquiring jobs; and the prevention of forced labor in the sectors where migrant women work, starting with the recognition of migrants’ employment as work. This work, at the moment largely in the informal

economy, should be regulated under the state labor laws, taking into consideration the specificities of each sector, for example, domestic work in private homes or work in the sex industry.

One positive development is the recognition by the International Labour Organisation of the inherent link between trafficking and forced labor. In 1998, the ILO promulgated the Declaration on Fundamental Principles and Rights at Work, exhorting all members to renew their commitment to respect, promote, and realize the four fundamental principles and rights of workers; that is, freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation.

The first Global Report in the Follow-up to the ILO Declaration *Stopping Forced Labour*, issued in June 2001, focuses on the domestic work sector, explicitly linking domestic work, forced labor, and trafficking: there is a link between modern trafficking and modern forms of bondage through indebtedness, which makes trafficking a form of forced labor.

Forced labour as such has not really caught the world's attention. It takes different forms—and their common features might seem abstract at first

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glance. Yet forced or compulsory labor makes headlines almost daily in stories of trafficking in persons, imprisonment in sweatshops and the slavery-like conditions on some plantations and even in private

[homes.11](#)

The report specifically describes the forced labor situation of domestic workers:

Domestic work per se is of course not forced labour. But it can degenerate into forced labour when debt bondage or trafficking is involved—or when the worker is physically restrained from leaving the employer's home or has his or her identity papers withheld...When the domestic workers are international migrants, the problems are compounded further ... primarily in developing countries, most often girls and sometimes boys spend long hours toiling in private homes instead of attending school...most common in urban areas, with

children having been lured from poor rural areas. Even adult domestic workers are subject to the same fraudulent and coercive recruiting practices as those faced by rural workers, and themselves come from the countryside . . . Once on the job, domestic workers tend to work in isolation, creating ample opportunity for disregarding labour legislation, if it applies to them in the first place. Indeed, domestic workers suffer prejudice on account of their frequent exclusion from the coverage of labour legislation (in developed and developing countries alike) and the obstacles they face in exercising freedom of association.

This combination makes it all the more difficult for them to extract themselves from situations involving [forced or compulsory labour](#).¹²

I would like now to see the work that was started by the International Report Project proceed to the next stage: the integration of anti-trafficking policies and legislation into labor policies and legislation, as instruments to address conditions of forced labor and slavery-like practices. This means that the basic strategy should be to address the specificities of the sectors in which most women work; for example, the nature and physical state of the workplace, working hours, leave days, and payment of wages (scales and methods of payment), and to regulate them in such a way as to preclude conditions of forced labor. Such a strategy requires the establishment and monitoring of the channels for recourse when these conditions are violated (e.g., by clear national legislation based on the Protocol definition of trafficking for forced labor), either by specific agents and employers or as a result of discrimination against migrant workers on grounds of ethnicity or work sector. Ultimately, as in all labor issues, the workers must be enabled to organize both formally into trade unions and informally in their own communities, to demand and defend their rights.

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WHAT HAS CHANGED?

In general, there has definitely been an explosion of anti-trafficking activity, from all sectors and at all levels. When I started, 20 years ago, we had to introduce the subject of trafficking and explain every time what it meant, as best we could. Nowadays, at every meeting that has to do with women, violence, migration, development, or human rights, at least one or two groups mention that

they are working on trafficking, whatever they may mean by the term. It is still unclear to me whether this is because there has been a real increase in the phenomenon of trafficking itself, or that the consciousness of the activists and development agencies to the issue has increased, or that they have discovered that trafficking is a popular issue, especially with development funders.

I think that there has been an evolution in the public response to trafficking—from moralistic outrage at the physical (sexual) violation of women's bodies to a more "ethical" concern for the poor conditions of work, especially of migrant women. As more knowledge is gathered about the impact of gendered migration flows on women's lives and work, there is also the realization that in the worsening global economic and political climate for the advancement of any rights, let alone women's rights, one has to accept all the forms and strategies for survival as such, and to improve the basic conditions of work as much as possible.

There is, in general, more acceptance of prostitution as "sex work,"

as well as understanding that trafficking encompasses more than prostitution, although there is still some lack of clarity about the precise definition of trafficking, and how to go about getting legal and social redress for victims. Sex-worker rights and migrants' organizations now distinguish between the different anti-trafficking cohorts, and realize that there is no antagonistic contradiction between being "pro-rights" and "anti-violence,"

and that the two must inherently coexist as two sides of the same coin. For example, this is evident in the fact that migrant workers' organizations and networks are collaborating more and more with GAATW, even invit-ing them to make presentations on the situation of migrant sex workers.

This is a recognition of the validity of GAATW's basic thrust—the promotion and defense of the rights of migrant workers in all labor sectors as the most potent strategy in anti-trafficking activism. There is, thus, a growing collaboration between migrants' rights groups and GAATW on the basis of struggle to achieve basic human rights and eliminate violence.

As I write this, I am reminded that this is exactly how we started in the Netherlands. In the 1980s alliances were being forged between feminists and prostitutes. In 1985, the same year that the report on trafficking was published,

the Dutch prostitutes' organization, "Red Thread" (Rode Draad), and the feminist solidarity movement for prostitutes, "Pink Thread"

(Roze Draad), were launched, *and* the first meeting of the International Committee for Prostitutes' Rights was held in Amsterdam. Right from the

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beginning, the initiators of the prostitutes' rights movement and the anti-trafficking campaigners felt the tension between the two approaches. There was tacit acknowledgement of the legitimacy of each other's point of departure, and an intuitive conviction that the one did not exclude the other.

But, to keep the analogy of the "thread," the two strategies remained stretched away from each other at two ends of the same "thread"... of the movements, lives, and work of women.

At the Second International Prostitutes' Congress held in Brussels in October 1986, I represented the Foundation against Trafficking in Women, together with Nena, a woman from the Philippines, who had started the tortuous process of bringing her traffickers to justice. We wanted to emphasize that recognition of the right of a person to choose her work, including prostitution, must imply the collateral right of another to refuse that work; thus forced prostitution (which was how we initially defined trafficking) should also be a concern of prostitutes' rights organizations. We held strongly that "the right to say YES" implied "the right to say NO" and both rights must be equally defended and advanced.

The statement that Nena read out then, in 1986, placed the issue of trafficking within the context of migration:

We migrant women have left our countries and our families for various reasons: some, because we married foreign men, some to look for work to keep ourselves and our families. Leaving our countries in itself has been difficult, and in general we feel strange and lonely in a foreign country and isolated because we do not speak the language.

Our situation is complicated by the fact that as migrant women we are dependent on either our spouses or other friends or agencies to help us organize the necessary immigration papers. In almost every western country Third World women are denied independent working and resident permits. We are subject to

control in very discriminating manners at borders. This is especially severe for workers in the sex-industry.

Because of this, many of us have been cheated and deceived by (internationally) organized traffickers who either promise us jobs or marriage and then coerce us into work which we do not choose to do, or do not pay us justly for our work...

We are here today to bring to the attention of this conference that many migrant women are being coerced, under conditions of servitude and violence, to work in different branches of the sex-industry. Migrant women working voluntarily in prostitution are often under great control and suffer violence and are not free to determine how and where and when to work. Most of the money we earn is taken away from us...

This is still my basic conviction today. After more than twenty years of anti-trafficking activism, my commitment remains to the struggle to establish the basic human rights universally for every human being.

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The change I have undergone, through all the personal and working experiences and insights gained throughout the years is, I hope, the maturity and wisdom to understand and acknowledge the various ways that people, in any specific context, must negotiate and compromise because the conditions are not present for the exercise of absolute rights.

The work that must continue unabated is the identification and removal of the obstacles to the exercise of rights and freedoms within the community. This is a work that must be done in principle, by the people concerned themselves, for the concrete exercise of rights is in the very struggle to achieve or defend those rights.

NOTES

1. “International Feminism: Networking against Female Sexual Slavery.” Report of the Global Workshop to Organize Against Traffic in Women, Rotterdam, the Netherlands April 6–15, 1983. Edited by Kathleen Barry, Charlotte Bunch, and Shirley Castley.

2. Many of the participants of this Rotterdam workshop would later form the Coalition Against Trafficking in Women, an aggressively abolitionist group, which rejects any notion of women's agency in prostitution and advocates for the abolition of prostitution.

3. Ministry of Social Affairs. "Investigation into the nature, global scale and channels through which women are trafficked into the Netherlands." The Hague: Ministry of Social Affairs and Employment, 1985.

4. Since then, new legislation has been passed, decriminalizing prostitution for Dutch women and women from EC countries, and a parallel legislation on trafficking for prostitution, which absolutely forbids the employment of women from non-EU countries in prostitution. This in spite of persistent lobbying and arguments from STV and other supporters.

5. Vienna Declaration and Program of Action, as adopted by the World Conference on Human Rights on 25 June 1993. United Nations General Assembly. A/CONF.157/23, 12

July 1993, Paragraph 1/18. Emphasis added.

6. GAATW was fully engaged in this lobby effort, together with the Human Rights Caucus, an international group formed specially to influence this process. The Human Rights

[Standards \(see note 7\) was used as the basic lobby document to make clear to the delegates](#)

the importance of, again, a clear definition, and of integrating such standards into the Protocol mechanisms in order to guarantee respect for and defense of the rights of victims and witnesses.

7. See GAATW (Global Alliance Against Traffic in Women). *Human Rights Standards for the Treatment of Trafficked Persons*. Bangkok: GAATW, 1999.

8. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime. United Nations Assembly A/55/383, Article 3 (a).

[9.](#) Jordan, Ann. *The Annotated Guide to the Complete UN Trafficking Protocol*. Washington, DC: International Human Rights Law Group, 2001.

[10.](#) Haverman, Roelof, and Marjan Wijers. *Review of the Law on Trafficking in Persons in Ukraine*. Geneva: International Organization for Migration (IOM), 2001.

[11.](#) *Stopping Forced Labour*. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. International Labour Conference, 89th Session. Report 1 (B) Geneva: International Labor Office, para. 305.

[12.](#) Ibid., para. 83, 84, 85.

PART II

THE “PROBLEM” OF PROSTITUTION



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[5](#)

From Anti-trafficking to Social Discipline

Or, the Changing Role of “Women’s” NGOs

in Taiwan

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Gail Hershatter has noted that prostitution has not always dominated public discourse or attention, yet at certain critical moments it may suddenly become the center of social concern as it is taken as “a metaphor, a medium of articulation” in which various emerging social forces and social anxieties play out their displaced existence (Hershatter 1997). As such, prostitution, as a

recognizable “social problem,” may signify very different practices and populations and involve quite different ramifications as the social context changes. In the present paper, I would like to trace such a process of change through which the anti-trafficking discourse, understood in the Taiwanese context as the eradication of a specific form of underage prostitution since the 1980s, came to articulate a quite different set of anxieties and interests in Taiwan in its post-martial law era, as well as the process of how, as the anti-trafficking cause quickly lost its relevance in the fast changing social reality of Taiwan, it has now transformed itself into an intricate web of social discipline that also

[embodies “a vision of global governance.”¹](#)

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I

The mid-1980s were the last years of the notoriously repressive Taiwanese martial law, as well as the height of Taiwan’s struggling democrati-

[zation process, and it was within this delicately volatile political milieu²](#)

that “anti-trafficking,” as a moral and humanitarian imperative, got “in-

[cidentally” hooked into a human rights imperative³ and came to pro-](#)

vide a legitimate cause through which various social forces could rally for social demonstration. The central figure in the initial formation of the anti-trafficking cause was the politically militant Presbyterian Church of [Taiwan.⁴](#) Presbyterian relief workers serving the aboriginal tribes had noted the string of girls, 13 to 16 years of age, sold into city brothels by a bankrupt aborigine economy amidst a booming Taiwanese eco-

[nomic miracle.⁵ As the advocacy of children’s rights became the central](#)

[focus of international organizations in the mid-1980s,⁶ the Presbyterian](#)

Church in Taiwan saw an opportunity to link up the local with the international. Underage aboriginal girl prostitutes were thus for the first time featured prominently in a report on tourism and prostitution at the Asian Church Women's Convention held by the Presbyterian Church in [Taiwan in November of 1985.7](#)

Determined to stop the spread of this terrible sin among the disadvantaged ethnic groups, the Presbyterian Church set up the "Rainbow Project" the following year to advocate the rescue of aboriginal girls.

Presbyterian relief workers would conduct regular missionary visits to families in the aboriginal area and take note of missing daughters so as to provide information to the police and urge the latter to put out searches for the girls. They were often frustrated because many policemen were rumored to have taken bribes from the traffickers and were never enthusiastic about looking for the girls, not to mention bringing the known traffickers to justice. More troubling was the worry that selling underage daughters to the brothels no longer seemed to be taken very seriously by aborigine families, and many of the girls even willingly re-

[turned to the trade after being rescued.8 For the Christian workers of](#)

the Rainbow Project, this was a sign of the total collapse of moral values in the villages. To save "the future mothers" of the aboriginal peoples, the Rainbow Project began appealing to nascent Taiwanese NGO groups to join in and pressure the government into eradicating what was then

[termed "the child prostitution problem."9](#)

The proposal by the Presbyterian Rainbow Project met with warm

[support among NGO groups in the loose political opposition alliance.10](#)

Labor issue-oriented progressives saw a clear case of exploitation and oppression of aboriginal girls being forced to work in the brothels. Human rights groups, which had been treading cautiously to defend the rights of political dissidents, saw the issue of child prostitution as a fully

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justified and potent case to accelerate the discourse of universal human rights. Nascent “women’s” groups had been groping for ways to arouse public concern for issues such as divorce, single mothers, or domestic violence, but to little avail. These issues were noticeable only as marginal social problems, waiting for a feminist discourse to help them evolve

[into a movement for social transformation.](#)¹¹ The issue of helpless mi-

nority girls being sold into prostitution and living in a state of enslavement, on the other hand, provided a clear-cut case of gender oppression that could trigger the deepest fear and disgust of women and perhaps mobilize more of them into political participation in the public sphere.

Religious groups of other denominations or other faiths were also supportive of the cause to rescue poor, helpless girls and rid the society of this terrible disgrace. As protests and rallies were still deemed unlawful political gatherings under martial law, the groups gathered around the anti-trafficking cause to stage a small-scale march, titled “Face Up to Trafficking: Concern for the Child Prostitutes.” The march would highlight not only the plight of underage prostitutes, but also the evil doings of heartless traffickers, as well as the indifference of the police. The target of the march was the Gweilin Precinct of Taipei Metropolitan Police, which oversaw a specific red-light district notorious for harboring aborigine girl prostitutes.

The march, organized and headed by the Presbyterian Rainbow Project, took place under martial law on January 11, 1987. Over 100 marchers gathered in front of the police station, demanding that the police make a genuine effort to rescue child prostitutes and put a stop to the operation of traffickers; slogans that condemned traffickers were chanted over and over again. Afterward, the marchers went into the red-light district and called out in the aborigine dialect to the girls in the brothels to leave the business and go home. Although the brothel doors remained shut during the march and it was not certain whether any of the girls heard the call, the march was significant because this was the first time a social cause, rather than a political cause, mobilized the Taiwanese people into the streets. And as police integrity and performance were profiled and questioned by this act, which did not make the government look too good at that delicate moment of political volatility (four months before the lifting of martial law), the authorities responded by announcing a special project effective March 1987 (known as the “Correcting the Customs Project”). The government

promised that not only would more police force be devoted to obscenity sweeps directed at the sex trade, but those police stations that failed to wipe out child prostitution in their own districts would face austere punishment. The later execution of the policy proved to be far from satisfactory, but at least the issue of underage prostitution was formally admitted into public view.

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At this initial stage of collaboration of the social movement groups, the general framework of reference for this united front was “rescue,”

with a two-pronged goal to urge the nonchalant police to rescue the girls out of their immediate predicament and crack down upon the trafficking crime rings. In other words, the police were seen as at least partially responsible for leaving the girls trapped in the vicious circle of trafficking and prostitution. In the meantime, the united front hoped to raise funds that would help the girls leave the sex industry permanently, learn a useful trade or continue with their education, return to their homes in the aborigine tribes, and eventually become [productive members of society](#).¹²

It is significant that at this initial stage, the anti-trafficking cause limited its targets to the evil traffickers and the inept police, and maintained a rather pragmatic attitude toward the tenacious existence of the sex industry as a whole. The banner that led the march boldly read:

[“the human rights of prostitutes.”](#)¹³ [In their First Joint Statement of Cause,](#)

the anti-trafficking alliance, instead of calling for the total eradication of the sex industry, offered “supervision” and “unionization of sex workers” as part of the short-term plan to deal with prostitution, so that other prostitutes could at least enjoy some basic protection and autonomy before the eventual abolition of prostitution (Fang 2003). The Joint Statement of Cause thus cited its rationale for rescue efforts from the United Nations’ 1948 *Universal Declaration of Human Rights* Article 4: “No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.” In other words, anti-trafficking at this stage in Taiwan was more *anti-slavery* than anti-prostitution, with a strong human rights concern for the enslavement of a specific segment of prostitutes, the underage minority girls.

Such a focused effort would gradually broaden as Taiwan's sociopolitical arena continued to change its scope. In order to meet Taiwan's pressing need for economic liberalization in the new globalizing world market, which at the same time necessitated the liberalization of the political sphere, martial law was finally lifted in May of 1987. Post-

martial-law atmosphere afforded a lot of opportunities for hitherto for-bidden social mobilization, including labor activism that organized to resist Taiwan's capitalistic exploitation, human rights activism that advocated the right to political dissidence, feminist activism that promoted the idea of gender equality, independence activism that worked toward reconsideration of Taiwan's nation-state status, etc. As social forces bubbled for outlets, the persistent ineptitude and insincerity of the police (as well as local legislators) to stop the traffic of aboriginal girls was taken to be a symbol of the utterly inefficient and indifferent authoritarian state. The anti-trafficking cause thus believed that the whole legal system needed to be amended to ensure that traffickers and brothel owners would be dissuaded from such acts of victimization once and

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for all. In other words, tougher sentences would be instituted against trafficking, and reforms of the criminal code were to be included as one of the goals of the anti-trafficking rescue effort. In addition to stopping up the supply channel through these practical measures, the anti-traffickers believed that the demand side should also come under the auspice of law. Actions directed at legal reform and at eliminating the clients thus became the main focus of the second anti-trafficking march one year later.

As public demonstrations gained increasing legitimacy under the rubric of democratization after the lifting of martial law, the anti-trafficking cause also found more grounds to work from than simple religious humanitarianism. When the second rescue march was held on January 9, 1988, in the same red-light district in Taipei, the central organizers had become the Awakening Foundation, the feminist intellectual NGO

that was developing discourses to turn the problem of child prostitution into an issue of profound *gender* oppression. Collaborating with the Awakening Foundation on the organization work was the recently established Taipei Women's Rescue Foundation, an NGO devoted specifically to the cause of

rescuing unfortunate women and girls who had

[fallen victim to domestic violence or human trafficking.](#)¹⁴ Now discursively well-armed and politically righteous, on the morning of the day for the march, the core organizers first lobbied the Ministry of Justice, as well as the Judicial Yuan, demanding stiffer penalties for “the bad guys”—the traffickers and the brothel owners, as well as the johns. In the afternoon, a total of more than 300 people representing various NGOs (including academic groups, “women’s” groups, aborigine groups, and Christian groups) joined a march titled “The Second March to Rescue Child Prostitutes.”

This time, as the marchers entered the red-light district again, they chanted slogans directed not only at the traffickers but also prominently at the clients who frequented the brothels. As the marchers increasingly chastised the johns alongside the traffickers, what had begun as a humanitarian or human rights gesture a year ago was refiguring itself into a moral crusade against immoral men who brutalized young girls through the sex industry. Reflecting (and venting) the crowds’ increasing impatience with the indifference of an authoritarian government, the general mood of the march was now not so much “rescue” of the innocent but

“*punishment*” of the guilty (*sinful*). Unfortunately, that impatience was also translated into a different position on sex work as a whole. The First Statement of Cause in the previous year had made a distinction between the short-term goal of rescuing the aboriginal girls and the long-term goal of the eventual abolition of prostitution. But the Second Statement of Cause in the following year dropped the conciliatory discourse that called for more supervision of the brothels and unionization of existing prostitutes, leaving the whole discourse leaning toward the goal of total abolition of sex work (Fang 2003, 15).

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II

As competing loyalties or affiliations emerged and began organizing crowds for various urgent social issues after the lifting of martial law in 1987, the continued operation of the anti-trafficking cause fell into the hands of mainly conservative and religious NGO groups searching for more effective ways to curb the child

prostitution problem as well as to

[reinstate moral values in the changing times of the early 1990s.](#)¹⁵ They

believed that a whole new special law would be needed to coordinate the various clauses of various codes and various agencies of the government into a concerted effort to not only punish those who were responsible for the trafficking of aboriginal girls into prostitution, but also establish a sort of preemptive/protective network to keep *all* girls from ever coming into contact with the perils of sex work.

The grand project of putting a new legislation into place called for a different kind of ballgame for NGOs, one that would involve heavy lobbying and advocacy strategies. One aggressive religious/children's welfare group, Garden of Hope (GOH), took the lead in 1992 to organize a task force of lawyers and social workers that would help draft

[the special law.](#)¹⁶ [The new cause was also helped along by](#) pressure from international organizations that were actively setting up a minimum framework of rules to tackle regional problems that were deemed to have global significance. The International Campaign to End Child Prostitution in Asian Tourism (established in Thailand in 1990, renamed in 1997 as End Child Prostitution, Child Pornography & Trafficking of Children for Sexual Purposes and broadened to include the rest of the world, but still abbreviated as ECPAT) joined UNICEF in disclosing horrendous figures for children involved in sex tourism or prostitution in Asian [countries.](#)¹⁷ Proud of its own economic miracle but embarrassed to find itself listed among economically and politically "backward" countries such as India, Sri Lanka, Thailand, and the Philippines for harboring child prostitution, the aspiring Taiwan government scrambled to improve its image and international reputation, thus creating a new window of opportunity for the legislative efforts launched by anti-child-prostitution groups.

As rescue efforts turned into legislative efforts, their scope of applicability also underwent significant transformations. The key justification of "rescue" efforts had depended upon the rescued girls testifying that they had been "forced" into prostitution. Yet, out of a complex of varied considerations, many rescued girls chose not to incriminate their own parents or the [brothel owners.](#)¹⁸ Without the element of coercion, the trafficking charges brought against traffickers or brothel owners often ended in acquittals and the girls were returned to their guardians or

their parents, before moving back into the sex trade again. The erosion of the

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“forced prostitution” premise left many frustrated anti-traffickers determined to change the terms of indictment so as to get rid of this seeming “loophole.” Another factor that urged anti-traffickers to consider overstepping the question of consent was the realization, supported by quite a few contemporary studies, that an increasing number of the so-called underage prostitutes were no longer aboriginal girls sold into prostitution. Instead, many newly found underage prostitutes were simply ordinary girls who, helped along by the liberalizing attitudes toward sex in a sexually charged social context, chose to enter the trade

[for the lucrative profits it offered.¹⁹ Faced with this emerging moral](#)

crisis amidst the deep and rapid structural changes in the socioeconomic-political fabric of Taiwanese society in the early 1990s, worried anti-traffickers resolved that the work of *aggressive and comprehensive “prevention”* would make more sense than the work of reactive and isolated

“rescue.” This significant change in approach and outlook would reveal itself later as a nationalist middleclass child-protection agenda taking steps to institute its own punitive-preventive measures of social control.

Several important transformations were thus effected in the process of legislation in the early 1990s. To begin with, the rescued girls’

testimonies of their own consent to do sex work would no longer be taken into the equation. Instead, the *act* of sexual contact and the *age* of the girl involved would be sufficient criteria for an indictment, thus effectively erasing the subjectivity of the girls, and most significantly broadening the meaning of “trafficking.” One woman lawyer from the Taipei Women’s Rescue Foundation who worked closely with the drafting of the new law stated the basic spirit of the law bluntly: “Those under 16 are weak and shallow in their thoughts, and lack adequate power of judgment in relation to sexual acts.” Consequently, she believed that those who commit sexual contact or perform obscene acts with such minors should receive severe penalty “whether or not mon-

[etary exchange takes place” \(Shen 2002, 26\).²⁰ Two significant expansions had been effected here: first, penalty would be applicable to any obscene contact, not](#)

just sexual intercourse; second, penalty would be applicable even when no monetary transaction took place. In other words, the target of the new law was no longer just trafficking or prostitution that involved minors, but *any kind of sexual contact with (or even between) juveniles*.

Moreover, penalties for the perpetrators of child-prostitution crimes were not only heavier according to the new law but also applicable to parties other than the traffickers and brothel owners. It would include: anybody who gave shelter to the girls (for any reason at all), the land-lord who (whether knowingly or unwittingly) rented the property that was later used as a brothel, even the person who unknowing lent money to a girl who then used it to take a taxi to a love motel to conduct a sexual transaction, etc. To safeguard the girls from reentering the sex

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trade after being returned to their parents, the new law would also allocate great sums of funding for halfway schools and other protection facilities that would keep the girls for a certain period of rehabilitation, monitor their progress, and eventually determine whether they were ready to be returned to normal life. Moreover, in order to prevent other

“high-risk” girls from entering the trade, whether voluntarily or forced, the law decreed that a monitoring network be established whereby schools and police stations would be required to report and track down girls who dropped out of schools without a good reason. The girls would then be consigned to relief workers and social workers to be “counseled” back onto the right track of life.

In other words, the anti-trafficking and anti-slavery line, even the whole framework of “rescue,” was being displaced by an *anti-prostitution* line that aimed to eliminate all that seemingly helped connect young girls to sex work, all that materially sustained the continued existence of such girls outside the supervision and jurisdiction of paternalistic families—while at the same time empowering the anti-prostitution NGOs in very substantial ways. Significantly, as anti-trafficking moved along this process of legislation, the class/ethnic outlook in the original rescue efforts was quietly eclipsed by a *gender/age outlook* that further affirmed the *woman-child protection-prevention dyad* which

reached deep into all

[sectors of social life.](#)²¹ An ever-broadening circle of control had conveniently displaced an originally humanitarian rescue effort.

Riding on an issue that had the potential to equal a moral as well as nationalistic imperative, the anti-child-prostitution cause “consciously”

adopted “strategic marketing” to lobby leaders of the Taiwanese society, including policy makers, legislators, opinion leaders, religious leaders, artists, and celebrity performers (Chi and Zheng 2002, 43–45). Staff members were successful in recruiting people of influence to the politically righteous anti-child-prostitution cause, or at least getting them to sign the Anti-Child-Prostitution Covenant drafted by Nan-Chou Su, the editor of the Christian journal *Wilderness*. Besides approaching influential figures, the cause also campaigned in front of department stores and collected signatures from citizens in order to apply pressure to the notoriously opportunistic legislators. A total of 70,000 signatures were turned over to the Legislative Yuan, which not only highlighted the importance of the issue but also greatly enhanced GOH’s public image and influence, from a Christian social service organization to a socially active NGO. More than US\$300,000 in donations was collected through collaboration with the famous convenience store chain 7-Eleven. A total of more than 55 task force discussions, public hearings, press conferences, reviewing sessions, and petitions were used to publicize the issue and lobby relevant legislators between May 1993 and July 1995 when the special law finally passed—which was record speed for any legislation in

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Taiwan’s history. And all this time, an effective media campaign, including radio programs and slogans and rescue hotline numbers in TV non-profit ads, kept the issue and relevant activities alive in public view.

The eventual transformation of the anti-child-prostitution cause since 1987 was clearly dramatized in one grand event. Before the proposed new legislation moved into the political process in 1993, a third massive march through the brothel district was organized by the anti-child-prostitution cause to christen the effort. But in contrast to the first two marches which were distinctively NGO in nature, namely, small in size, consisting of marginalized NGO groups, and

viewed by the government with suspicion; the third march—the so-called Anti-Child-

[Prostitution Jog²²—took place on November 14, 1993, and was attended](#)

by all the key government officials, legislators representing various political parties, educators, celebrities, and other social leaders, amounting to more than ten thousand people. Leading the jog were the Minister of Justice, Minister of the Interior, Minister of Finance, Director of Government Information Office, and other officials of the government, as a gesture of state support for such a noble cause. Instead of being the targets of criticism for corruption and indifference toward the child-prostitute issue, politicians and law enforcement officers were now running alongside anti-child-prostitution movement organizers and crowds, declaring war on the traffickers, brothel owners, and clients, and pledging to rid [Taiwan of this unmentionable national shame.](#)²³

While the public show of resolve was still riding on the strong sentiment against the trafficking of underage girls, the legislation was expanding far beyond the issue with successive expansions added on by opportunist politicians and concerned anti-child-prostitution NGOs as they responded to the evolving social realities of [Taiwan.](#)²⁴ [In the end,](#)

the version that was passed no longer contained much reference to human trafficking, but something much broader. In addition to broadening the category of punishable acts from sexual intercourse to all forms of “obscene acts,” ranging from heavy petting, oral sex, and masturbation to posing for pornographic films, another new category of punishable crimes was also added to the law to truncate teenagers’ increasing accessibility to information that was believed to lead to sex work. Advertising for sex work, advertising for pornographic materials, even provision or display of pornographic materials would be considered

“solicitation,” liable for sentencing of up to five years of imprisonment and \$1 million in fines. The information control also brought with it a whole set of knowledge/power formations that not only demonized perpetrators, but also pedagogized children and juveniles. The law would provide detailed classification of the relevant crimes, and perpetrators would be categorized, labeled, and assigned differential degrees of punishment, thus creating a whole new conceptual framework for the so-

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called child prostitution ring. The newly drafted law also imposed a clear demarcation on the age of the child or juvenile in question—differential punishments would be applied to the clients in direct proportion to the age and gender of the juvenile involved, with 14 (for girls) and 16

(for boys) as the benchmark ages. In short, a new parental and pastoral power concerning the sexuality of the young was gradually moving into place.

This parental and pastoral power was not only manifested in the punishment applied to traffickers and johns, but more concretely embodied in the administrative power that would now be invested in the anti-prostitution NGOs. For, instead of turning a blind eye to the petition of NGOs, various state agencies—including the Ministry of Justice, Bureau of Health, Ministry of Communication and Transportation, Ministry of Education, Ministry of Defense (!), and Ministry of Economic Affairs—would be bound by law to actively seek, inform, investigate, place in protective custody, and provide medical care and consultation for those girls suspected of doing sex work. Moreover, the performance of government agencies on such matters would be subjected to regular evaluations by a monitoring alliance formed by none other than the anti-child-prostitution NGOs and other sympathetic lawyers and scholars. Now legally endowed as “watchdog agencies,” these NGOs had the right to directly or indirectly report cases, interview suspected child prostitutes, bring lawsuits against perpetrators, set up placement institutions or halfway schools, and hold regular meetings with government agencies. The easy access to state information and power, plus preferential access to state-provided funding and resources, added onto their original image as non-profitable religious charity/social service organizations, would greatly improve the anti-prostitution NGOs’ sustained power to institute and monitor/supervise the implementation of the laws, not to mention increased staff and budgets through both govern-

[ment funding and public donations.25](#)

At the historical moment when the Law to Suppress Sexual Transaction Involving Children and Juveniles was passed in 1995, what had begun as an anti-trafficking effort initiated for aboriginal peoples eight years before had now been

formally and legally transformed into a national establishment that held immense power and resources to regulate sexual associations, as well as sexual expressions, of those under 16.

The formation and operation of such a “power of the civil society” would prove to be instrumental in urging the Taipei city government to ban legalized prostitution in 1997, which, to the government’s surprise, sparked off Taiwan’s first prostitutes’ rights movement, made up of 128

middle-aged, minimally literate, licensed prostitutes. Once again, marginal sex workers came into public view, but this time not as young helpless victims to be rescued by anti-trafficking “women’s” groups,

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but as mature sexual subjects resisting regulation by the now-powerful

[anti-prostitution “women’s” NGOs.](#)²⁶ [The ironic turn of events reflected](#)

not only the emergence of a new subjectivity of sex workers in the Taiwanese context (from victims of trafficking to prostitutes demanding their work rights), but also the changed social status of mainstream “women’s” NGOs in the increasing bourgeoisization of [Taiwanese society.](#)²⁷

III

As one key woman lawyer in the anti-prostitution camp put it: “The law will have to be continuously revised to keep up with the emerging forms

[of sex work for juveniles.”](#)²⁸ True enough—since 1995, the Law to Suppress Sexual Transaction Involving Children and Juveniles went through several major amendments. Each amendment was heralded as necessary in order to curb newly emerging social ills, and each further widened the web of social discipline. Most noteworthy of all were amendments introduced in 1999.

In response to media reports of Taiwanese men taking advantage of sexual tourism in other countries (whether it involves minors or not), amendments to Articles 9, 22, and 34 added penalties for such acts even if the country where the sexual transaction took place does not consider such acts as criminal. To make enforcement feasible, the amendment mandates tour guides or tourist agencies to

become whistle-blowers or watchdogs, thus extending the long arm of Taiwanese law far beyond its borders. Amendments to Article 33, furthermore, made media agencies liable for the ads they carry in their publications or broadcasts, thus effectively forcing the media agencies to take on censorship functions that greatly impinge on the freedom of speech and expression. The media's compliance would be further ensured by the anti-prostitution NGOs' watchdog mechanism that would monitor, evaluate, and report on media performance regularly.

The most profound amendment had to do with Article 29, which has now become the most broadly and effectively enforced article. The original article had aimed to prevent those establishments in the sex industry (ranging from night clubs, escort services, porn production companies, underground pubs, and sexual karaokes, to telephone clubs)

[from putting up commercials to lure teens into the sex trade.](#)²⁹ So the

original article read:

Those who use advertisement, publication, radio, television, or other media to publish or broadcast *commercials* in order to induce, broker, imply or by other means *cause people to be involved* in sexual transactions shall be punished with imprisonment of no more than five years and alterna-

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tively coupled with a fine of no more than one million NT dollars. [italics added]

But the 1999 amended version greatly extended its scope of applicability: Those who use advertisement, publication, radio, television, *electronic signal and internet*, or other media to publish or broadcast *messages* that induce, broker, imply or by other means *cause people to be involved* in sexual transactions shall be punished with imprisonment of no more than five years and alternatively coupled with a fine of no more than one million NT dollars. [italics added]

When the applicability of the law was extended to include “electronic signal and the internet” and far beyond the category of “ads and commercials,” the highly individualized and variegated communications in the cyberworld were

conveniently subsumed under the auspice of the law. Now, any “messages” on the Internet, even those posted by individual Net citizens in the clearly marked adult chat-rooms or discussion boards, that could be read as “hinting/implying” sexual invitations which

[“might” evolve into transactions were to be indicted.](#)³⁰ In fact, since

1999, a total of more than 2,000 cases of alleged efforts to conduct *enjo-kosai* (a Japanese term meaning compensated companionship or casual

[sex work\) have been indicted and convicted.](#)³¹ Many of the perpetrators

were merely young people who were seeking sexual relationships on the Internet and had done nothing other than using the fashionable and highly seductive term *enjo-kosai* to distinguish themselves in the vast

[ocean of “Netters.”](#)³² What’s worse, the enforcement of Article 29 was so pervasive that even online discussions of *enjo-kosai* as an academic subject could be subjected to the same scrutiny if the discussion did not follow the orthodox line of condemnation of casual sex. In short, whereas it used to be the *act* of sex for money that constituted punishable behavior, now, even [speech about sex for money was liable to be indicted.](#)³³

The Internet has become a focal point of contestation not only because it has provided limitless possible connections for sexual contacts and sexual transactions, but also because of its easy circulation of so-

[called pornographic materials.](#)³⁴ Adults are all the more alarmed because of their own unfamiliarity and ineptness on the Net. Protection-minded “women’s” NGOs thus took up the crusade to “make the internet safe” for [children and juveniles.](#)³⁵ ECPAT Taiwan, the NGO that still retains the anti-child-prostitution concept in its Chinese name but is now concentrated on anti-pornography campaigns, acquired state funding to start an online pornography-monitoring campaign called Web 547 in 1999. The campaign recruited volunteers, put them through a 3-day training program on how to use the computer and how to “recognize” por-

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nographic or other illegal material on the Web, and then assigned them to

monitor communications and postings on the Internet. Statistics and figures of the “amazing inundation by pornographic material” were then made known not only to the government but also to the media to alarm the public of the pervasiveness of pornography and to urge more con-

[trol and screening of the Internet.](#)³⁶ But the target of such “purity campaigns” spans far beyond sexual transaction or pornographic materials.

In its May 2002 campaign of “guarding angels on the internet,” ECPAT

encourages children to adopt the principle of three “No’s” while surfing the internet: “not to sell, buy, distribute, post, or forward pornography”; “to say no to prostitution”; and most interestingly, “to say no to one-night-stands.” The incongruence of the third term is symptomatic of ECPAT’s expanding goal: to end child prostitution now means to curb sexual explorations by the young. In that sense, measures taken by such NGOs are aiming much less at forced child prostitution than at containing the immense sexual impulses and curiosity demonstrated by

[today’s youths.](#)³⁷

Since 1995, the once-anti-trafficking NGOs have evolved into mainly children’s welfare or child-protection agencies, with more than two dozen subsidiary care centers or halfway houses. Child protection has proven to be a much more potent and profitable concept than anti-trafficking.

Garden of Hope, ECPAT Taiwan, Taipei Women’s Rescue Foundation, and Catholic Good Shepherd Sisters have been aligned since the anti-trafficking days, presenting themselves not only as the moral high ground of Taiwan society but as the “heart” of the new government. Now no longer refusing the media’s reference to them as “women’s groups,”

they have again linked up the concept of “women” with the middleclass idea of fiercely protective motherhood. In addition to gains in the judicial arena where new laws are being added to consolidate the control over sexual contacts through the Internet, these NGOs are also increasing their presence in the education arena. Proposed amendments in 2003

included clauses that required all schools to initiate preemptive reports on “high-

risk” students who “looked like” they “might” get involved in casual sexual transactions; decisions may then be made to put them away in halfway houses for their “protection.” Government committees that oversee gender-related laws and gender/sex education programs con-

[tinuously include these NGOs as regular members or advisors,38 thus](#)

giving such groups even more access to not only the design of education policies but also the regulation of the education Internet, which effectively controls the activities of numerous Net users.

In retrospect, the late-1980s “discovery” of “aborigine child prostitution” and attendant local and international (religious) fervor of anti-trafficking efforts in Taiwan has over the years become the terrain where-upon a nationalist middleclass consolidation of social and moral values

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is taking place via the policing of sex as well as the eradication of all forms of sex work in the name of child protection, especially in the arenas of youth and Internet sexuality.

Aside from the justified deployment of disciplinary powers that these child-protection NGOs helped put into place in Taiwan, a major part of the welcome enjoyed by these NGOs in government matters must also be attributed to the opportunity of international participation that they have helped provide the Taiwan government. The child-protection NGOs’ affiliations with international anti-child-prostitution organizations often carry further links to other international nongovernmental and intergovernmental organizations (such as Interpol, World Tourism Organization, and various United Nations agencies, es-

[pecially UNICEF and ILO-IPEC\),39 a connection network that the aspir-](#)

ing Taiwan government is eager to tap into in order to promote affirmation of its envisioned independent nation-state status. The NGOs themselves benefit from such a network too, for connections are set up for exchange of skills, information, and advocacy purposes between organizations in the developed countries and those in the developing countries, which quickly and dramatically

enhance the effectiveness of local efforts as well as their power of influence. International events hosted or promoted or assisted by the international organizations give

[strength and credibility to local groups.](#)⁴⁰ Furthermore, the organiza-

tions share their work plans with one another, mutually strengthening each other's projects. Linkages with all these organizations bring external pressures to bear on national governments to implement measures suggested by international organizations, thus effectively consolidating the "global governance" that the UN is aspiring for.

The Convention on the Rights of the Child, deemed as "a *universally agreed* set of *non-negotiable* standards and obligations," is the most recent example of such consolidating efforts that work to identify national laws and practices that need to be brought into conformity with UN standards. The Taiwanese Legislative Yuan has passed joint amendments to the Children's Welfare Act and Juveniles' Welfare Act, effective June 1, 2003, in order to "bring the Acts in line with United Nation's definition of children."⁴¹ [The amendments not only broadened](#) the Acts'

applicability to those under the age of 18, thus greatly increasing the number of youngsters that come under the auspice of the law in the

[name of children's welfare,](#)⁴² but also more rigidly regulated the whole

of social and virtual space *in the name of children*. The Internet and other media have to be rated and, if found broadcasting materials unsuitable for children, would be subjected to heavy fines and temporary suspension of licenses. Furthermore, parents and guardians are now held responsible for the activities of their children: if children under 18 are found to have come into contact with unsuitable materials, visited sex-

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related recreational businesses, or lingered at gambling, pornography, or violence-related video arcades, then the parents or guardians will be

[charged and fined.](#)⁴³ Protection of children can even extend to before

they were born: pregnant mothers are now prohibited by law from smoking, drinking, using drugs, chewing betel nuts, or conducting other activities deemed harmful for the fetus. It is speculated that as “gender mainstreaming” gains international momentum, more new rules and regulations concerning men’s and women’s daily lives are going to be prescribed in Taiwan to further consolidate the encroaching project of global governance.

IV

It is a historical irony that, as the original anti-trafficking fervor dissipated and transformed into a large-scale project of social discipline, the actual “trafficking” of humans in Taiwan at the present moment is being conducted on a much larger scale than ever imagined. Thousands of migrant laborers from, for example, Thailand, Vietnam, Indonesia, Philippines, and most recently Mongolia, are being legally brought in to satisfy the needs of both government construction projects and industries in the private sector, as well as the need for domestic help by

[middleclass families.](#)⁴⁴ [Thousands of migrant marriages have also taken](#)

place as a result of dramatically changed global and local economic conditions since the early or mid-1990s (with foreign brides coming mostly from Vietnam and Indonesia, negotiated through professional matchmaking agencies at a cost, in addition to a huge number of Main-

[land China brides\).](#)⁴⁵ Viewed in this context, when conservative

“women’s” groups, in order to demand more stringent laws in the name of anti-trafficking, continue to invoke the history and memory of trafficking in terms of a traditional familial custom in times of economic poverty (the “selling” of daughters, daughters-in-law, etc.), it serves only to effectively displace/deny today’s massive legalized trafficking on the state level, as well as the discriminatory laws in relation to Main-

[land brides.](#)⁴⁶ [On the other hand, the term “human trafficking” is al-](#)

ways invoked in another specific context: the continuous flow of migrant women from Mainland China, or more recently from Russia, in search of better economic possibilities through sex work in this wave of rapid globalization. To describe such women in terms of trafficking—

evoking lingering images of helpless aboriginal girls in the hands of heartless traffickers, brothel owners, and pimps—serves not only to distort/erase the subjectivity/agency of such migrating sex workers but

[also to demonize the political regimes from whence they come.](#)⁴⁷ In other

words, the cause of “anti-trafficking” can still serve multiple political

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functions—as a means to stabilize and consolidate state- and family-oriented projects (in state-sponsored construction work or the flow of brides from Third World regions), as well as a continued effort to defeat women’s transgressive search for economic betterment outside the confines of marriage relationships.

In the past, astronomical figures of the rapid growth and spread of the sex industry are constantly cited by anti-prostitution groups to justify the legislation of more laws and ordinances that impinge on the life of every citizen in the name of child protection. Yet, what we have witnessed in Taiwan in the past 10 years is the incredible growth and power of an *anti-sex* industry that thrives upon the imagined evil existence of trafficking and the sex industry, as well as the convoluted aspirations for national-global governance. Such a web of normalizing knowledge/

power conglomerate that continues to reduce the widely varied faces and practices of Asian sex work to nothing but the trafficking of women and children is bound to constitute more obstacles for the emerging subjectivity and agency of sex workers as well as the prostitutes’ rights movements in Asia. And it is this national/global governance that has to be

[resisted.](#)⁴⁸

NOTES

[1.](#) Tani E. Barlow has also discussed this concept in relation to the universalization of the gender analytic by Chinese women’s NGOs working in unison with the United Nations in the post–Cold War era. See Tani Barlow, “Asia, Gender and Scholarship Under Processes of Re-Regionalization,” *Journal*

of *Gender Studies*, No. 5 (2002), 8.

2. Researchers have also detected that concern over prostitution flares up usually at

moments of intense social or political tension. Cf. Lucy Bland, *Banishing the Beast: Sexuality and the Early Feminists* (New York: The New Press, 1995), 95–123; Gail Hershatter, *Ibid.*, 3–12; Ruth Rosen, *The Lost Sisterhood: Prostitution in America, 1900–1918* (Baltimore & London: Johns Hopkins, 1982, 1983, 1994), 38–50.

3. “Human rights” as a concept had originally been used by the Nationalist government in Taiwan mainly to highlight the notorious human rights records of its rival, the Communist government of the People’s Republic of China. The concept was gradually appropriated by Taiwanese political dissidents to draw attention to Taiwan’s own record of political oppression during the 1970s and 1980s.

4. The Presbyterian Church of Taiwan has been actively and openly promoting the nation-state status of Taiwan for the past 30 years and is quite closely linked to the present ruling party, the Democratic Progressive Party. Its conception of human rights has always been framed in a nation-state status claim. The Church reiterated its political aim on the 25th Anniversary of the Declaration on Human Rights: “We re-affirm our intent, stated 25 years ago, to see Taiwan as a new and independent nation” (<http://www.pct.org.tw/english/>

[arti020916.htm](http://www.pct.org.tw/english/arti020916.htm)). Believing that there is no dichotomy between the sacred and the secular, and that the social, economic, and political are all within the field of interest of religion and religious bodies, the Church takes active measures to intervene in social issues, child prostitution being one of them. Admittedly, it was not easy to advocate issues related to sexuality among conservative churchwomen; issues such as AIDS advocacy (which was seen as only teaching

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foreign laborers how to use condoms in sexual intercourse) and sex education (which was read as encouraging the young to learn about sex) met with great difficulty ([\[www.dpp.org.tw/publication/public2-12-17.htm\]\(http://www.dpp.org.tw/publication/public2-12-17.htm\)\). The issue of underage](http://</p></div><div data-bbox=)

prostitution, in contrast, had a much easier time winning support among churchwomen, probably because of its Armageddon rescue/relief posture against demonized lustful/greedy men. Also, during the politically repressive era of the early 1980s, the Church saw firsthand the continued oppression of marginal ethnicities, exemplified in the existence of underage aboriginal prostitutes, and read it as echoing the oppression of the politically marginal, the Church itself included.

5. It was rumored at the time that in any poor aboriginal family, the sons would be shipped off to sea to work as sailors on fishing boats and the daughters would be sold into brothels in the big cities and become prostitutes. Researchers had even estimated that in one aboriginal village, 20 percent of the women were involved in prostitution. See Yi-Yuan Lee,

“Teenage Problems among Aborigine Tribes during Social Change,” *Journal of Institute of Ethnography*, 48 (1979): 1–29.

6. In response to the setting of the 1979 International Year of the Child, Defense for Children International organized an NGO Ad Hoc Group in mid-1983 to draft the Convention on the Rights of the Child. In 1987, the NGO Ad Hoc Group joined with UNICEF and prepared a Convention which was finally adopted by the General Assembly of the United Nations in 1989. Overall, the 1980s was a decade in which children’s rights violations such as torture, prostitution, economic exploitation, arbitrary detention, and trafficking and sale became highly profiled issues (http://www.child-abuse.com/childhouse/childrens_rights/

[dci_crc.html](http://www.child-abuse.com/childhouse/childrens_rights/dci_crc.html)).

7. Significantly, the aborigine boys who were shipped off to sea in order to pay back family debts or to improve living conditions for the whole family rarely received much attention, even under the rubric of children’s rights. In contrast, aborigine girls who were sold off for the same purposes became central concerns of Presbyterian ministers and social workers.

8. The double bind of the highly esteemed Chinese family ideology of filial piety helped make it “natural” for the girls to sacrifice themselves for the family out of love, as well as to return to the trade after they had been rescued by well-wishing NGO groups. The church groups, however, put the blame only on the ruthless

traffickers and heartless parents.

9. The picture of a poor, powerless girl crying helplessly in the hands of ruthless traffickers captured the imagination of the public and became a powerful symbol for prostitution even when it no longer involved such victimization.

10. One underlying basis of consensus has to do with the fact that many of these groups overlapped one another in membership and in their common commitment to opposition politics (better known as “democratization” in Taiwan). The cause thus carried strong ethnic, age, gender, and (most significantly) religious connotations, mixed in with political concerns. All of these factors would play significant roles in the future transmutation of the anti-trafficking cause.

11. Feminist thought was first introduced into Taiwan with Hsiu-lien Lu’s pioneering book, *New Feminism*, in 1973, but it was more of a one-person intellectual crusade than a social movement. In fact, the book was widely read, not by women, but by dissident intellectuals at the time as a declaration of human rights in general—it is ironic that under martial law, political dissidence could find legitimacy only in discussions of gender inequality. The first overtly feminist journal, *The Awakening*, was not published until 1982; the emergence of the first feminist movement group had to wait until 1987 due to restrictions on the right to associate under martial law, which was finally lifted that year. Significantly, feminism as a concept might have been known to some progressive intellectuals at the time, but “feminists”

were stigmatized as ugly, undesirable, angry spinsters, butches, and lesbians. Due to the nature of their own membership—namely, heterosexual, marriage-bound women—most

“women’s” groups that took part in the anti-trafficking effort chose to describe themselves as

“children’s welfare groups”; they wouldn’t even want to bear the title of “women’s groups.”

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Only one group adopted the term “feminist” to describe itself, but whether its

individual members did so is another matter.

[12.](#) What had begun as a relief effort that depended mostly upon charitable donations would later evolve into a mega-business that receives huge sums in subsidies from a Taiwanese government that, in the name of social welfare, increasingly franchises its functions to various NGOs and thus transforms parts of the civil society into power adjuncts of the government.

[13.](#) The choice of the wording here certainly did not derive from any pro-sex-work imperative; the latter would emerge much later in 1997 with Taiwan's first prostitutes' rights movement. In reality, the declaration of "human rights" for prostitutes at this historical march in 1987, when martial law was still in place, only thinly veiled the demand for "human rights" (understood mostly in political terms) by the highly diversified march participants, who were distinctly opposed to the authoritarian regime as the root of all social evil.

[14.](#) The contingent coupling of a feminist group that believed in empowering women through political action and a women's rescue group that aimed to restore peace and security to families was symptomatic of a time when a loosely united opposition front was needed in order to resist a quite authoritarian political regime.

[15.](#) Such "effective" means to stop the traffic of aborigine girls would also prove to be an effective means to greatly enhance the (financial and political) status of those groups working exclusively on the anti-trafficking cause, to the extent that quite a few rescue/relief groups that aimed at rescuing "unfortunate" girls (or women) were established by various religious denominations in the few years before the 1990s. The Catholic Good Shepherd Sisters (est. 1987) were affiliated with the Catholic Church, while the Garden of Hope (est.

1988), the Rainbow Center (est. 1988), and End Child Prostitution in Asian Tourism (ECPAT) Taiwan (est. 1990) were all closely related to Protestant denominations. As these groups later took up the work of running halfway houses or halfway schools and providing spiritual education/counseling for the rescued girls, their voices and their religious-moral standards also became viable forces in the social framing of the problem of underage prostitution.

[16.](#) Garden of Hope even hired a new Director for Special Projects, Hui-Jung Chi, to coordinate such efforts. Chi had been a journalist for 7 years and knew

how to work the media; she had also been trained in social marketing for nonprofit organizations by international groups and was eager to try out her skills in lobbying and media management. Incidentally, GOH aimed to broaden its influence and power by upgrading the anti-trafficking cause to an anti-child-prostitution “social movement.” As Chi recollected recently, “Six months before I came to the Garden of Hope, the Board had passed a resolution [in 1992] to start the Anti-Child-Prostitution Social Movement. In other words, the Garden of Hope was transforming from a charitable organization into a social movement organization. However, due to the sensitivity toward the word ‘social movement,’ we masked our transformation as ‘Anti-Child-Prostitution Special Project.’” (Cf. <http://www.goh.org.tw/english/english.htm>) The reference to “social movement” here had more of a religious connotation—a this-worldly vision of *social reform*—than what is usually considered to be social activism. For over the years GOH had also done the most actual damage in stigmatizing and shortcircuiting the efforts of sex-rights groups to advocate human rights for marginal sexualities. For example, in the name of “protection of children,” GOH had repeatedly impeached feminist sex radicals for the latter’s against-the-grain discourses on teenage sexuality, abortion, occasional sex work, or zoophilia.

17. UNICEF had reported numbers of children involved in sexual tourism in 1993: Thailand had more than 800,000; India had 500,000; Taiwan had 100,000; Philippines had 60,000. Between 1993 and 1994, Taiwanese researchers and official alike have repeatedly disputed the validity of such figures.

18. Their testimonies of having joined the trade “willingly” were consistently read as resulting from financial pressures or from threats against the safety of their families. No room was left for any consideration of the girls’ own agency.

19. Garden of Hope itself cited a study of teenage girls in April of 1993 that showed

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that over 30 percent of junior-high-school girls already had sexual experience, and more than 70 percent of the “rescued” teenage prostitutes “willingly” entered the trade. This new generation of girls, growing up in a social atmosphere quite different from that of the pre-martial-law days were much more daring and assertive when it came to their own sexuality.

Consequently, such studies often evoked mass hysteria that resulted in more stringent laws regarding contact with teenagers.

[20.](#) The basic spirit here would be carried over to other amendments to the Criminal Code in 2000 that made sexual intercourse with teenagers under the age of 14 (girls) or 16

(boys) a sexual crime no matter what the circumstances are. Many teenage couples have suffered from this new legislation.

[21.](#) The Presbyterian Rainbow Project gradually withdrew from rescue work to turn to more education-oriented work, which was believed to truly enhance the economic status of the aborigine tribes so that trafficking could be stopped at its origin.

[22.](#) GOH's CEO Hui-Jung Chi remembers the event fondly in one interview: "In order for everyone to feel they were a part of the event, I designed it as a massive jogging event. You know, a very healthy activity for everyone. I had thought we could jog around this red-light district seven times, just like what the Israelites did to the city of Jericho, and it would disappear from the face of the earth. It would be a humorous ritual, a pledge of some sort"

(<http://www.ccea.org.tw/soc/17.htm>). It was not clear whether all those who joined the event were aware of this Christian underpinning.

[23.](#) Feminist sex radicals had long noted the contrast between the two marches and had criticized the assumptions that underlay the erasure of teenage sexual subjectivity by such self-proclaimed children's welfare NGOs. See Xiau-Ling Zhao, "Standing on the Shoulder of Patriarchy: The 'Anti'-Child Prostitute Movement," *The Awakening Monthly* 159 (1995): 12–14.

[24.](#) A major concern centers on the proliferation of sexual messages and the liberalization of sexual values and morals in Taiwan, prompted by a great variety of commodities. The Feminist Sex Emancipation Movement had intervened in 1994 by bringing forth a new liberating discourse for women's and teen's sexualities. But since then, the anti-child-prostitution NGOs have hounded feminist sex radicals for the alternative stand the latter take on issues such as sex work, surrogate motherhood, sex education, cybersex, and teenage sexuality.

[25.](#) The annual budget for Garden of Hope was US\$ 2,000,000 in 2003, ten

times what it was in 1987, and with 93 full-time staff members. ECPAT Taiwan had a budget of US\$ 300,000 in 2003, thought to be unbelievable by its executive officer in her annual report (http://www.ecpat.org.tw/html/view02_04.htm). The Catholic Good Shepherd Sisters'

annual budget is now US\$ 600,000 and fast increasing.

[26.](#) I have put “women’s” in parentheses to highlight the fact that in a much earlier historical context, these NGOs actively avoided the label “women’s” and its accompanying stigma. But as the gender analytic came to be adopted as a state policy in the late 1990s, these anti-prostitution NGOs have increasingly assumed the position of “women’s” groups. And, as dissenting voices rose among sex-positive women in protestation against the retrenchment of sex-related laws, the groups are now resorting to their old titles of child-protection groups to take advantage of the new and seemingly unchallengeable imperative.

[27.](#) The struggle of the prostitutes’ rights movement in 1997 also marked the formal and summary schism within the Taiwanese feminist movement over the issue of female sexuality, with sex-positive feminist activists being fired from the staff of the once-progressive Awakening Foundation. Feminist discourse was also stymied when faced with female sexual subjects significantly different in age and class, not to mention sexual sentiment and preference, from the underage aborigine girls trapped in forced prostitution which had come to frame most mainstream women’s groups’ representation of sex, not to mention sex work.

[28.](#) The statement is prominently featured on the back cover of the book that documents the whole legislation process of the Law to Suppress Sexual Transaction Involving

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Children and Juveniles, signaling the plan of the anti-child-protection NGOs to further utilize this law for future purposes.

[29.](#) The law may have been designed to protect teenagers from being tempted into sex work, but “causing people to be involved in sexual transactions” never

specified the age of the “people” referred to, nor whether it excluded the person putting up the ad, which effectively makes the law applicable to *anybody* who is sending out sexual invitations, not to mention messages for sexual transaction, on the Internet. As it stands now, Article 29 has proven to be a most potent law against both professional and occasional sex workers.

[30.](#) Whether minors were actually involved in the communication is of no consequence, for the mere “possibility” that juveniles could stumble onto such postings on the Internet and become “negatively affected” is enough cause for prosecution.

[31.](#) The statistical figure is quoted in Mei-Hua Chen, “Sex Work Rights,” *Taiwan Human Rights Report 2002*, Taipei: Avant-Guard Press, 2003, 115–116. For an analysis of *enjo-kosai* as an emerging sociocultural phenomenon in Taiwan, see Josephine Ho, “From Spice Girls to *Enjo Kosai*: Formations of Teenage Girls’ Sexualities in Taiwan,” *InterAsia Journal of*

[Cultural Studies](#) 4.2 (Aug. 2003): 325–336.

[32.](#) “*Enjo-kosai*” may have come to stand for any form of casual sex work in Taiwan, but Article 29 addresses not actual sexual transactions, but the *communication* that *may* lead up to such transactions. More than 2,000 cases have been convicted for their speech and self-expression on the Internet; whether any rendezvous or transaction had taken place was of no consequence to the law. In January 2003, a pregnant wife posted *enjo-kosai* messages in her husband’s name to see if the husband would give in to the many calls of inquiry from women.

The husband never made any move, but the wife is now prosecuted for posting *enjo-kosai* messages.

[33.](#) The Center for the Study of Sexualities at National Central University had a website that collected relevant news, debates, panel discussions, and academic research on the issue of *enjo-kosai*. When it posted satires of police entrapment of Net citizens for possible *enjo-kosai* charges in 2002, the Center received formal warning from the Ministry of Internal Affairs, as well as the Ministry of Education, for possible violations of Article 29: using electronic signals and the Internet to publish or broadcast messages that “cause people to be involved in sexual transactions.” The warning had been prompted by none other than the

child-protection NGO the Catholic Good Shepherd Sisters.

[34.](#) The Internet has also proven vital for marginal sexualities and communities, including gays, lesbians, transgenders, etc. See Chris Berry, Fran Martin, and Audrey Yue (eds.), *Mobile Cultures: New Media and Queer Asia* (Durham, NC: Duke University Press, 2003).

Of course, under the auspice of the newly amended law, communications within such sexual communities are also susceptible.

[35.](http://www.web547.org.tw/nessite/about.htm) <http://www.web547.org.tw/nessite/about.htm>.

[36.](#) In her study of prostitution in Victorian England, Judith R. Walkowitz has already noticed that empirical studies and investigations are often done on the so-called deviant behavior so as to pave the way for policy suggestions that aim to correct such behavior. See Judith Walkowitz, *Prostitution and Victorian Society: Women, Class and the State* (Cambridge: Cambridge University Press, 1980), 37.

[37.](#) ECPAT International's mission statement describes the organization as "a network of organizations and individuals working together for the elimination of *child* prostitution, *child* pornography and trafficking of *children* for sexual purposes." Yet ECPAT Taiwan's monitoring activities often extend beyond the scope of children. Out of the 7 completed monitoring reports posted on their website, only 1 has direct bearing on children. In the end, the reports function only as justification for more obscenity sweeps on the Internet. The Ministry of Education is already citing Web 547's reports to justify new restrictions imposed on postings on the education Internet.

[38.](#) For example, Garden of Hope's CEO Hui-Jung Chi has been a member of the Ministry of Education's Gender Education Committee since the latter's founding in 1997.

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Other such NGOs have also had their delegates on this committee that oversees gender- and sex-education-related matters nationwide.

[39.](#) See http://www.ecpat.net/eng/Ecpat_network/index.asp.

[40.](#) Following upon the 2nd World Congress Against Commercial Sexual Exploitation of Children held by ECPAT International in Yokohama in December of 2001, the First ECPAT-Taiwan Forum Against Commercial Sexual Exploitation of Children was held on October 14–

15, 2002, with three speakers from ECPAT International and SAGE (Stand Against Global Exploitation). Government officials are fully aware of the amazing progress that could be made in such events, considering Taiwan's repeated defeats in other diplomatic channels. In fact, when the Ministry of Foreign Affairs' Research and Design Committee Chairperson tagged along with ECPAT representatives to the World Congress in Yokohama, she was so touched by the opportunity to attend international conventions, as well as so impressed by ECPAT Taiwan's international connections, that she wrote to praise the latter for conducting successful "citizen's diplomacy" (http://www.ecpat.org.tw/html/view01_05.htm).

[41.](#) The Ministry of Interior explains that major revisions of the Children's Welfare Act in 1993 had greatly enhanced relevant laws for the protection of children; the recent fusion of Children's Welfare Act and Juvenile's Welfare Act aims exactly to revise both in accordance with UN definitions. See <http://publish.gio.gov.tw/newsc/newsc/>

901214/90121401.html.

[42.](#) Incidentally, the expansion of teenager-related laws often entails expansions in halfway houses or shelter institutions, many of which are run by various welfare NGOs. In 1988 when the anti-trafficking legislation process began, one halfway institution (Taipei Municipal Kuang-Tze Care Home) built partly to shelter "unfortunate girls" petitioned to the government saying that over 700 such girls had been found by the police in the first 6 months of the year, but the institution could keep only seven girls on their roster and was on the verge of being dismantled by the government. They were hoping amendments to the laws would help keep more girls at the institution. Not surprisingly, the Law to Suppress Sexual Transaction Involving Children and Juveniles effectively increased the number of high-risk or already fallen girls to be kept there for rehabilitation. Likewise, when the joint amendments to the Children's Welfare Act and Juvenile's Welfare Act were being proposed in 2002, the Taiwanese Association of Orphanages admitted that they had the capacity to house 3,500 kids but only 2,300 beds were filled at the time. They thus urged the age of

protection be raised to 18

so that more children from “dysfunctional families” would fall under their auspice, not to mention an increase in funding that is required by the law they helped put into place ([http://](http://www.ettoday.com/2002/11/19/327-1377473.htm)

[/www.ettoday.com/2002/11/19/327-1377473.htm](http://www.ettoday.com/2002/11/19/327-1377473.htm)).

[43.](#) Scholars have noticed that the new amendments aim to strengthen parental duties, but warn that such amendments depend on a family-centered ideology that aims to consolidate the natural bond between children/juveniles and their parents, which may no longer be viable in the late modern society. See Shuen-Min Wang, “Some Thoughts on the Combinatory Amendment of Children and Teenagers Welfare Act,” *NPF Commentary* 092–

046, National Policy Foundation, March 27, 2003. See <http://www.npf.org.tw/PUBLICATION/SS/092/SS-C-092-046.htm>.

[44.](#) The number of alien workers in Taiwan, totaling 150,000 in 1984, had just about doubled by early 2003. Gender distribution used to favor male alien workers but dovetailed toward the end of 2000 due to public fear that male alien workers may sexually assault local women. Last count in February of 2003 put male alien workers at 134,000 and female alien workers at 170,000 (<http://www.cla.gov.tw/acdept/month/tab1104.xls>).

[45.](#) By the end of 2002, the total number of foreign brides totaled 85,000 ([http://](http://www.ettoday.com.tw/2003/02/25/301-1417410.htm)

www.ettoday.com.tw/2003/02/25/301-1417410.htm). The number of brides from Mainland China had, however, reached 140,000

(<http://archive.udn.com/2003/2/22/NEWS/>

[NATIONAL/NAT5/1204192.shtml](http://archive.udn.com/2003/2/22/NEWS/NATIONAL/NAT5/1204192.shtml)).

[46.](#) After repeated petitions and protests, more than 3,000 Mainland brides took to the streets in Taipei on September 20, 2003, to demand human rights and equal treatment as

the independence-minded government moved to change the waiting period of ID cards for Mainland brides from 8 years to 11 years.

[47.](#) For historical reasons, Mainland China and Russia (reminiscent of the Soviet Union) have long been considered Communist menaces to the world. Migrant sex workers from these countries who have come to Taiwan seeking better incomes are thus always characterized as, on the one hand, a demonstration of the thoroughly bankrupt rule of these regimes, but on the other hand, embodiments of conspiracies by these regimes to disrupt Taiwan's moral values and economic stability.

[48.](#) Since 1999, the Collective of Sex Workers and Supporters (COSWAS), the only prostitutes' rights group in Taiwan which evolved from the 1997 Taipei Alliance of Licensed Prostitutes (TALP), has struggled to keep the right-to-sex-work initiative alive in public debates. COSWAS has organized four International Action Forums on Sex Worker's Rights, three Sex Worker's Cultural Festivals, and numerous dialogs between sex workers and urban residents so as to educate the public about the realities of sex work and to push for decriminalization. Their struggle and efforts have not only effectively challenged the anti-sex-work agenda but also spurred decriminalization initiatives elsewhere in Asia ([http://](http://www.taconet.com.tw/Home/)

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Trafficking in Lives

How Ideology Shapes Policy

Melissa Ditmore

Public concern about the issue of trafficking in persons has a long history; the history of concerns related to women's economic independence, their mobility, and autonomy is still longer. Any change in women's situations, particularly one that involves "unsupervised"

women, brings to the fore a myriad of concerns, primarily focused on questions of morality and chastity. This has been observed particularly in the context of female migration, first in the historical migration of women from rural to urban areas, then in the context of international migration. Female migrants now outnumber male migrants, and the associated areas of concern include the age-old specters of trafficking in women and prostitution. These issues have in turn brought forth a wide spectrum of different reactions, with advocates for women advancing both protectionist and empowering ideals as solutions to perceived problems.

The seemingly endless debate about trafficking focuses heavily on sex work, with a number of questions continually reemerging: Is all participation in the sex industry (including, particularly, prostitution), trafficking? Is such participation an inherent violation of human rights?

Equating sex work and trafficking leads to an overly simple analysis that neglects the core issue of trafficking, namely migration, while refocusing discussion on other problems. Maintaining a lurid focus on sex allows the dull and intractable issue of migration to be ignored in favor 107

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of a more politically popular and publicity-friendly condemnation of trafficking as sex work. This artificially narrow focus is doubly perilous: abolitionist approaches to sex work have led to the imposition of limitations on women's mobility in the name of protecting them against the twin "evils" of trafficking and prostitution. These limitations not only restrict women's freedom but may even drive determined migrants into the arms of traffickers. Secondly, while notions of trafficking reflected in recent approaches have grown more sophisticated—as demonstrated by a move away from an exclusive focus on sex to one that also includes servitude and debt-bondage in industries as disparate as garment production, domestic work, and construction—the influence of activists'

agendas vis-a-vis sex work and trafficking has also expanded. Debate on these subjects can now determine or influence policy in a wide range of areas, including funding for anti-trafficking programs and even health issues such as the allocation of funding for programs addressing HIV/AIDS.

Historically, trafficking in persons has been equated with prostitution. The forerunner to the latest anti-trafficking legislation is the United

[Nations 1949 Convention¹ that exclusively addressed prostitution. The new](#)

approaches to trafficking are different in two ways: first, the assumption that prostitution constitutes a human rights violation has been hotly debated, and secondly, the issue of trafficking is now understood to include other industries and to encompass men as well as women. But while the understanding of trafficking and its definitions has expanded, discussions of trafficking are often still limited to its most salacious aspects, verging at times on voyeurism. Crafting law is no exception.

This essay describes the discussion of the definition of trafficking in persons for the United Nations Optional Protocol on Trafficking and recent changes in US funding policy for organizations addressing trafficking around the world, both of which were greatly affected by the various efforts of advocates for women. Feminist activists with a wide range of ideologies have had enormous impact on the creation of new legislation and policy addressing trafficking in a variety of

ways and at every level.

UNITED NATIONS OPTIONAL PROTOCOL ON TRAFFICKING

This article draws on my own participation in, and observation of, the negotiating process of the United Nations Optional Protocol on Traf-

[ficking² to discuss two seemingly disparate but quite intertwined is-](#)

sues; namely the feminist response to sex work and the issue of how to define trafficking in persons in the protocol. The reason I describe these phenomena in tandem is because approaches to this UN document emerged from two feminist stances in distinct opposition to each other.

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These opposing approaches result in a recurring debate whenever trafficking is discussed. The first view sees all sex work as a form of trafficking. The second holds that conditions of labor in all industries, including the sex industry, should be addressed. The debate as to whether prostitution is slavery per se, and therefore equivalent to trafficking in persons, was related most directly and vehemently to the definition of trafficking in persons in this protocol. I describe these debates and the influence exerted by various factions lobbying legislators and presenting at negotiations in order to interpret and criticize the discussion of this new legal document.

I analyze the definition of trafficking in the UN protocol with an eye to the use that is likely to be made of this document. Two Optional Protocols on smuggling and trafficking in persons address mobility, but with different levels of agency. Trafficking in persons defines a victim of crime rather than an agent, while smuggling necessarily implicates the person who has engaged the services of a smuggler. A smuggled person, like a trafficked person, has clandestinely crossed a border or been transported, but unlike trafficking, smuggling is not linked to work. A smuggled person is not a victim but a criminal, an illegal immigrant, an undocumented alien, while a trafficked person is assumed to be an innocent victim. This conception of agency divides in the imagination—if not in reality—along gender lines. This division is reflected in the title of the protocol addressing trafficking, which is the Optional Protocol to Prevent, Suppress and

Punish Trafficking in Persons, *Especially Women and Children* (emphasis added). This contorted language was sought by a network of feminist organizations that view all sex work as a violation of women's human rights. They initially advocated for the title "Trafficking in Women and Children," omitting men entirely. The Smuggling Protocol has no such coda and no specific emphasis on gender. Smuggled migrants are assumed to be men seeking work elsewhere without proper documentation, while trafficked persons are assumed to be duped victims, usually women. This gendered distinction follows long-standing stereotypes of women as victims and men as less able to be victimized.

As well as presenting a distorted view of women, such an ideology harms men. Trafficked men are invisible and their situations continue to be less recognized and therefore more difficult to address. These distinctions may also significantly affect enforcement, depending on the way that they are interpreted. They are also visible in laypersons' interpretations and in the crafting of this protocol.

The association of trafficking with victimization is commonly reflected in the language used, where the term "victims of trafficking" is frequently encountered. This may in part be encouraged by law enforcement agencies—in dealings with law enforcement, it is always preferable to be perceived as a victim of crime rather than a criminal. The

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use of "victims of trafficking" rather than "trafficked persons" may serve as a handy guide that helps to make it clear who is a criminal to arrest and who is a victim to protect.

Another problem with the use of the term "victim" is that it fails to reflect the complexity of this issue or the experiences of all people who have undertaken to leave their homes and families to pursue a better future via economic migration (Finkel 2001; Human Rights Watch 2000; Skrobanek, Boonpakdi, and Janthakeero 1997). Trafficked persons are not simply and solely victims; they are often the go-getters of their home communities. It is ironic that in this framework the ambitious and industrious poor who undertake migration are unrewarded, while "pathetic" victims garner greater sympathy.

This insistence on the title of victim has historic precedent. DuBois and Gordon

(1984) wrote that feminists of earlier eras

consistently exaggerated the coerciveness of prostitution. In their eagerness to identify the social structural forces encouraging prostitution, they denied the prostitute any role other than that of passive victim. They insisted that the women involved were sexual innocents, women who

“fell” into illicit sex. They assumed that prostitution was so degraded that no woman could freely choose it, not even with the relative degree of freedom with which she could choose to be a wife or a wage earner. (33) Definitions of this sort, with their focus on women’s role as victims and on the coercive nature of the sex industry, are convenient for those whose definition of traffic in persons views traffic that does not involve the sex industry as being, at best, ancillary to the phenomenon of trafficking. But such a restrictive viewpoint touches on only one aspect of trafficking, and plays down the real pivotal issue; namely the question of migration.

Migration lies at the heart of international traffic in persons. Trafficked persons are for the most part migrants—usually undocumented—

seeking work elsewhere, who find themselves in untenable working conditions. A typical recent trafficking case involved some dozens of Asian men and women relocated to the US territory of the Northern Mariana Islands for work in sweatshops and brothels, for which they were either inadequately paid or not paid at all, and were brutalized by their employers if they dared to protest about their conditions. Sex featured in the Marianas case in that some of those trafficked were employed in brothels, but many trafficked persons were not involved in the sex industry at all. Testimony to the US Congress by the Director of the Global Survival Network described thousands of people in debt-

[bondage and slavery-like conditions in the garment industry.](#)³ The crucial factors that determine a case of trafficking are the conditions in which trafficked persons find themselves, and the means—deception,

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coercion, outright enslavement—by which they are brought into those conditions. These are the criteria that are used to distinguish, for example, cases

of smuggling from cases of trafficking.

UNITED NATIONS PROCEDURES AND PARTICIPANTS

Lobbying Blocs

Lobbying factions at the deliberative meetings during the drafting of the UN protocol were drawn largely from two main non-governmental organizations working with outside allies. One bloc was led primarily by the International Human Rights Law Group (IHRLG), which worked with the Global Alliance Against Trafficking in Women (GAATW), Women in Law and Development in Africa (WILDAF), and the Asian Women's Human Rights Council (AWHRC). These organizations and others distributed documents with recommendations for the protocol under the name of the Human Rights Caucus. The other main bloc, calling itself the Human Rights Network, was chiefly represented by the Coalition Against Trafficking in Women (CATW), working with the European Women's Lobby (EWL), Soroptimist International (SI), the International Human Rights Federation (IHRF), the International Abolitionist Federation (IAF), and Equality Now (EN).

The Human Rights Caucus and the Human Rights Network held diametrically opposed views about whether prostitution is inherently trafficking in persons. CATW and their Network allies proposed an abolitionist approach to sex work to make the sex industry more illegal and to prosecute and punish men involved as clients and otherwise. They sought specifically to include prostitution and other sex work in the definition of trafficking in persons. The International Human Rights Law Group and other members of the Caucus sought to separate sex work and trafficking, and to define trafficking based upon working conditions. In this, they were influenced by the groundbreaking inclusion in their ranks of sex workers and advocates for sex workers' rights. The approach of the Caucus reflected the position of the sex workers' rights advocates, who recognize sex work as a form of work, albeit a difficult one that is not always

[performed in ideal conditions.](#)⁴ While sex workers' rights advocates are

the first to recognize that there are abuses within the sex industry, they seek to correct and to address the problems not by abolition, but by improving conditions and affording legal recognition to the sex industry. The Caucus also advocated for the inclusion of other human rights protections such as witness

protection and health care.

The issues discussed in this protocol, especially whether to define prostitution as trafficking per se, evoked emotional responses. It is

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difficult to convey the rancor that existed between feminist factions addressing trafficking in persons. However, malice between feminists on the issue of prostitution is neither new nor unique, and can take extraordinary forms. For example, an earlier Coalition Against Trafficking in Women newsletter (1998–2000) described Jo Doezema, Marjan Wijers, and myself, all members of the Human Rights Caucus, as “pro-prostitution” advocates. This language is akin to the use of the term “pro-abortion” by activists who seek to ban abortion. It is also similar to earlier factional infighting within the feminist movement. Alice Echols, in her article about the sexuality debates in the larger feminist movement, described the use of similar discrediting and silencing tactics when she wrote Anti-pornography feminists have tried to silence their intra-movement critics with the same red-baiting tactics of feminist capitalism. Recently, Kathy Barry characterized the feminist opposition to the anti-pornography movement as a cabal of leftist lesbian and heterosexual women who want to destroy the movement so that “male leftists can continue their sexual abuse of women without fear of censure.” (Echols 1984, 54) It is unfortunate to note that such tactics are reproduced almost twenty years later.

Good-faith efforts to overcome factionalism failed, even on issues that every NGO agreed upon. In one attempt to find common ground for working together, my organization invited the International Abolitionist Federation, a member of the Network, to jointly distribute suggestions for the inclusion of human rights protections for trafficked per-

[sons.5 These suggestions were not a point of dispute between NGO](#)

factions because they were not related to the definition of trafficking or similarly loaded issues. But even this olive branch was declined.

I was disappointed that the Network made no efforts to address human rights protections for trafficked persons. In fact, when one Caucus representative asked

a Network representative why her group made no efforts to promote human rights protections in the protocol, she was told that the Network chose to focus their limited resources on the defi-

[nition of trafficking alone.](#)⁶ [This response suggested that the Human](#)

Rights Network prioritized anti-prostitution activism over and above human rights. This order of priorities prevented NGOs from presenting a united front, which in all likelihood prevented the inclusion of manda-

[tory human rights protections in the protocol.](#)⁷

The Human Rights Network and the Human Rights Caucus were both largely composed of self-proclaimed feminist organizations, or organizations with feminist leanings. Their stances on what are often deemed women's issues, particularly those addressing female bodily autonomy, such as reproductive rights, abortion, family planning, and promoting the

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use of condoms against HIV, were generally similar. Yet despite the potential common ground, the two groups were most often bitterly divided.

This division contrasts dramatically with the rapprochement that took place between the Human Rights Network and American right-wing and religious organizations. On the face of it, these two groups should have practically no point of agreement, as the position of the conservative organizations on the issues described in the paragraph above is usually diametrically opposed to that of any feminist organization. Yet the Human Rights Network was able to join with conservative American politicians in promoting a definition of trafficking in persons formulated in such terms as to include prostitution. Apparently, the need for an alliance on this one issue proved

[stronger than all the other potential sources of disagreement.](#)⁸

This outwardly incongruous alliance was most apparent in media pieces advocating their position. Media pressure as a lobbying tactic usually took the form of op-ed pieces and letters in large newspapers timed to coincide with

decisions on particular issues. Both the Caucus and the Network used their media contacts in the United States to promote their views. The US delegation to the UN grew progressively more cautious in their speech during the last few meetings as any comments favorable to the Caucus position were presented as “pro-prostitution”

to media and government representatives by Network members and affiliates. William Bennett and Charles Colson, noted American conservative standard bearers, [9](#) wrote that “Over the past few months the Clinton administration has lobbied for the United Nations to adopt a protocol that would lend legitimacy to prostitution” and “the White House delegation has worked to narrow the definition of sexual trafficking, in a way that would allow certain prostitution rings to flourish”

(Bennett and Colson 2000). This was countered by a letter from Ann Jordan, Director of the Anti-trafficking Initiative of the International Human Rights Law Group and a member of the Human Rights Caucus, in which she highlighted the inaccuracies of these statements, adding that debating about prostitution would bring about the collapse of these negotiations and result in a lost opportunity to combat crime and assist the victims of crime. Echoing the Bennett and Colson view, a *New York Post* article (De Russy 2000) erroneously stated, “Hillary Clinton chairs a presidential task force that is lobbying the United Nations to redefine prostitution in a way that would effectively legalize it—and make it impossible to fight the ‘sexual slave trade.’” The *Los Angeles Times* ran an article advocating a definition of trafficking that included workplace abuses, citing a 1995 case in which 75 people were enslaved in a sweatshop (Cho and Salas 2000). Activists on both sides of the debate were aware that media pieces carried considerable weight, with the abolitionist movement being particularly adept at using this tool, albeit at

[the price of making some strange associations.10](#)

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The nature of the alliances made and positions taken also became clear in meetings between the US delegation and NGO representatives.

In one meeting, James Puglio, a member of the US delegation with a strong law enforcement background in his capacity as Special Assistant to the Assistant Secretary of the International Narcotics and Law Enforcement Department of the US State Department, stated that the inclusion of a definition of sexual exploitation would prevent any accord and so would be scrapped. The Network representative angrily said that she was disappointed, adding that Senator Jesse Helms would also

[be very disappointed with this.11](#) At this time, Jesse Helms—a conservative American politician most famous for the 1973 Helms Amendment prohibiting the use of US funds for abortion services outside the US—

wrote to then-US Secretary of State Madeleine Albright:

I am being deluged with telephone calls, faxes and letters about the incredible US position in the UN negotiations relating to the [Trafficking Protocol]. Those contacting me are shocked, as am I, that your State Department negotiators are on the verge of reversing the official US opposi-

[tion to prostitution.12](#)

These contacts illustrate the “strange bedfellows” phenomenon in which certain feminists work with the radical right (Chancer 1998). The phenomenon continues: more recently, the conservative, anti-choice Representative Chris Smith of New Jersey sponsored new funding restrictions for the US Global HIV/AIDS Fund, apparently motivated by the same conflation of trafficking and sex work. The continued collaboration between opponents of abortion and opponents of sex-work projects reflects the strong focus on sexuality and women’s autonomy in policies addressing trafficking.

Definition of Trafficking in Persons for this Document

One of the most hotly disputed elements of the protocol was Article 3, which defines trafficking in persons. Ideologies resembling those of the NGO blocs were visible among the different government delegations, leading to protracted discussion of the definition of trafficking. Consensus was extremely difficult to

achieve. Rather than list all the proposed definitions, I will use examples of the more contentious dialogue.

Debates about the definition of trafficking typically centered on whether to include all sex work, an issue on which the different camps were deeply divided. This was demonstrated not only by the expression of opposing views but also by the sacrifices that proponents were willing to make to ideology. The discussion of prostitution eclipsed the

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plight of trafficked persons—including men—in other industries. Additionally, examples of a willingness to sacrifice women’s autonomy were evident during these discussions. For some feminists, sex work and the exchange of sex for goods or money, as in prostitution or possibly even dating, is a reinforcement of male social elevation over female. While most feminists and certainly most women do not take this much further than acknowledging that an exchange for sex exists and that they may not approve, a minority make this a core issue. This is reflected in some of the recommendations which were offered for the definition of trafficking.

The sacrifices that certain factions were willing to make in the name of ideology were illustrated by some of the emotionally charged pleas made on the floor of the UN in favor of certain proposed definitions.

For example, a written suggestion from the Philippine delegation was circulated on June 6, 2000, which suggested a definition of trafficking that included the formula, “with or without consent of the victim by legal or illegal means, for all purposes of sexual exploitation including

[prostitution, marriage, employment...](#)¹³ If adopted, such a definition

would have criminalized as trafficking not merely prostitution, but also marriage and even employment. While this is clearly an extreme, not to say ludicrous example, it is one of the dangers of an obsessive and myopic focus on prostitution that it opens the door to the willing sacrifice of other essential liberties and rights in the name of eradicating prostitution.

In a UN protocol, definitions necessarily afford a certain interpretive leeway for enforcement by signatory nations, in order to allow consensus to be achieved in such a large meeting. The Trafficking Protocol does not prohibit additional measures and/or sterner enforcement, thereby allowing signatory nations to enforce additional domestic legislation regarding these crimes and to assess punishment for them as they see fit. Such an allowance for domestic legislation affords great variation in the possible enforcement of this document nation by nation.

Thus nations are able to legislate prostitution as they see fit. Australia, Germany, the Netherlands, and New Zealand, among others, were very clear that they would not sign a protocol that would require them to change their national laws to outlaw prostitution. Their sentiments on this matter are in line with the Human Rights Caucus. Similarly, nations such as Iran, Iraq, the US, and the Vatican would not have signed a protocol requiring them to decriminalize prostitution in their jurisdictions.

The definition of trafficking adopted in the protocol specifies that the threat or use of force or deception is a necessary component of trafficking persons into any situation. It goes on to make clear that consent is irrelevant when these means have been used. In other words, a person can consent to work but not to slavery or servitude. The definition additionally specifies that any recruitment, transportation, or harboring of a person under 18 is to be considered trafficking in persons,

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regardless of the means used. The inclusion of men in this definition constitutes a significant legal breakthrough.

The issue of consent, crucial to the definition, provided fertile ground for the exercise of agendas. Under international law, children—

defined as any person “under 18 years of age”—are not able to give consent. During the October 2000 meetings, a member of the Philippine delegation who is also the director of the CATW in the Philippines made an intervention (spoken suggestion), the apparent intent of which was to redefine prostitutes as children. IHRLG representative Melynda Barnhart summarized this statement by saying

that the delegate “essentially said that [for] all women making decisions that [this delegate]

doesn't agree with, i.e. prostitutes, others should have the legal ability

[to override their decisions.”¹⁴](#)

Suggestions of this kind echo the way in which some earlier feminists patronized other women during the white-slavery panic of nearly a century ago. In 1913, Jeannette Young Norton, for example, wrote: “The big sisters of the world [want the] chance to protect the little and weaker sisters, by surrounding them with the right laws for them to obey for their

[own good.”¹⁵ The written proposal, distributed October 2, 2000, was sig-](#)

nificantly refined, but seemed also to include people with disabilities.

Article 2bis(d) [this article is numbered 3 in the final document] Definition of Child

“Child” shall mean any person under 18 years of age provided that those over 18 years of age but unable to fully protect themselves from abuse, neglect, cruelty, exploitation due to mental or physical incapacity be considered for the purpose of this protocol.

Whatever the intentions behind this proposed definition, it is legally very dangerous. During the 1950s, women in the United States could be institutionalized for being “promiscuous” (Keefe 1994). It would be all too easy, using the definition above, to see a return to that state of affairs with adult women being judged unable to “fully protect themselves” due to “mental or physical incapacity” if they engage in unap-proved activities such as promiscuity or prostitution. The definition be-trays a readiness to sacrifice many of women's hard-won gains, including independence, legal majority, and the ability to make enforceable contracts, solely in order to render prostitution more criminal.

Definitions of this kind, in which the normal presumption of adult autonomy can be overruled by a subjective, external judgment as to the desirability of an activity, are essentially perilous. They call to mind Rubin's “brainwash theory” which “explains erotic diversity by assuming that some sexual acts are so disgusting that no one would willingly

perform them. Therefore, the reasoning goes, anyone who does so must have been forced or fooled” (Rubin 1984, 306).

Abolitionist reasoning proceeds from the same starting point. Prostitution as a condition is assumed to be so inherently intolerable that no rational person could freely choose it for themselves; therefore if anyone appears to have chosen it for themselves, it can only indicate that they are either not rational, or they are victims of coercion or deception; that is to say, victims of trafficking. The perils of such an argument lie precisely in the way that it opens the door to a paternalistic interpretation of “what is best for women.” Such interpretations have historically had a very negative impact on women; the gains made by the modern feminist movement have been in large part concerned with escaping from such paternalism and forcing the recognition of women’s autonomy and their ability to make their own decisions. To roll back those gains in the interests of pursuing a war on prostitution is perilous indeed.

NEW USAID FUNDING POLICY

Feminists have shaped not only international law, but also United States foreign policy. Here too, ideological positions have led to some strange alliances and even to efforts directed toward the defunding or discrediting of projects whose effectiveness is undeniable but whose positions are unpalatable. Ironically, even while trafficking is a key concern, it is sometimes precisely those sex-work projects that are recognized for their excellent and effective anti-trafficking projects that may find themselves under attack.

Once again, certain feminists have chosen to work with far-right politicians and other conservative figures to promote an agenda that actually limits women instead of empowering them. Their allies in this case include groups such as the Vatican, the Salvation Army, and other religious groups; their targets include organizations whose efficacy in combating human rights abuses of sex workers and trafficked persons has been confirmed by their selection to receive funding from the United States Agency for International Development (USAID). It is very clear that grassroots efforts have affected policy.

For example, on June 19, 2002, the abolitionist feminist Donna Hughes

addressed the US House Committee on International Relations specifically to denounce sex-work projects that she declared “promote prostitution,” and to demand efforts to prevent funding of these organizations. The organizations named included the Nobel Prize–winning Doctors Without Borders, as well as the International Human Rights Law Group. Hughes has since followed this up with a number of press pieces and conference talks. Since then, the US administration has been

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very clear in its determination that projects that “promote prostitution”

will not receive further anti-trafficking funds from USAID. Unfortunately, this seems to include projects that work with sex workers in productive ways to promote both their human rights and their health, including working to prevent the spread of HIV.

The shift in focus from trafficking in persons to attacking funding for sex-work projects indicates an interest in promoting anti-prostitution ideology at the expense of health and human rights, particularly the health and human rights of women and others in the sex industry. Whatever the nature of the ongoing debate, ideology should not be permitted to override effective HIV prevention efforts or to interfere with treatment of HIV-positive people. Unfortunately, that is exactly what is occurring with these vindictive efforts to defund sex-work projects. There is as yet no way to quantify the number of infections such policy will promote, yet it is clear that sex workers are put at risk and equally clear that they are not the only people to be adversely affected by such mis-guided policy. The children and families of sex workers and their clients will all be affected, and there will be a knock-on effect in the broader area of public health. When the alliance between certain feminists and American right-wing politicians affects HIV prevention for the worse, it ceases to be merely incongruous and becomes positively dangerous.

The recent sea change in the administration’s attitude was reflected in a cable sent in 2003, signed by Colin Powell and circulated to USAID

field officers. The Powell cable stipulated that organizations amend their websites to promote abstinence over condom use in the struggle against HIV and

AIDS. This gained widespread notice; a less noted stipulation was that USAID anti-trafficking and other funding should not support

[sex-work projects, needle exchange, and abortion services.](#)¹⁶ These ac-

tivities are all legal in the US; it is the Bush administration's position, however, that they must not be supported outside the US, regardless of their proven effectiveness in saving lives or improving public health.

The language of the Powell cable—which stresses the unsuitability of non-abolitionist sex-work projects as recipients of US aid, before going on to stress that taxpayer funds must not be used to support “trafficking of women and girls”—reveals that, once again, the conflation of prostitution with trafficking has resurfaced (so too has the restriction of trafficking to females; the cable does not explicitly forbid using US taxpayer monies to support trafficking of males). If this conflation has proven so durable in the minds of many people, it is in part due to its promotion by certain anti-trafficking activists who have worked very hard to reinforce this association to Congress and the public, through speaking engagements and in print. It is ironic that the activists in question are often strong radical feminists, when the consequence of their efforts is the

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encouragement of a general protectionist stance toward women, a stance that is more than likely to be highly detrimental to women in general.

This ideological agenda has the potential to affect effective projects whose success has been widely recognized. Projects that involve sex workers are the most successful at combating abuses within the sex industry around the world, but because such projects often advocate legalization of prostitution, they may find themselves cut off from funding. An example of a project that may suffer under this new policy is the Durbar Mahila Samanwaya Committee of Kolkata, more widely known as the Sonagachi Project. This is considered one of the strongest success stories of HIV prevention among vulnerable populations in South Asia, and USAID has supported their presentations at the International Conference on HIV and AIDS in the past. The negative ramifications of excluding exemplary projects such as the Sonagachi Project from USAID contracts would be enormous.

The Sonagachi Project is one of many projects that exemplify pragmatic and effective approaches to reducing not only transmission of HIV, but also abuses such as trafficking within sex work. The prevalence of HIV among sex workers is far lower in Kolkata than elsewhere in India. Their anti-trafficking initiative relies on the participation of red-light-district residents, especially sex workers, to prevent trafficking into the red-light districts. As of June 15, 2001, 43 trafficked persons had been assisted by the Sonagachi Project, 35 of whom were minors (Durbar Mahila Samanwaya Committee 2001).

Another potential victim of current policy is Empower, a Thai project that enables sex workers to get high school equivalency diplomas. Diplomas are important for those who want to leave the sex industry and seek other work. If Empower's attitude to sex work disqualifies it from receiving funding under the terms of the Powell cable, the people who will be hurt are not policy makers, lobbyists, or activists—they are poor women far from the people who make these decisions, women whose voices and needs were not considered when these decisions were made.

The potential ramifications of the policy are far-reaching. Sex workers' groups are at the forefront of proposing specific, practical solutions to the many problems faced by sex workers. A policy that defunds these projects because they fail to measure up to the ideological yardstick used by the current administration will harm the health of sex workers, their human rights, and their ability to organize. It is likely to deny them education and vocational training that would allow them to exit the sex industry.

Sex workers are not the only group likely to be affected by policy that is formulated based on a conflation of prostitution and trafficking.

In the first place, whether the administration likes it or not, sex workers are members of a community that includes other people, including the

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clients or dependents of sex workers. Any decision that impacts their health or economic options also impacts others. Moreover, as the logic of the Powell cable suggests strongly that the administration has “bought in” to a worldview that includes a restrictive focus on sex trafficking as the principal area of concern in

trafficking, there is a real danger that other anti-trafficking initiatives dealing with less “sexy” areas, such as trafficking into sweatshops or domestic labor, or trafficking of males, will also find themselves starved of support.

The list of potential losers continues. While specific groups may be directly targeted because their outlook is incompatible with that of the Bush administration, other sex-worker rights organizations around the world are also likely to suffer by association.

The current trend in policy is likely to affect other organizations as well. However distasteful the idea may be to certain groups, sex work is a form of labor. It is also a significant portion of the economy: the ILO

estimates that the sex sector accounts for between 2 and 14 percent of GDP of four Asian countries; namely Indonesia, Malaysia, the Philippines, and Thailand (Lim 1998, 7). In common with other economic sectors of marginal legality or low social acceptability it also employs many undocumented workers. A crackdown on sex work may be implemented through a more general attack on sectors employing undocumented workers or, conversely, broad initiatives to crack down on undocumented labor may gain impetus from a policy that favors repression of sex work.

In either case, unions and other groups that support undocumented workers will feel the chill of the new policy.

So too will organizations dealing with migrants. Undocumented workers are clustered most heavily in particular industry sectors, such as the sex industry, agriculture, construction, and clothing production. A large proportion of these undocumented workers are migrants, drawn into these specific sectors because they lack the formal qualifications (educational or administrative) necessary for entry to other sectors. If organizations working with migrants are seen (rightly or wrongly) to be facilitating clandestine or illegal employment, they too are likely to be singled out for increased scrutiny, legal harassment, or withdrawal of support.

Feminist groups that address gendered labor issues are a third group that will potentially be affected by present policies. The sex industry employs more women than men, so conditions in the industry are necessarily of interest to feminist groups. But if the formula that they propose for improving conditions of

female workers happens to be at odds with the prevailing policy, they are also likely to suffer negative consequences.

The impact of new directions in policy is felt initially by groups that work in specific sectors but ultimately, and far more damagingly, by workers in those sectors. Punishing unions or NGOs for being “out of step” with policy begins by depriving workers of services or support

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offered by those groups. It also hampers the attempts of those groups to address problems such as the exploitative conditions (including low wages and unsafe working environments) endured by marginalized workers across the sector. Furthermore, because no one sector exists in isolation, trends in one sector affect others. Low wages for undocumented workers in one field will depress wages across all sectors for all workers, documented or undocumented (Kwong 1997). Lastly, the sex industry supports other individuals or sectors. Sex workers have dependents, including children, and sex businesses are supported or serviced by other businesses that are not part of the sex sector but are nonetheless economically dependent on it. For example, a 1997 survey in Thailand suggested that of approximately 100,000 workers in just under 8,000 establishments providing sexual services, more than a third were “support staff” (Lim 1998, 9).

The sex sector does not exist in isolation. Issues surrounding the sex industry are part of a larger complex of issues related to the labor market as a whole, particularly with respect to gender issues and migration. As a consequence, any policy that targets the sex industry will necessarily have a much broader impact, as measures proposed to address one particular sector “spill over” to affect other areas. Trafficking in persons has a long history of conflation with the sex industry. Responses to trafficking that exclusively focus on the sex industry affect a broad range of people and issues, sometimes in unanticipated ways.

Recent years have witnessed significant progress in expanding approaches to trafficking in persons to address working conditions and to include men. In this light, the new US and USAID policy represents a step backward. This return to a restrictive focus on women trafficked into the sex industry is illustrated by a February 2003 conference entitled “Pathbreaking Strategies in the Global Fight

Against Sex Trafficking,” which was sponsored by the US government and attended by international activists. Although mandated “to underscore the commit-

[ment of the United States to fighting trafficking in human beings,”](#)¹⁷ this

conference exclusively addressed the sex industry, neglecting the larger numbers of people trafficked into domestic work, construction, agriculture, and sweatshops. This backsliding is further illustrated by the fact that USAID anti-trafficking efforts are now managed by the office of Women in Development—trafficking is once again a “women’s issue.”

Male trafficked persons, or those whose experiences do not neatly fall within a narrow focus on sex trafficking, risk being left out in the cold.

The current attitude toward trafficking, promoted in part by specific groups within the women’s movement and their *pro tem* right-wing allies and expressed by statements of policy such as the Powell cable, has the potential for doing serious harm. Because of this attitude, organizations with a proven, positive impact at the grassroots level risk losing

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support because their policies are politically unpalatable to the current US administration and those who have influence over it. Other organizations, while not in direct conflict with Washington’s new directions, also risk being starved of support, simply because their primary areas of concern fall outside an increasingly narrow focus on one aspect of the trafficking problem. These ideological policy shifts are not abstract or without consequences—they translate to a very real human impact, and the potential to cause significant suffering to real people.

CONCLUSIONS

Trafficked persons have gained and lost from new attitudes toward trafficking. Progress has been made in the expansion of trafficking to address slavery-like conditions more generally. This has drawn attention to a variety of cases, including ones involving sweatshops, Thai children, and Bangladeshi domestic

workers. But trafficked persons and sex workers have also lost ground if prevention efforts by sex-work projects are defunded. All of Asia and beyond will lose out if anti-trafficking efforts are undermined because sex workers are deliberately deprived of access to friendly and supportive services. The most effective sex-work projects are precisely those which address sex work as labor, such as the much heralded Sonagachi Project, which has been noted as a “best practices”

project by USAID, or SHAKTI in Bangladesh, commended as a best practices project by UNAIDS. Yet these are also the types of projects that the US administration is not currently amenable to funding.

New US policy on funding is part of a continuation of the debate on whether sex work is trafficking in persons per se. This recurrent ideologi-

[cal schism is seen whenever trafficking is discussed,18 including the recent](#)

deliberations of delegates to the UN working to define trafficking for the UN Optional Protocol. The debate hinges on two opposing positions. One position recognizes trafficking of all kinds as a grievous violation of human rights, but holds that sex work is real work and needs to be addressed as such. The other position views sex work itself as a human rights violation and that policy on trafficking is a vehicle to use to address this violation. There is also a third view on the issue, which was neatly summarized by Meillón (2001, 156–157). This view recognizes that forums such as conferences or negotiations of legal protocols are not arenas in which it is possible to conclude one way or another, and that they are therefore not the right places for such discussion. This third view has come to the fore in other discussions of trafficking, including the negotiations of the Trafficking Protocol. This possibly pragmatic realization led to the final definition, which left the legislation of prostitution to the individual nations, rather than capturing it as part of a UN-backed definition of trafficking.

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Short-sighted policy in this area risks causing greater damage. Policies that restrict travel, and especially women’s travel, actually encourage the practice of trafficking in persons by closing legal avenues of migration.

Would-be migrants of both sexes are forced to fall back on the services of traffickers and smugglers, increasing the potential risks that they run (Meillón 2001; Kwong 1997). New restrictions are evident throughout the world, whether they take the form of an increase in scrutiny of young women leaving certain nations, such as Thailand and other Asian nations, or entering them, such as Japan, or simply increased control of borders in general, as in the case of the United States.

Despite a continuing tendency to see trafficking simply in terms of

“white slavery,” it is a complex issue that involves issues of migration and labor. Faced with this complexity, some advocates see a need to simplify the issue. The temptation of simpler analysis is obvious but it comes at the expense of specificity and accuracy. While simplifying issues may help some people understand them, this is to the detriment of complex problems—an overly simplistic solution is not a solution but a seed for new problems. The anti-prostitution stance is an example of oversimplified and inefficient analysis that claims a moral high ground while obscuring the plight of trafficked men and women in other industries. This is too great a sacrifice. When this attitude manifests itself in policy decisions affecting international aid, it comes at a very real human cost. Cambodian sex workers use the slogan “Don’t talk to me about sewing machines, talk to me about workers rights” to emphasize the need to address working conditions within the sex industry. Their voices—incompatible with an abolitionist stance that is unable to accommodate the idea of better conditions within the sex industry as a valid human rights issue—have been ignored by US policy makers.

Despite protracted debate about trafficking and prostitution, there are reasons for cautious optimism. Radhika Coomaraswamy, UN Special Rapporteur on Violence Against Women, has rightly referred to the

[protocol’s definition of trafficking as a “breakthrough”¹⁹ because it estab-](#)

[lished trafficking as a crime that extends beyond the realm of prostitution.](#)

This was made possible by a recent shift toward consideration of actual conditions and crimes against persons, rather than focusing narrowly on sexuality and morality. Recent US foreign-policy shifts have taken a dangerous turn, one that has its counterpart in trends directed at reducing women’s

autonomy in other areas, particularly in the field of reproductive rights, and in the paternalistic approach to new funding to combat HIV

and AIDS. But this is in part balanced by the existence of a growing base of supporters working to direct policy in more positive and enlightened directions. These supporters have developed an increased recognition of human rights issues and of trafficking as a multifaceted problem of which sex trafficking is only one aspect, and by no means the defining one.

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NOTES

1. United Nations 1949 Convention for the Suppression of the Traffick in Persons and of the Exploitation of the Prostitution of Others, which came into effect in 1950.

2. The Protocol was crafted by the UN Crimes Commission, to supplement the Convention Against Transnational Organized Crime. I attended these meetings in 1999 and 2000 as a lobbyist with the Human Rights Caucus, representing the International Human Rights Law Group and the Asian Women's Human Rights Council.

3. Testimony by Steven R. Galster, Global Survival Network, before the House Committee on Energy and Natural Resources, September 16, 1999, concerning the US Common-wealth of the Northern Mariana Islands, <http://www.house.gov/resources/106cong/>

[fullcomm/99sep16/galster.htm](http://www.house.gov/resources/106cong/fullcomm/99sep16/galster.htm).

4. See Sprinkle, and Leigh, both in Nagle (1997). See also "Addressing Sex Work as Labor," presented by the author to the U. N. Working Group on Contemporary Forms of Slavery during the June 1999 NGO Consultation. The text of this talk is available at [http://](http://www.swimw.org)

www.swimw.org.

5. This invitation was intended to build bridges after an unpleasant incident. In

lobbying, I left a note with suggestions about the definition of trafficking on the desk of the Caucus-friendly delegate from an antipodean nation. A representative of the International Abolitionist Federation, a member of the Network, asked for a copy of the note, and I replied honestly that I had only enough for specific government representatives and not other NGOs. When I returned to the room, the note was gone and the delegates had not yet returned. I confronted the IAF

representative and she took the paper I had left from her purse and returned it to me.

[6.](#) Private conversations and correspondence with a Human Rights Caucus representative.

[7.](#) Human rights protections are included with qualifying language like “in appropriate cases” in articles 6 through 8 of the Protocol. The anticipated consequences of this weak language are described in Jordan (2002).

[8.](#) It should be noted that this is not the first time that such an alliance has been observed. Feminists have worked with Christian groups on trafficking in Victorian England and America (Walkowitz 1983).

[9.](#) Bennett served in the administrations of Ronald Reagan and George H. W. Bush.

Colson served seven months in prison for actions related to the Watergate scandal.

[10.](#) For example, Donna Hughes, former webhost of the abolitionist Coalition Against Trafficking in Women, continues to publish regularly in the extreme right-wing *National Review*.

[11.](#) Private conversation with a Caucus member from the International Human Rights Law Group.

[12.](#) Letter from Senator Jesse Helms to Secretary of State Madeleine Albright, January 2000, on file with author.

[13.](#) Text copy of the intervention circulated by the Philippines delegation during the UN Crimes Commission meetings, Vienna, June 2000, on file with author.

[14.](#) Discussions with Melynda Barnhart, International Human Rights Law Group representative, October–December 2000.

[15.](#) Norton, Jeannette Young. “Women Builders of Civilization.” *Women’s Political Civilization*, September 1, 1913: p. 5. Quoted in Dubois and Gordon 1984, 38.

[16.](#) The text read:

Organizations advocating prostitution as an employment choice or which advocate or support the legalization of prostitution are not appropriate partners for USAID anti-trafficking grants and contracts, or sub-grants and sub-contracts

and continued:

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Careful review of all programs and publications should ensure that USAID is not perceived as using US taxpayer funds to support activities that contradict our laws or policies, including trafficking of women and girls, legalization of drugs, injecting drug use, and abortion.

The first part of this is repeated on p. 9 of “Trafficking in Persons. The USAID Strategy for Response,” February 2003, www.usaid.gov/wid/pubs/pd-abx-358-final.pdf.

[17.](#) <http://www.state.gov/g/tip/c8628.htm>.

[18.](#) This has been the case at other meetings, such as Beijing + 5 (Mitchell 2000) and the United Nations Working Group on Contemporary Forms of Slavery (Ditmore, forthcoming).

[19.](#) Talk delivered at Columbia University Law School, April 2001.

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[The Myth of Nepal-to-India](#)

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Its Creation, Its Maintenance, and Its Influence

on Anti-trafficking Interventions

John Frederick

INTRODUCTION: THE TRAFFICKING MYTH

Since the late 1980s, the discourse on sex trafficking from Nepal to India among local nongovernmental organizations (NGOs), donor partners, academics, and governments has evolved from a small set of questions and speculations to a complex and increasingly sophisticated discus-

[sion.](#)¹ At the core of that discourse is the trafficking “myth”—a typifying narrative of the trafficking episode. The myth serves several purposes: it is the “consensus description” of a typical trafficking episode around which the discourse revolves; it encapsulates the issues for the media, public, governments, and donors; and—in the absence of a firm body of knowledge—it is the basis upon which some, but not all, anti-trafficking interventions are determined.

The word “myth” is used throughout this essay because, in the case of the trafficking of girls and women from Nepal to India, the narrative is in large part fabricated—woven from strands of solid data, conjecture, cultural assumptions, and organizational and political

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agendas. Few comprehensive studies been conducted, NGOs have little experience working in several key areas of trafficking prevention, and much of the experience gained so far from fieldwork has not been assimilated into the general pool of anti-trafficking knowledge. Myths—

in the sense here of “typifying narratives”—are problematic in terms of achieving anti-trafficking goals, ensuring human rights, or providing a voice for the disadvantaged. A myth is simplistic: it cannot express the complexities of an issue, entertain controversy, or encompass “gray areas.” Like a popular film, it presents morals, heroism, and emotionality as readily as facts. A myth is conservative: it is resistant to change and discourages innovative ideas and

interventions, while being easily influenced by cultural prejudices and political agendas. And it is pseudoknowledge: in the absence of knowledge about the actual trafficking episode, it provides donors and policy makers with the validation to create interventions or policies.

Over the last decade, the Nepal-to-India trafficking myth has evolved as more about the trafficking episode has been learned, as agendas have changed, and as the myth itself has been challenged. Chal-

[lenges may come from research, conceptual clarification,2 common sense,](#)

the assertion of human rights, or a clearer identification of the players in the trafficking episode. While the myth determines interventions, the interventions themselves, by their success or failure, may change the myth—or may not. Organizational, cultural, or political agendas may override the “correcting” of the myth—its alignment with “reality”—

and this may in turn deter the development of new and more effective interventions. In 1998, I wrote an essay describing the myth of Nepal-to-India sex trafficking, the typifying narrative identified from several years of discussion with NGO workers, donor agency persons, government officials, and journalists (Frederick 1998). At that time, the myth had remained essentially unchanged since the early 1990s. Since 1998, many interventions have been conducted, much has been learned, and the myth has changed—in part. The recent evolution of the myth of Nepal-to-India trafficking, and its effect on interventions (and vice versa), is the subject of this essay.

THE ORIGINAL GITA MYTH

From *Himal Magazine* (Frederick 1998), with some changes: This is the story of a poor Tamang girl from Sindhupalchowk District. Her name has got to be Gita. Passive, fair-skinned Gita (they like them like that down in India) goes out of her hovel one day to buy some oil for her mother. At the local shop, a swarthy stranger gives her a drugged Pepsi

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and the next thing she knows she’s blearily looking out a dirty bus window at a customs post on the Indian border. Another Pepsi later, she wakes up in a filthy padlocked room in Mumbai.

Despite the rows of beckoning girls she sees on the street below, innocent Gita has no idea what's in store for her. When her snarling madam brings in her first customer (a sickly, festering man who's convinced that sex with a virgin will cure his AIDS) she nobly refuses. Trouble, Gita. In comes the *goonda* for her "training." After being raped fifteen or twenty times a day for a week, Gita gets the picture: she's supposed to be a sex worker.

Finally accepting her fate, Gita starts to work. She has to service thirty customers a night, is not allowed out to see Hindi movies (even though it's Mumbai), and has no idea that she owes the horrible fat madam 25,000

rupees for her purchase at 80 percent interest compounded daily.

Now the saviors appear. An inspired NGO leader, aided by cops with humanitarian consciences, beats down the door of the brothel and finds Gita hidden away in a mattress. After a pleasant holiday in a government remand home, she's repatriated to Kathmandu. But alas, she can't go home any more, as the song says, because she's HIV positive. Luckily for her, there's room in a kind barracks where she learns to embroider placemats and lives her last days in dignity.

The Gita myth is comprised of a sequence of "scenarios," which generally correspond to situations and events in a real trafficking episode.

These scenarios also correspond to what are today considered most of

[the basic areas of direct anti-trafficking intervention.](#)³ Thus, the sce-

narios "Gita and Her Socioeconomic Situation before Trafficking" and

"The Trafficking of Gita" correspond to prevention interventions, "The Transportation of Gita" to interception, "The Destination and the Withdrawal" to prevention, "The Rehabilitation of Gita" to rehabilitation, and "Gita Returns to Society" corresponds to integration.

THE RECENT EVOLUTION OF THE TRAFFICKING MYTH

Gita and Her Socioeconomic Situation before Trafficking

The Gita of the original myth was from the Tamang community, a diverse ethnic

group from the hills of central Nepal. The Tamang of the districts north of the Kathmandu Valley were the first ethnic group to be identified with trafficking, in the 1980s by ABC Nepal, the first NGO

to raise awareness of trafficking in Nepal (ABC n.d.). ActionAid was the first international NGO to address trafficking in Nepal, also in the 1980s. The Tamang people and the several “danger districts” surrounding

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the Kathmandu Valley became established as the cast and setting of the early trafficking myth in film, semifictional “case-studies,” newspaper articles, and donor agendas. [4](#) Historical justification was provided to identify the Tamang as “the first [trafficking victims.](#)”[5](#)

In the last several years, Gita has lost her Tamang heritage in the trafficking myth, in part due to objections from the Tamang about being labeled “trafficking-prone,” but primarily due to the recognition that many other districts in Nepal have been affected by trafficking. Today, Gita can be Gurung, Magar, or one of the other “Mongolian” hill

[ethnicities,](#)[6](#) or she can be from one of the [marginalized ethnic groups or](#)

castes such as the Mahji. However, Gita is rarely identified as being from the Hindu higher-caste groups such as Brahmin or Chettri, despite the fact that the heavily impacted districts of Western and Far Western Nepal are predominantly Brahmin or Chettri.

In the myth, while Gita’s bloodline is “ethnic hill-tribe” rather than Hindu, her gender-disadvantage and socioeconomic status are based on the “disempowered Hindu woman” paradigm that predominates in the gender and development discourses in Nepal. Gita and her sisters are portrayed as second-class citizens, confined to the home, a dowry burden on their parents, and raised to be given over to the husband’s family—all strongly Hindu stereotypes, applicable to Southern and Western Nepal and to India, but less applicable to the Mongolian woman of the hills, Gita’s mythic bloodline. Nepali hill women have relatively more freedom from the patriarchal constraints of Hindu culture than their lowland sisters. Many women of hill ethnic groups conduct business, they have

greater control over household economy than their lowland sisters, dowry is still rare, choice in marriage (by elopement) often prevails over arranged marriage, and, significantly, hill women—like hill men—routinely migrate for employment to supplement their family's income.

Gita and her family are rural and poor, scratching by in a subsistence economy. The economic and social settings of the original myth—the “causes of trafficking”—reflect the simplistic “rural poor” paradigm that has predominated in Nepal development for the last forty years. This paradigm does not recognize a number of socioeconomic factors that exacerbate baseline poverty and make the poor more vulnerable to trafficking.

The Gita myth, as with development in general, denies the caste/

ethnicity power imbalance that has long existed in Nepal. While Brahmins and Chettris comprise approximately 30 percent of the national population, they make up more than 95 percent of government employees and, with the exception of the Newars of the Kathmandu Valley, the vast majority of landholders, professionals, media persons, and senior development workers in the country (HMG Nepal 2002). The

marginalization of ethnic and lower-caste groups by the dominant Brahmins and Chettris, resulting in unequal distribution of arable land, em-

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ployment, and opportunity, has not entered the discourse. The prevalence of indebtedness to moneylenders throughout the country has been generally ignored, and has not entered the trafficking myth as a cause of trafficking. As well, the original myth does not recognize the social and economic disruption of families who have migrated from the countryside, and the greatly increased potential for abuse and trafficking of girls and women in highway, small-town, and urban environments.

The Trafficking of Gita

In the abduction scenario of the original myth, usually an outsider kidnapped Gita (often using drugs) or duped her or her family with the promise of employment. In recent years, the myth of Gita's abduction from her village has aligned more with what is known of the abduction or recruitment process.

Promise of employment is now the most common ruse of traffickers in the myth, distantly followed by promise of marriage, and the more sensational “drugged and dragged” scenario has receded.

This change has been brought about by NGOs’ greater experience with returned trafficked girls, many of whose accounts have been printed in the local media. In a study based on interviews with returned trafficked girls, few claimed to have been drugged, and the majority claimed to have been lured either by promises of marriage or of employment (K.C., B.K. et al. 2001). As well, the recent emphasis on promise of employment is due to increased recognition of girls being trafficked from away-from-home workplaces, and the nascent recognition of Nepali female labor migration. The promise-of-marriage ruse, although common in reality, still does not occupy a major place in the myth. This perhaps reflects a cultural resistance to criticizing the institution of marriage, as well as a denial of marriage by elopement, common to hill ethnic groups, as opposed to arranged marriage, an aspect of the patriarchal construction of the Hindu woman.

In the original Gita myth of a decade ago, NGO, media, and donor scenarios almost unanimously cast the trafficker as a person from “out of town,” frequently an Indian or a Nepali from the south or from Kathmandu. For years the myth maintained the innocence of the rural Nepali community, despite the common knowledge of NGO workers and villagers that abduction in an insular village setting would be virtually impossible without inside support. The Nepal government had no wish to accuse their constituents of trafficking their children or to draw attention to the possible collusion of government officials in trafficking. Donors and NGO leaders wished to maintain an easy path of intervention—awareness messages cautioning villagers to avoid the evil

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trafficker—and were reluctant to confront criminality in the villages they were trying to protect.

From the beginning, the Gita myth has stereotyped the impacted family as uneducated, naïve, and upright. Although it is increasingly recognized that some families are complicit in the sale of their daughters into prostitution (K.C., B.K.,

et al. 2001; Fichtl 2003), the myth prevails that the parents have been duped. This has caused some inconsistencies in presenting Nepal trafficking in the media. For example, a hillside of houses with new tin roofs purchased with money from the sale of girls has become a common visual symbol of trafficking impact in Nepal, although common sense suggests that a hillside of families cannot all be ignorant of the destination of their daughters.

Although still not held culpable for their daughter's trafficking, in the last few years the probity of Gita's family has been challenged. Since the early 1990s, hundreds of rural women's groups have been started throughout the country to promote income generation, basic literacy, and legal awareness. Many of these groups are now well established and have independently turned to social mobilization, coming out against drinking, gambling, spouse abuse, and most recently trafficking in their villages. These natural grassroots responses have not gone unnoticed.

Family dysfunction and indebtedness as a result of male behavior are now beginning to enter the technical discourse on trafficking as one of the "causes," but have not yet been incorporated into the common myth.

In the past several years, however, the myth has accommodated the reality of local citizens and returned sex workers being recruiters for the traffickers. This change is the result of the groundswell of social activism of women's groups and of recent NGO efforts to promote legal awareness and mobilize communities to resist violence against women, including trafficking. These efforts have led to a number of incidents in which community members (usually groups of women) have apprehended a local person attempting to traffic a girl and reported that person (usually a male) to the police.

This change in the Gita myth is significant. As mentioned above, much of the Gita myth has developed in the absence of (and because of the lack of) knowledge about the trafficking episode through direct experience or research. In this case, the positive results of NGO interventions have placed new actors in the Gita myth, resulting in a greater alignment of myth with reality.

The Transportation of Gita

The transportation scenario in the Gita myth has remained firmly unchanged. According to the myth, a trafficker-transporter carries Gita from her village or

workplace to a major Nepal-India border point, and

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with the customs official's eyes averted, takes her across to India. Despite unanimous awareness of the movement of narcotics, weapons, and consumer goods across the open Nepal-India border, and despite years of neighboring Bangladesh addressing the problems of trafficking across its own porous border with India, the Nepal government, NGOs, and donors maintain the myth that traffickers take their victims across official border points.

This is an illustration of how myths are established and maintained by the agendas of mythmakers. India-Nepal government discussions on cross-border trafficking focus on official border crossings, avoiding the uncomfortable subject of the unofficial transportation of goods between countries. Although there is little evidence of success and considerable evidence of human rights violations, “intercepting traffickers” is a widely

[publicized anti-trafficking activity in local and international media,⁷ bring-](#)

ing publicity and funding to the government and to donors, thence to NGOs. Donors now support NGOs to maintain more than ten “transit homes” and interception posts at official crossings, and more are rapidly being established. Mobilizing communities living in border areas to resist trafficking, as has been done in Bangladesh, is far more difficult and less likely to produce numerical results, although at this writing one NGO—Maiti Nepal—is making plans for community sentinel activities along the Nepal-India border.

In part, maintaining this aspect of the myth in order to justify interception is a response to the need of the government, NGOs, and Nepal-based donors to appear proactive in the war against trafficking.

There is a frequently expressed feeling of helplessness in the Nepal anti-trafficking community because “their girls” are in India, Nepali NGOs (and most Nepal-based donors) cannot work in India, and India is not helping, having enough problems of its own. Interception allows the Nepal anti-trafficking community to take an aggressive and punitive role, rather than being limited to the more passive roles of prevention and rehabilitation.

The Destination and the Withdrawal

The portrayal of Gita's brothel destination, her clients, and the horrors she undergoes has not changed since the inception of the myth. The brothel is physically modeled on "The Cages" of Mumbai, a small, un-representative strip of working-class brothels in Kamathipura where donors and media persons are routinely taken to view the streetside solicitation of sex workers. Gita's resistance to sex work and her subsequent rape and torture are routine in the myth. The personalities of the clients are blank, with the exception of mention of their acts of violence or their HIV-positive status. The madam, or *gharwali*, is abusive, and

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order in the brothel is maintained by thugs. The other sex workers in the brothel are invisible, or mirror Gita's experiences of torture. The only notable change in portrayal of the destination in recent years is the addition of Delhi as a destination city, primarily due to the publicity

[given to brothel raids conducted by a Delhi NGO.⁸ Kolkata, Pune, other](#)

Indian cities, and border towns have not entered the myth.

This part of the myth has clear advantages to mythmakers in being the most evocative and sensational scenario, provoking moral outrage and generating funding. However, the lack of change is also due to continued ignorance of the destination or "demand side" by those in the anti-trafficking field. This lack of knowledge stands in contrast to the considerable knowledge of sex workers and brothel operations in India by those conducting HIV/AIDS interventions, reflecting a lack of information-sharing with the HIV/AIDS community that continues to hamper anti-trafficking interventions. As indicated by bibliographies in NGO and donor publications and situational analyses, the anti-trafficking community in Nepal has utilized few of the available sources of information on the destination. With the exception of one study of the demand side conducted in India (O'Connell-Davidson and Anderson 2002), two narratives by researchers in a book on sex work in South Asia (Frederick 2001), and one well-researched fictional narrative (Friedman 1997), almost all "data" have been taken from newspaper accounts and

[from case studies of rescued trafficked girls.⁹ Unutilized sources of in-](#)

formation include studies by HIV/AIDS researchers, studies by Indian anti-trafficking NGOs and research organizations, and a number

[of pieces by Indian writers.10](#)

Despite recent identification of human rights abuses during and after brothel raids, the rescue part of the destination scenario remains firmly in the myth for two primary reasons. As with interception, it casts NGOs and police as dramatic heroes, and provides the illusion, particularly for the public and donors, that something is being done.

And it remains because the anti-trafficking community—because of lack of knowledge about, and lack of interaction with, the destination side—

has not recognized alternative ways of withdrawing girls who wish to leave the brothels or ways to reduce the demand for trafficked persons.

THE REHABILITATION OF GITA

This episode of the Gita myth has changed the most in the last few years. In the early 1990s myth, the “Gita returned” scenario was relatively unformed: after her rescue, Gita returns HIV-positive to Nepal, where she is provided with some job skills and lives the remainder of her life in care, or just disappears from the picture. Several reasons ac-

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count for the anticlimactic ending of the early myth. The Nepal public, government, and media at first resisted the return of trafficked girls, primarily because as many as 50 percent were HIV-positive. An under-current of cultural prejudice prevailed during that time, unexpressed except in newspaper editorials, that returnees were perceived to be “ruined,” no longer representative of pure Nepali womanhood, and might possibly act as traffickers if they were allowed to return to Nepal. Returnees were accepted only after their highly publicized defense by

[NGOs.11 Governments, NGOs, and donors had little experience work-](#)

ing with psychosocial cases, and had no ready interventions to assist them, except care homes and job skills. And for many years, the publicity value of

rehabilitation was unrecognized; this scenario providing far less response and funding than abduction, rape, and rescue.

The “Gita returned” scenario has developed greatly in the last five years, primarily due to donors and NGOs entering a broad new area of intervention: the rehabilitation of trafficked girls. A precedent for rehabilitating children had been set a few years earlier in South Asia when donors and NGOs began to address the needs of street children and child laborers. Gita’s rehabilitation quickly became established as part of the myth because of the obvious need to provide a positive outcome to the trafficking episode, despite the fact that the real outcome—Gita’s integration back into society—remained unclear.

For the first time, a small dimension has been added to Gita’s personality: traumatized. Because of her experience, Gita is psychologically damaged and needs to be rehabilitated. Damaged Gita has successfully supplanted her previous outcome in the myth—a former prostitute and HIV-positive—which was somewhat uncomfortable, particularly for the government and the public. Now that Gita has been typed as psychologically injured, her HIV-positive status has generally been dropped from the myth. The recent addition of rehabilitation enriches the myth with another actor: the Florence Nightingale figure (or NGO) who helps the helpless, a character with the same theatrical power as the heroic

[NGO leader of the brothel raids.](#)¹² [The repairing of damaged Gita has](#)

proven a powerful fundraising tool, and the rehabilitation sector of anti-trafficking programming has now become nearly as large as the prevention sector.

Gita Returns to Society

Both the original and the present Gita myth have inconclusive endings.

In the original myth, HIV-positive Gita simply died, usually in care, occasionally back in her village. Most often, her end—or her future—

was absent from the myth. The village ending didn’t prevail in the original myth because of the harsh reality of returned girls being routinely

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rejected by their families and communities. Gita's end, or future, is similarly absent in the present myth. When Gita is last noted, she's "recovering." While the "she lived happily ever after" scenario would be an attractive and functional conclusion to the Gita myth, its absence reflects the lack of attention placed on the integration of trafficked girls into Nepali society. To date, there is little conceptual clarity about integration, and interventions are almost entirely absent.

Gita's social integration is not part of the myth because the reality of her return to society is neither simple nor heartening; it is not myth material. At this writing, the subject has been avoided by donors, NGOs, and governments, and only one part of one workshop on trafficking survivors has focused on social integration (ILO-IPEC 2002). The real Gita has few options, none of them positive. Acceptance by her family, and especially her community, is extremely difficult unless she returns with wealth. The stigmatism of sex workers in South Asia is strong, and she faces harassment and possibly rape in any social situation in which she cannot hide her past.

The myth cannot readily accommodate Gita living independently, as such is not part of the South Asian cultural norm. Rather, the culture readily suspects girls who live independently to be sex workers, which is inappropriate for the myth's conclusion. Finding a husband and living happily ever after doesn't fit the myth either, for although the rehabilitation scenario provides Gita penance for being a sex worker by casting her as psychologically damaged, she can never be the model of Nepali womanhood; the highly idealized wife. Consequently, the original and present Gita myths are inconclusive, and in this sense jibe with reality: Gita remains institutionalized.

THE MYTH AND THE INTERVENTIONS

Prevention: Gita and Her Socioeconomic Situation before Trafficking
Interventions to strengthen the resistance of communities and families to trafficking have taken several approaches: general economic empowerment of the "poor"; preventive support focused on at-risk girls; community mobilization (sentinel activities); awareness raising; and the strengthening of government bodies such as police and local anti-trafficking committees.

Prevention activities, naturally, are based on addressing the "causes of

trafficking.” The Gita myth was both created upon and has maintained a simplistic definition of causes: poverty, lack of education, and lack of awareness of trafficking dangers. This has been reflected in simplistic criteria for being at risk, criteria that encompass the majority of

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Nepal’s rural population. Many donors have opted for a primary strategy of general economic empowerment of the poor as a means to pre-

[vent trafficking.](#)¹³ [This has been convenient for donors, NGOs, and the](#)

government, as criteria for being at risk encompass populations already being served by interventions, and they have been able to “address trafficking” without substantially altering their activities.

Preventive measures targeted at at-risk girls have suffered from the same constraint as those targeted at at-risk communities: lack of criteria for being at risk. These activities have been generally adapted from existing interventions that prevailed throughout the 1990s on behalf of the “girl child”: non-formal education and skills training. “Prevention centers” provide day instruction for at-risk girls, varying little in target group or curriculum content from earlier centers for “disadvantaged girls.” The establishment of residential “prevention homes,”

in which girls supposedly at risk are placed for their protection, has caused some concern among members of the NGO and donor community due to reports of girls being institutionalized without adequate evidence that they are in danger of being trafficked.

Over the years, NGO fieldworkers have been able to better identify impacted communities and families. They have unofficially established their own criteria for being at risk, which they are now using in their prevention activities. These include marginalization of ethnic and lower-caste groups, arable land versus size of family, and access to land and alternative sources of income. Recently, NGOs have recognized the possible negative effects on girls within the family from domestic violence, stepparents or second wives, substance abuse, and gambling. Although recognized by NGO fieldworkers, these criteria have not been assimilated by the government or by most NGO leaders or donor partners, nor have they entered the myth. This provides an illustration of the conservative character of the myth, and an example of members of the anti-trafficking

community (in this case NGO fieldworkers) “bucking the myth” and conducting interventions based on their own knowledge and experience.

Community-mobilization and awareness activities have generally been conducted in unison, some with positive results. In Nepal, the most successful of these activities have not been those conducted in the name of anti-trafficking. Rather, they have been older, well-designed programs for generating legal awareness for women and for reducing violence

[against women and girls.](#)¹⁴ Trafficking issues have been highlighted in these programs in recent years. Due to their success, accounts of communities identifying and apprehending traffickers have recently entered the Gita myth.

In the case of awareness raising, however, the myth has supported interventions which have had negative effects on the women and girls it

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has sought to protect. The denial of Nepali women’s migration and the patriarchal “Hindu woman” paradigm inherent in the Gita myth have manifested in migration policies and awareness messages which discourage migration and women’s freedom of movement, even that of a girl going alone to a local marketplace. Awareness messages communicate danger and generate fear, using illustrations of a girl abducted by a trafficker at a local festival or disappearing en route to a job “in the city.” Utilizing characters such as “loose women” who encourage the freedom and movement of village girls, the messages assert patriarchal Hindu values with the implication that “good women stay home” (The Asia Foundation 2002).

Prevention: The Trafficking of Gita

Although, for all of its generalities and inconsistencies, the Gita myth clearly presents different ruses of the trafficker, no specific method of recruitment or abduction is addressed in the majority of interventions.

In most interventions, the promise-of-employment ruse has not yet been placed in the context of female migration. However, cross-border trafficking by promise of employment from destinations of internal migration is now being addressed.

One small NGO of trafficking survivors conducts awareness activities in urban carpet and garment factories, where working girls without family protection are sometimes

[sexually abused and trafficked by male factory workers.](#)¹⁵ [In the last](#)

year several donors and Nepali NGOs have been airing issues surrounding “safe migration,” and the relationship between trafficking and migration is at this time entering the general discourse. There has been discussion of addressing the trafficking-migration issue by the registration and documentation of women and girls wishing to migrate for employment. Critics of this action state that because the power of registration will be primarily in the hands of male family members and corruption in the registration process is inevitable, this will add to the present restrictions on women’s migration.

The promise-of-marriage ruse has received virtually no attention in the strategies and action plans of donors and NGOs. The marriage ruse has been little discussed, and neither researched nor placed in the context of varying marriage patterns in the country. Unlike Bangladesh, in which a study in the Rajshahi District showed promise of marriage to be the primary trafficking ruse in the communities observed, neither the Nepal government nor donors (and consequently NGOs) have developed specific strategies of, for example, encouraging formal marriage registration and background checks on potential husbands.

The Gita myth simplifies the trafficking process, ignoring the critical role of the local recruiter, a person from the community with com-

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mercial links to the transporter and the purchaser. This has been reflected in government policy and donor agendas, the strategy being to strengthen communities to resist traffickers, rather than to apprehend traffickers from within. As with general prevention awareness activities, however, NGO fieldworkers and mobilized community members have “bucked the myth.” Working on the ground, they have identified and at times apprehended local recruiters. Although some of the recruiters have been identified as family members of the trafficked person, in accordance with the myth families are still not held to be complicit by donors or NGO directors. However, in another

example of “bucking the myth,” NGO fieldworkers are aware of communities with families who knowingly send their daughters to earn money by sex work, and have directed interventions (primarily economic support) at them.

Interception: The Transportation of Gita

The transportation side of trafficking interventions is probably that most affected by the Gita myth. The strength of the myth, as explained above, continues to maintain a basically ineffective intervention: interception of potentially trafficked girls and women at official border posts on the India-Nepal border. The long-term commitment of considerable funding by donors makes them reluctant to assess the effectiveness of interception (no assessment of interception has yet been conducted), let alone adopt new strategies. Estimates of the number of border interceptions are only a few hundred girls over ten years and most significantly, it is unclear how many of the girls “saved” were actually being trafficked.

Only since late 2002 have doubts been cast on interception, although these doubts refer to human rights abuses rather than the unlikelihood of traffickers crossing at official border posts. This has risen from greater awareness of the prevalence of migration of Nepali women, coupled with reports of intercepted girls and women who claim to have been crossing the border willingly, for economic or for personal reasons. Interception is conducted by NGO “Border Guards,” whose assumption of the role of government immigration and police officials has been questioned. Some of the Border Guards are trafficking survivors, others are girls who have been institutionalized at transit homes for being “at risk.”

There are no established criteria for “being trafficked,” and the Border Guards identify traffickers and victims from “their own experience.” It has been reported that a female accompanied by a male non-relative is a criterion for “being trafficked.” Girls who are intercepted are either returned to their families or placed in transit homes.

At the moment of this writing, one of the major NGOs conducting interceptions is retooling its strategies to address transportation, shift-

[ing its emphasis from interception to safe migration.](#)¹⁶ This is a significant

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example of an NGO “bucking the myth” (as well as bucking donor agendas) and changing interventions due to challenges from human rights, expanded knowledge, and self-evaluation of its activities. Recognizing that trafficking must be placed in the context of women’s migration, the NGO is changing its awareness strategy from “trafficking dangers” to supportive safe migration messages. In response to perceived ineffectiveness of interceptions at official border crossings, it will now develop sentinel activities among communities living along the open border, as has been done with some success in Bangladesh and Thailand. It remains to be seen if this development will change the myth.

Withdrawal, Prevention: The Destination and the Withdrawal As with interception, the Gita myth continues to determine interventions on the destination side. Brothel raids are at present the only form of intervention to withdraw girls from brothel situations. Brothels are identified as places of violence and oppression, and the assumption is made that any person working in a brothel should be “rescued.” Although purportedly rescuing trafficked children (notably, non-trafficked children and bonded laborers are not targeted for rescue), adult women are routinely removed from brothels during the raids, often against their will. Media portrayals of brothel raids abuse women’s rights to privacy and confidentiality, with the implicit assumption that prosti-

[tutes forgo those rights.17](#)

Most particularly, brothel raids contravene the law, which in India does not directly prohibit sex work, and by denying the fact that the brothel is a workplace—and often the only available environment for abused and stigmatized women—the raids deny women’s rights to choose their employment or place of residence. The publicity of the raids cast all brothels—and by implication, all sex workers—as “evil,” legitimating police and community violence against sex workers. And they obfuscate the consequences for women and girls after their rescue: incarceration in remand homes, abuse by police and caregivers, forced repatriation, and detainment for perhaps years during “legal processes.”

Notably, the myth supports an intervention which itself discourages more effective alternative interventions. By antagonizing brothel communities, raids restrict the entry of outsiders into those communities—not only HIV/AIDS

workers, but also potential researchers on trafficking. Interventions to prevent traffickers' activities at the source, to address debt servitude, and to provide economic alternatives to sex work are all dependent on gaining knowledge of trafficking economics and brothel operations by accessing the voices of sex workers, madams, and clients.

Mobilization of sex-worker communities to resist trafficking, as

[has been successfully demonstrated in Kolkata,18 necessitates acceptance](#)

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of the brothel as a workplace, not a place of criminality as the myth portrays. Working with clients to reduce demand for trafficked persons (as well as for children and indebted laborers) necessitates putting a human face on clients. And the heroic role of the police in the rescue scenario masks routine abuse of sex workers by police—the reason why those in abusive brothel situations do not seek asylum with the police.

This discourages the creation of alternative places of asylum for those who are able to escape abusive brothel situations.

There are substantial constraints for the Nepal anti-trafficking community to work on behalf of Nepali women and girls in the brothels of India. Intergovernmental talks on the issue are sensitive, and have resulted in very little to date. Local NGOs are dependent on Indian NGOs to conduct interventions, with consequent problems of funding, administration, and conflicting agendas. For donors, direct interventions are generally conducted from their country offices, and counterpart offices in India may be nonexistent, or may not agree with or be permitted to execute the agendas of Nepal country offices. At this time, alternative means of withdrawal and prevention are not yet on the horizon.

Rehabilitation: The Rehabilitation of Gita

The “Gita returned” scenario of the original myth was unformed, and had only one direct effect on early anti-trafficking interventions: it stimulated the establishment of institutions to place Gita. This has continued to this day, and has resulted in the establishment of dozens of “care homes,” “shelters,” and “transit homes.” Most provide little more than craft activities, residence, and food. Few of those supporting the rapid expansion of facilities have questioned

the social and psychological problems resulting from prolonged institutionalization, nor have they yet explored alternatives to residential care, such as foster homes, group homes, or outreach units.

A decade's emphasis on institutionalization has posed some rights concerns. Rescued and intercepted girls are often held in institutions without their or their families' permission. Participation is minimal, the girls' voices concerning their institutionalization are unheard, and the frequency of girls escaping from confinement is not mentioned by NGOs or donors. Systems and practices of confidentiality and privacy are lacking, and institutionalized girls are routinely observed by donors and "experts," and photographed by media persons without their permission.

In the mid- to late 1990s, "psychosocial" interventions drew the attention of the anti-trafficking community. Psychosocial interventions, like child protection activities, became established in development agendas as a part of "children in especially difficult circumstances" (CEDC) activities of the early 1990s, which focused on the needs of street children,

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disabled children, child prostitutes, and other extremely disadvantaged children. Psychosocial rehabilitation was an entirely new field for the development community, but it answered the question of what to do with returned trafficked children. (Significantly, donor concern for nontrafficked children in prostitution waned.) Gita's "trauma" was identified and incorporated into the myth.

The identification of psychological problems as an area of intervention was a major advance for the development community, and in the last few years has made profound positive changes. It has given a human dimension to development recipients like Gita, added meaning to buzzwords such as "well-being" and "best interests of the child,"

and expanded awareness of a wider spectrum of human rights. And it has opened up new areas of concern regarding children, such as corporal punishment and domestic sexual abuse. However, in the absence of conceptual clarity and research, the development community has addressed the psychosocial concerns of trafficked girls as it addressed prevention and interception: with dependence

on the myth rather than with knowledge or experience. Thus, the constraints inherent in myth—

its simplicity, its conservatism, and its ready influence by agendas and cultural prejudices—have made themselves felt on interventions.

The recognition of Gita's trauma supported the welfare paradigm which prevails throughout development: "Gita (or the poor, or the nation) is passive, helpless, and damaged, and needs to be fixed." Although there are very recent challenges to the paradigm (Protacio-De Castro 2002), trafficking returnees are generally treated as victims and beneficiaries, their capabilities and resiliency are not recognized, and they are not given the right to participate in decisions about their lives, including return to society. Token participation activities, such as selection of menus or daily chores, are provided in some institutions.

The simplification of Gita's brothel experience and her resulting personality as "traumatized" has resulted in a simplification of her needs, and a single-minded focus on a narrow area of psychosocial intervention: counseling. Counseling is seen as the only cure, and to date peer activities, experiential therapies, living skills, and communication skills are scarcely included in the roster of psychosocial interventions. Today, counseling is routine in action plans and proposals; more than twenty counseling courses are offered in South Asia, and numerous NGOs profess to conduct counseling.

In essence, the myth has legitimated the conducting by inexperienced (but well-meaning) NGO workers of what should be professional activities: the operation of caregiving facilities, psychological care, and social work interventions. Counseling is not seen as an activity, like medicine, law, or nursing, to be conducted by professionals. Donors have been eager to build the capacity of NGOs with short orientations called,

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erroneously, "trainings." Beyond some university courses, professional training in counseling (which by definition includes extensive monitored clinical practice) is provided by only one organization in South [Asia.19](#)

While the majority of the orientation courses are of relatively good quality, providing an introduction to communications skills and an overview of trauma, depression, and other psychological problems related to abuse, NGO workers are

given the impression that they have been trained to be counselors. Numerous cases of “retraumatization” have been reported when NGO workers have attempted to conduct in-depth explorations of survivors’ abuse history without adequate skills. To date, none of the facilities in Nepal conduct psychosocial assessment or operate under basic case management principles.

Integration: Gita Returns to Society

Gita’s integration back into society is not yet part of the Gita myth, nor at this writing are there substantial interventions to promote her integration. This scenario of the myth is at this time forming, and it appears that interventions will create the myth, rather than vice versa, as in the case of the transportation/interception scenario. Although interventions are as yet unformed, and although many donors, and in particular the government, are maintaining institutionalization as the optimal ending for Gita’s trials, a strong demand for effective integration strategies has recently arisen from the NGOs and a few members of the donor community.

Integration is constrained by a major lack of conceptual clarity. The term used by the Nepal anti-trafficking community, “reintegration” (as opposed to integration), is itself problematic, implying that Gita can return to her original state, which she cannot. Integration is generally conceived to be a state of being—that is, Gita back home and normalized. This static view obfuscates the reality of integration as a process: preparation during her residence in a facility; intermediate residential situations, such as group homes; outreach support activities provided after she enters society; and finally, assessment of her self-sufficiency and closure of her case. The “damaged Gita” paradigm, as mentioned above, also denies the resiliency of many Gitas—the fact that many women and girls are not damaged by the brothel environment, and have the ability (and wish) to return to society almost immediately after being rescued. That is, rehabilitation and reintegration interventions are sometimes not necessary.

The history of anti-trafficking interventions in Nepal has shown repeatedly that the hands-on experience of NGO workers has resulted in “bucking the myth” and creating interventions that work. In the case of integration, the decade’s experience in rehabilitation has helped NGOs

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recognize the downside of institutionalization and identify integration needs of rescued girls. These include market-researched functional job skills, group living situations, community assessment, family interventions, and outreach mechanisms, among others. However, donors have not recognized these needs, or developed the tools or provided support to effect such activities. This is strongly illustrated by the “missing link” in the discourse on rehabilitation and integration: social work.

Although the role of social workers is imperative in social assessment of trafficking survivors upon intake and throughout survivors’ integration, they are absent in donor considerations. While local Nepali NGOs cannot be expected to identify “social work” as the name for the needed activities they have identified, donors can be expected to do so, but have not.

CONCLUSION: CHALLENGING THE MYTH

In the very short history of anti-trafficking activities in Nepal, the myth still dominates the design and implementation of interventions. The myth has valid and important purposes in being a “consensus description” of a typical trafficking episode upon which to conduct the trafficking discourse, and in encapsulating the issues so that they can be easily communicated. However, the role of the myth in determining anti-trafficking interventions has been shown to be counterproductive.

Over the last ten years, it can be seen that the myth has perpetuated unrealistic stereotypes of the Nepali woman, the Nepali family, sex workers, and the intervention actors themselves. It has maintained in-complete and sometimes false descriptions of the trafficking episode, including the causes of trafficking, the transportation of trafficked persons, and the destination environment. And it has validated activities that have abused the rights of women and girls, including removal of women from their workplace, restricted migration, forced institutionalization, and psychosocial malpractice. The majority of positive changes in anti-trafficking activities have arisen in spite of, not because of, the myth. Local NGOs, with assistance (and sometimes pressure) from human rights activists, have led these changes. From the ground, they have created clearer criteria for being at risk of trafficking, refined prevention activities, responded to the need of women’s migration, and encouraged rapid and effective integration

of returned trafficked girls.

At this writing, the myth is being challenged from many directions. Knowledge of the trafficking episode is increasing as donors and the general anti-trafficking community absorb the experiences of NGO

workers. Research is still lacking, although while donors remain reluctant to support careful research, several small studies of quality have

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[recently been conducted.](#)²⁰ [Increased sensitivity to human rights issues](#)

is perhaps having the greatest impact on the myth. The assertion of rights-based perspectives in interventions has stimulated a shift from the discouragement of migration through fear messages and interception toward safe migration strategies. In very recent renditions of the myth, Gita is trafficked during the act of going to a genuine place of employment, due to lack of awareness of how to migrate safely.

A broader understanding of children's rights, along with recognition of poor caregiving practices, has brought about a concern for quality of care in rehabilitation. The government of Nepal is leading an effort to develop national minimum standards for care facilities, donors are developing practices for child protection and participation, and some NGOs are promoting the activism and social involvement of trafficking returnees. Increased recognition of Gita's strength and resiliency is manifest in some of her recent myth portrayals as a returnee-turned-activist who works on behalf of girls at risk.

Certain dramatic aspects of the Gita myth will likely remain. The heart-wrenching, money-earning episode of her trials in the brothel is unlikely to change, much because the basic cruelty of trafficking—if not sex work—needs to be portrayed. Whether the noble brothel-buster will be replaced by the compassionate client or the sex worker with a heart of gold has yet to be seen. The Florence Nightingale NGO character of Gita's rehabilitation scenario will remain. Like the destination hero, she will continue to play a necessary role in the myth, although perhaps she will become a less patronizing figure.

The myth will continue its descriptive and communicative function for the public, media, and participants in the general trafficking discourse. It is hoped,

however, that it will lose its role in guiding interventions, to be replaced by a complex picture of reality based on knowledge, experience, and human rights.

NOTES

1. Donor partners include international nongovernmental organizations (INGOs), multilaterals, bilaterals, and foreign governments.
2. Trafficking Thematic Group, *Revisiting the Human Trafficking Paradigm: The Bangladesh Experience* (Dhaka, Bangladesh: Trafficking Thematic Group, April 2003).
3. Areas of anti-trafficking intervention not discussed in this essay include policy development, legal instruments, arrest and prosecution, international repatriation, and training for police and government officials.
4. For example, *The Selling of Innocents*, produced and directed by Ruchira Gupta (1997); *Under the Tin Roof*, produced by the Center for Women and Development Nepal (mid-1990s); and Pradhan, G., *Back Home From Brothels: A Case Study of the Victims of Commercial Sexual Exploitation and Trafficking Across Nepal-India Border* (Kathmandu, Nepal: CWIN, 1996).

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5. The Tamang as “the first trafficking victims” have been repeatedly provided with the “historical justification” of their women having been used as consorts by the Rana ruling class of the Kathmandu Valley in the late nineteenth and early twentieth centuries. The historical justification is tenuous, however. The link between the early-twentieth century Kathmandu consort and late-twentieth-century trafficking victim to India has not been established, nor does the history consider trafficking from the eastern Rai and Limbu ethnic groups to Kolkata, which likely preceded trafficking to Mumbai. The trafficking of Nepali girls to Kolkata has not been entertained in the trafficking myth, nor have any interventions of note been focused on the large number of Nepalis in Kolkata. It has been suggested that modern trafficking originated in the 1950s and 1960s as an offshoot of the large recruitment of Nepali men to work in India in road building and urban construction, but this has not entered the myth.

[6.](#) “Mongolian” is a term frequently used today, particularly among young people from hill ethnic groups, to distinguish themselves as the original non-Hindu residents of Nepal from the Hindu castes originating from India and southern Nepal.

[7.](#) The documentary film *The Day My God Died*, produced and directed by Andrew Levine (2002), contains almost all of the clichés of the early 1990s Gita myth.

[8.](#) Stop Trafficking, Oppression and Prostitution of Children and Women (STOP), New Delhi, India.

[9.](#) The frequently identical content of published “case studies” of trafficked girls, considering the vast range of potential destination experiences, casts some doubt on the veracity of the accounts. Possible reasons why the accounts may not represent “reality”

include NGOs editing, amending, or omitting non-negative accounts; the narrow sample of girls interviewed (only girls who have been rescued); the casual and sometimes abusive manner in which case studies have been collected (usually from girls in rehabilitative confinement); and the probability of some girls’ inclination to alter their stories to deny their voluntary entry into sex work or their families’ income from their labor.

[10.](#) For example, All India Institute of Hygiene and Public Health, *Assessment of Sex Trade in Calcutta and Howrah* (Calcutta: AIIHPH, 1993), and Sinha, I., *A Study of Child Prostitution in West Bengal* (New Delhi: National Commission for Women, 1997).

[11.](#) Particularly by Ms. Anuradha Koirala, Director, Maiti Nepal.

[12.](#) For illustration of “heroic NGO leader saving trafficked child,” refer to documentary *The Day My God Died*, directed by Andrew Levine.

[13.](#) ADB and USAID among others.

[14.](#) Two legal programs with significant impact have been conducted by Saathi and Lawyers for Human Rights and Legal Aid (LHRLA), both based in Kathmandu, Nepal.

[15.](#) Shakti Samuha, Kathmandu, Nepal.

[16.](#) Maiti Nepal.

[17.](#) It is noteworthy that in the brothel scene of Levine's film *The Day My God Died*, only the white visitor to the brothel had his identity pixilated out.

[18.](#) The "Self Regulatory Board" of the Durbar Mahila Samanwaya Committee, Kolkata, West Bengal, India.

[19.](#) Centre for Victims of Torture Nepal, Kathmandu, Nepal. Also noteworthy are courses recently being developed at the Department of Clinical Psychology, University of Dhaka, Bangladesh.

[20.](#) For example: The Asia Foundation and Population Council/Horizons, *Prevention of Trafficking and the Care and Support of Trafficked Persons* (Kathmandu, Nepal: TAF/

Horizons, 2001); Clawson, V., *Application of the Positive Deviance Approach to Anti-trafficking Programming in Nepal: A Trial in Nuwakot District* (Kathmandu, Nepal: Save the Children US, 2002).

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[Sex Workers' Rights Organizations](#)

[and Anti-trafficking Campaigns](#)

Edited by Kamala Kempadoo

Despite the shift in international definitions of trafficking, from prostitution to broader migration processes and situations of forced labor, the global sex trade remains a target for many anti-trafficking policies and agencies. In the following we present excerpts from public statements and appeals by sex worker rights organizations about anti-trafficking interventions and politics. The excerpts reveal dimensions of the violence and terror sex workers are subject to in the name of anti-trafficking, yet also offer alternatives for policy and action to address the multiple dimensions of the problem of trafficking. The organizations represented here—ZiTeng, Durbar Mahila Samanwaya Committee, and Empower—are located in, respectively, Hong Kong, China; Kolkata, India; and Thailand. Their experiences and perspectives are similar to those ex-

[pressed by sex workers' rights organizations elsewhere in the world.1](#)

REDEFINING TRAFFICKING IN NGO PRACTICE

Zi Teng is a non-governmental organization established for the purpose of providing much needed services to Hong Kong and Mainland Chinese sex workers. It was formed in September 1996 by a group of local women 149

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activists with diverse backgrounds, yet all sharing the common goal of assisting and empowering Hong Kong sex workers. It aims at raising the public awareness on issues impacting sex workers through legal advocacy work, and targeted programs and services. Sex workers are among the most marginalized groups, facing various forms of political, legal, and social oppression in Hong Kong. Their marginalized legal and social status means they are largely without police or other legal protections and have very limited access to social welfare, health benefits, and legal and health information. They are therefore among the most vulnerable segments of the Chinese society. These problems are particularly urgent in Hong Kong as there are only a few support groups focused on their needs, and no union has been formed to give voice to their problems and fight for their rights. The executive committee members of Zi Teng believe that every human being should have the same basic human rights regardless of her/his gender, sexual orientation, class, race, age, or occupation, and should have the right to live and work with dignity. This is why we continue to fight against discrimination, marginalization, and criminalization of sex work and sex workers in Hong Kong, and struggle to assist these women in their own empowerment through education, network development, and providing immediately needed services, such as legal advocacy, health assistance, and hotlines.

In addition to its primary concern with sex workers in Hong Kong, Zi Teng also has implemented joint projects with related organizations in different parts of Mainland China since the mid-1990s. Zi Teng has assisted in the development of sex worker-related service centers, and set up a sex worker hotline in collaboration with local organizations in various provinces in China. In addition, migration and cross-border “employment” became a major phenomenon for sex workers in Mainland China over the past decade. There has been a dramatic increase in the number of women crossing borders working as migrant sex

workers. Many migrate from the central and southern provinces into Shenzhen, and make their way to Hong Kong and other South East Asia countries. We have many chances to get in touch with those migrant sex workers in Hong Kong through our outreach program and other services.

Through the interaction with migrant sex workers during our outreach program, we realize that many have little knowledge about the industry and related health information. Consolidation of existing experiences and services provided to sex workers tell us that there is a pressing need for more groups and organizations to provide health information and immediate help for those sex workers in need. Our programs are not only aimed at informing the health and livelihood issues to sex workers, but also cover topics on women's sexual autonomy and their rights to self-determination. As China will soon join the World Trade Organization (WTO) and it is foreseeable that there will be an increasing number of

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under-employed and unemployed women workers due to the restructuring of many enterprises for competitiveness, the number of sex workers will be on the rise. However, as the problem of migrant sex workers is always confused with the trafficking problem, service providers fail to be aware of what information and help the sex workers really need.

In the past decade, the problem of international trafficking in Asia has aroused much attention from international organizations and governments. At the same time, the expansion of the sex industry also worries some of the local and overseas governments. Policies and governments have done a lot to combat some forms of trafficking, such as sex trafficking, while on the other hand, they ignore the existence of other forms of trafficking. From our experience, however, the worst part is that they fail to distinguish between sex trafficking and migrant sex work. This pushes the most deprived and marginalized groups—women sex workers—into an unpleasant and dangerous situation under globalization. Employing a new approach with relevant strategies is the only way to produce more effective and practical programs and practices.

From our local experience, we find no difference between people working as factory workers, domestic workers, sex workers, or people wanting to marry aboard. Sex work is a job or simply a way for women to increase their and their families' living standard. They are women who take initiatives to improve their

living conditions. This is quite the opposite of the

“passive victim” stereotype that is widely circulated about them.

As an organization that cares about sex workers, we oppose all forms of trafficking—forceful activities against one’s will. If women are forced to sell their labour or sex, it is immoral. If women willingly sell their labour or sex, but are grossly exploited in the process of selling, it is also immoral.

However, we have to understand that combatting trafficking is different from controlling and suppressing the sex industry through the legal system. Only when we accept sex work as a job, actively engage with the lives of women in the sex industry, we may understand the unfairness of current sex transactions and enable sex workers to gain legal protection. . . .

We should not treat sex trafficking and other forms of trafficking differently. If we only consider sex trafficking as evil but overlook the others, sex workers will have to face even greater stigmatization and exploitation.

Actions against trafficking within this approach will only put sex workers at risk of punishment. Sex can be sold, but should be sold under fair conditions, in a fair context. “Sex trafficking” applies only when sex is sold under the control of triads or pimps, or when women are sold irrespective of their consent.

Under this approach, governments and NGOs should employ both repressive and supportive strategies to fight trafficking. On one hand, repressive strategies aim at suppressing organized crime, forced migration, and exploitation. On the other hand, there should be also strategies

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that aim at supporting the women concerned and strengthening their rights. We may employ a labour framework in this issue that would make visible commonalties and shared forms of exploitations between sex workers and other workers. Trafficking in women can be understood as the result of the poor legal and social position of women: as women, as workers, and as migrants. This approach calls for labour opportunities and working rights: protection from unpaid work, pensions, state benefits, etc., to women sex workers. What we need

to do now is to make this industry become fairer in its operation.

YimYuet-Lin and Anita Koo, for ZiTeng

December, 2003

DMSC UNDER ATTACK ONCE AGAIN

We, the sex workers of Sonagachi and of other red light areas in West Bengal have collectivised ourselves under Durbar Mahila Samanwaya Committee (DMSC)—an organisation of and for sex workers. As DMSC, we run one of the most successful STD/HIV Intervention Programmes in the world—the famed “Sonagachi Project.” Besides DMSC, we have our own micro-credit society, Usha, our cultural wing, Komol Gandhar, and our trade union, Binodini Srameek Union. We also run Self-regulatory Boards in red light areas to prevent trafficking and entry of minors into the trade. Every new entrant to the sex trade, adult or minor are [sic]

interviewed and counselled by the DMSC Self-regulatory Boards. We actively help all unwilling adults and minor girls option out of sex work.

As a result of DMSC’s successful intervention activities among sex workers, Sonagachi had forgotten police raids for a while. However, of late, a group of policemen from the Kolkata Police Headquarters have, in the pretext of searching for and rescuing minor girls trafficked into the trade, been raiding brothels and harassing sex workers who are of age, and also picking up, arresting and harassing, in the name of “rescue,”

girl children of sex workers. We at DMSC had lodged formal protests about the matter but the government did not take any action to stop this.

[Recently] a posse of police . . . raided a brothel in Sonagachi red light district and forcibly picked up Payel Mazumdar on charges that she is a

“minor” and “has been trafficked recently” into Sonagachi. Payel Mazumdar is a sex worker who is “of age,” has two children and has been working as a sex worker for the last six years in Sonagachi. When women in the house and neighbourhood protested strongly to this harassment the posse of police resorted to an unprovoked and brutal baton-charge. A large number of our sex worker activists and staff of the intervention project suffered body blows and had to

receive medical care.

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Innocent bystanders, notably children of the neighbourhood too did not escape the brutal police third degree—around fifteen of them received baton injuries and had to be hospitalised.

We immediately protested these acts of barbarism by the police and gave a deputation to lodge a formal complaint with the local police station requesting it to take action, stop their brethren from continuing violence against sex workers, and restoring normalcy within the area.

...

We of Durbar strongly condemn this act of terrorism perpetrated on us by Kolkata Police! We at Durbar strongly feel that this kind of violence by the police on us reveal their utter callousness about our human rights, and infringe on our right to livelihood. In addition, such acts of violence by

“upholders” of “law and order” on sex workers only manages to marginalise us more, makes us suspicious of “mainstream” interventions and sets back by a quantum leap the gains DMSC had made in STD/HIV

prevention efforts among us. In short such police atrocities, take away not only our livelihood, but also our health and our lives!

DMSC, 2003

A REPORT BY EMPOWER CHIANG MAI ON THE HUMAN RIGHTS VIOLATIONS WOMEN ARE SUBJECTED TO WHEN “RESCUED” BY ANTI-TRAFFICKING GROUPS

Empower Foundation is a Thai Organization since 1985. Empower promotes opportunities for women workers in the entertainment industry.

Empower strives to promote these opportunities and rights to all women workers regardless of their country of origin. Far from being a “bold new method” . . .

Empower Chiang Mai has been dealing with the issue of

“raids and rescues” of women working in brothels for the past eleven years. Empower abhors the trafficking of any person, forced labor including forced sex work, and the sexual abuse of children, whether for commercial exploitation or not.

Over the past three years there has been an increased international and national focus on the situation of women who have been trafficked. However, the focus on trafficking in persons has meant many groups with little or no experience on the issues of migration, labor, sex work or women’s rights have been created to take advantage of the large sums of money available to support anti-trafficking activities. Their inexperience and lack of contact with the sex worker community has meant they are unable or unwilling to differentiate between women who have been trafficked and

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migrant workers. They also show a great deal of trouble differentiating between women and girls, often applying identical standards and solutions for both. It is obviously inappropriate to treat an adult as a child.

Empower has monitored the methods and results of these group’s activities and we are very alarmed at the increasing violations and inhu-mane treatment women are subjected to by unworkable and unethical methods. . . . [we therefore appeal] to anti-trafficking campaigners, funding bodies and policy makers to urgently and very carefully consider these recommendations and ensure that they protect the rights of the women they propose to assist:[2](#)

- No person should be trafficked, or forced to work in work they have not chosen to do and that no child under the age of 18 years should be abused sexually either commercially or domestically . . .
- Methods to combat trafficking must be revised and solutions found that do not violate the rights of workers . . .
- The rights of adult trafficked victims as workers must be acknowledged.

We should receive recognition of our work and compensation, so we are not financially worse off after our “rescue.”

- All women affected by trafficking or anti-trafficking measures must receive adequate compensation . . .
- The primary goal of prosecuting traffickers must be altered to a primary goal of assisting trafficked women and children . . .
- Anti-trafficking groups must work toward improving the human rights situation in Burma, securing the ability for women to travel independently, and fully supporting the recognition of refugee status . . .
- Anti-trafficking dialogue and groups [should] consider us as anti-trafficking workers and human rights defenders. . . .

Empower June 2003

<http://www.nwsp.org/mobility/mpower-0306.html>

NOTES

1. See, for example, writings by a coalition of sex workers’ rights’ organizations in Australia, “Alleged Trafficking of Asian Sex Workers in Australia” (<http://www.bayswan.org/>

[Austral.html](#)); the “Statement on Trafficking, Stigmatisation and Strategies for Alliances” by Carol Leigh and Marjan Wijers, prepared for The Transnational Trafficking Seminar on Trafficking in Women, June 20–24, Budapest, Hungary, 1998 (<http://www.bayswan.org/>

[alliances.html](#)); the electronic article by Anna Louise Crago (2003), writer, activist, artist, and founding member of sex worker political action group “La Coalition pour les droits des travailleuses et travailleurs du sexe” in Montreal, Canada (<http://www.breakthrough.tv/>

[news/news-details.cfm?id_News=117](#)); analyses and commentaries by activists in the Network for Sex Work Projects (NWSP) (<http://www.nswp.org/mobility/analysis.html>); the journal article by the director of SWEAT (Sex Worker Education and Advocacy Taskforce) in

South Africa: Jayne Arnott, "SWEAT: Engaging with Trafficking in Women in South Africa—

an NGO Perspective," *Canadian Woman Studies* 22, no. 3–4 (2003): 188–191; and News Item

8 with comments by Kara Gilles of the Toronto migrant sex worker advocacy group, on the Canadian police raids on massage parlors in the Greater Toronto Area, December 19, 2003

(<http://www.sexprofessionalsofcanada.com>).

For more perspectives from sex-workers' rights groups, see *Partners in Change: Stories of Women's Collectives* (Bangkok: GAATW, 2002); the "Legal Agenda for Migrant Prostitutes and Trafficked Women," compiled by a coalition of European organizations, at: <http://www.femmigration.net>; and the website "Connexiones para Migrantes/Connexions for Migrants," that offers comments, articles, and links, with an emphasis on Latin America: <http://www.nodo50.org/migrantes>.

2. The recommendations came out of a meeting held by Empower on May 12, 2003, on trafficking and anti-trafficking responses, in which sixty-four entertainment workers from three different centers in Thailand participated. A majority of the participants were from Burma, "some of who had at some time been 'victims of trafficking' and all of who had at one stage or other enlisted help to migrate for work in Thailand."



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PART III

REPORTS FROM THE FIELD

Participation, Research, and Action



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Migration, Trafficking, and Sites of Work

Rights and Vulnerabilities

Jagori

Jagori, a women's center based in New Delhi, India, has worked on issues of trafficking, migration, and rights of sex workers for over six years. In our work so far, we have consistently come across problems in the availability and reliability of data on these issues, which render intervention either impossible or ineffective, and uninformed. In an effort to begin addressing this gap, Jagori conducted a study in 2000 in two states of India, Rajasthan and Gujarat, which led to a larger action-research project.

This paper reports on the study and presents some of the initial findings and Jagori's perspective on the issue of trafficking. During this short study to map trends, we felt that it was critical as a first step to focus on movement per se; that is, migration in itself, and explore its causes and implications for women in particular. Only through such a

“lens” would we be able to locate elements of trafficking in the process—such as coercion, deceit, abuse, and slavery-like practices. Using this approach enabled a more acute awareness of the need for women to move in search of work, and the concomitant vulnerabilities inherent in the process of their movement. Second, the context within which trafficking has been conceptualized is across borders, thus it is enmeshed in issues of illegal migration. It is therefore more difficult to apply it in cases of migration within borders, from one state to another, or between 159

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districts, and its applicability is immediately reduced. We did find, however, that by breaking the concept into *elements* of trafficking, or understanding it as a continuum of violations, it could be used to analyze internal migration processes. Moreover, while the notion of illegal migration is redundant in internal migration, violations of rights of migrant workers can take place under different circumstances. The concepts of citizens' rights and human rights need to be invoked to address these violations. As the UN Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, notes in her report of her mission to Bangladesh, Nepal, and India: "Trafficking of girls and women often follows the same route as legitimate migration... 'traffickers fish in the stream of migration'...." The focus of inquiry and of the report itself has been on unraveling and understanding these very streams of migration.

METHODOLOGY

The study was conducted over five months in selected districts of Rajasthan and Gujarat. It involved State-level consultations, a series of informal meetings with NGOs and other stakeholders, interviews with women migrant workers, and field visits, in order to understand the dominant trends and key issues and share the concerns of the project with NGOs and other civil-society organizations working in the region.

It was critical to identify existing gaps in data, understand the issues of concern, and exchange ideas and strategies that would optimize the scope and utility of the study with the active involvement of groups and experts working in the area. In addition, an extensive survey of literature was undertaken to gauge the gaps and missing links in migration research, particularly with reference to women and migration, in order to contextualize the study within existing debates.

Our initial consultations and forays into the field were conducted within the conceptual framework of trafficking. However, increasingly we found that such a framework was too limiting for us to understand, analyze, and engage fully with all the emerging issues. The NGOs and field sites we visited threw open entirely new areas and ideas to explore, which hinted at possible intersections with discourses of trafficking. Discussions with the NGOs, as well as within our

team, helped us reflect on the debates surrounding the trafficking discourse.

THE FOCUS ON MIGRATION

Migration has been a feature of all societies historically. There have been different forms of migration—nomadic migration, migration for labor,

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migration due to war, displacement, etc. Perhaps today it is the changing context of the world and the extent and scale of migration which makes it a key feature of the times. Globalization has today precipitated the process due to increased opportunities at one level and disruption of livelihoods and food security on the other. The reality is that people today and women in particular are moving in search of survival and fulfillment, in search of ways to create new identities and a better life for themselves and their families (Karlekar 1995; Lingham 1998; Pedraza 1991; Sweetman 1998). Migration indeed has been an extension of women's everyday lives in many regions.

The extremely high level of mobility of capital has led to freedom to choose labor from any part of the world. The devaluation of human labor and the simultaneous increase in the value of capital is the context for the increase in mass-level international migration. These changes in the global economy have brought more women into the realm of paid labor. The transnational character of industrial production has created a market for female labor, especially migrant women.

It has been increasingly documented that women face several kinds of vulnerabilities during the process of movement. In some cases, especially of cross-border movements, studies have shown that there are serious issues of human rights violations that need to be dealt with, the more severe being cases of trafficking (Coomaraswamy 1997, 2000).

However, in order to tackle the issue of trafficking we need to make clear conceptual distinctions of the different elements involved. Trafficking has been defined as “all acts involving recruitment and/or transportation, moving, selling and buying of women and children within and/or across borders through coercion and/or deception, for sexual services and/or work, for the purpose of profit” (Coomaraswamy 1997).

It is important to challenge the perception that whenever women move out alone in the world they are forced into the sex industry. While it is true that this is valid in many situations, it is neither correct nor useful to assume this is always the case. The focus on sex work as the ultimate site of work of a trafficked woman leaves aside a large number of other sites into which women migrate and face abuse, coercion, and sexual exploitation. We found that in many of the sites of work which we visited there was abuse and exploitation of different kinds, which might not be labeled as trafficking. It therefore became more relevant to examine the kinds of vulnerabilities that women face during the process of movement, finding work, and at the different sites of work.

Our study therefore focused on a broader canvas looking at the process of migration and sites of work, point of origin, and the places to which they migrate. It is important to recognize that inequalities, discrimination, and violence within the home, during the journey or movement, and at the sites of work make women vulnerable to being coerced,

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deceived, and violated. Patterns of violence and exploitation within the family also play a role in women's decisions to migrate in search of work.

MIGRATION TRENDS IN RAJASTHAN

In parts of Rajasthan, migration has historically been a way of life. People from different castes in Rajasthan move for different reasons with different results. Social structure mediates all access to resources. The caste composition is distinct and has shown great tenacity in surviving the effects of modernization and urbanization. Mechanisms of caste accommodations and networks and local understandings have also been built over generations. As a result migration often occurs in clusters or networks, rather than individually. Structural conditions also may marginalize entire communities, as a result of which they are forced to move.

Pastoral groups also usually migrate in big groups of hundreds or thousands, with cattle and all belongings. The ecosystem in Rajasthan is intricately linked to migration patterns. The pastoral region to the west of the Aravalli Range is a totally separate ecosystem from the rest of Rajasthan; in fact Western Rajasthan is ecologically a part of West Asia.

Pastoral migration is an essential part of the ecosystem of Rajasthan (Kavoori 2000).

The role of the State in the context of migration has been ambiguous. While on one hand it plays an enabling role, helping the flow of labor and creating labor markets, at the same time it has also tended to focus on settling people (sedenterization) and on efforts to reinforce ethnicity and "Statehood."

Rajasthan exhibits tremendous regional variation, in terms of ecology, agrarian structure, caste, class, and ethnicity. Southern Rajasthan has a history of bonded labor and exploitation within the tribal institutional framework. In Shekhawati, for instance, the Jajmani system has been very popular, as a result of which people migrated in groups. Thus along with the Marwari patron, the castes which provided services to them would move also—such as the barber, cooks, and so on. Border districts such as Dhaulpur and Sawai Madhopur show a particular type of migration, in which case the construction labor sector becomes important. There is also the phenomenon of migration to Gulf countries in Churu and Jhunjhunu, areas where there is a dominant Bohra Muslim community. The

occupational diversity along caste lines is also important to understand. With its rich traditions, Rajasthan has always witnessed migration of one sort or the other; in the case of performing arts groups like the Nat, Mal, and Mirasi, they travel from village to village as entertainers.

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The process of industrialization and opening up of markets has had an impact on peoples' livelihood options. For example, in the Alwar area over the past 15 years, a large number of locally run industries have closed down due to their non-viability, which has led to severe unemployment. This has meant loss of livelihoods for families and there has not been a commensurate opening up of other livelihood options for them. This has led to women entering sex work, a phenomenon which we found both in Alwar and in Ahmedabad where textile mills have been closed down in large numbers (Bremen 1996).

In Rajasthan the continuous drought conditions between 1999 and 2002 have been devastating, with over 3 million people having been affected. Livelihoods have vanished, and many villages suffered from acute crises—malnutrition, death of livestock. News came of the Chittor region in January 2000 where 40 villages were so badly affected that as many as 1,400 people were leaving a single village. In some villages only old people had been left behind—men, women, and children had all moved in search of work and survival. In the cities there was increased begging and an increased number of rickshaw pullers, women in prostitution, labor in the *choktis*, and swelling suburbs and slum settlements.

“Choktis” is the local name given to the assigned places in the city where laborers, most of whom have migrated from the rural areas, assemble in the early morning to provide their services to contractors who come looking for casual, daily-wage labor. Where there were once 100 people in one place, it has increased to 250 to 300 people in the same place.

Often the whole family was there to provide labor. While the number of laborers coming to the *choktis* is on the rise, the work available is falling.

Due to inflation the construction industry suffered, so laborers are able to get work for only around ten to fifteen days in a month. There are also different scales of wages amongst the laborers; the unskilled laborers are paid less and

women are usually paid 30–40 percent less than men. Contractors come with work usually for construction, laying of telephone lines and cable lines, and so on. There are thirty-five such *choktis* in Jaipur, of which twenty are very large. The laborers live in slum settlements, where they have to pay rent of about Rs. 200–500

(approximately US\$4–10) a month. Some live temporarily in the semi-constructed houses they are being contracted to build. Almost 60 percent of migrants in this kind of situation return to their native place when they are able to. Women are also vulnerable to sexual exploitation; often, delaying payment is the pretext under which women are recalled by the contractors and harassed. Most women and men accept the abuse, as they see no choice. Women workers are usually in the range of fifteen to forty years of age. Ninety-nine percent of the women are accompanied by men. Only some women, like widows, may be on their own.

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Many communities have been put out of work by changing economic policies and conditions. The Regar community, for instance, which was a shoemaking community, was affected badly by the entry of Bata, a multinational shoe company, and other large shoe companies; even villagers would no longer come to them for their shoes as options that were cheaper (and sometimes perceived as higher status) were now made available.

Some traditional entertainment tribes such as the Nats, Bedias, and Kanjar have increasingly become impoverished as they can no longer support themselves with their trade. Women who used to work as entertainers are now working as prostitutes to support themselves and their families. They migrate within the State and also to other cities. In recent years a new route has also begun in which women are going, or being taken, to Bombay and then to countries in the Gulf for work, often domestic or sex work.

Family Labor in Brick Kiln Factories

Banwari Lal and Kishandas live in Meda ka Vaas, approximately fifty kilometers from Jaipur, near Choma village, off the Jaipur-Delhi highway.

They belong to the Raiger community. Although some members of the community own small pieces of land, the majority are landless. Traditionally they worked on other people's fields as casual seasonal workers when the work was available, but of late it is becoming consistently harder to find regular work in their villages. With the state fighting severe drought for the last three years, work in the fields has become scarce. So to make a living, they migrate to nearby and far-flung cities to work as laborers on brick kilns. The last contract they had was on a kiln near Bijaipur on the Jaipur-Alwar road. They generally travel with their families because the whole family can get work on the site. The women and children all get involved in the work. In the past few years they have traveled to many places in Punjab, e.g., Pathankot, Jammu, Tilwada, Ambala, Chandigarh; many towns in Rajasthan—Jaipur, Alwar, Ajmer; and also Himachal Pradesh.

Nearly 500 people are needed to work on a medium-sized kiln. They come from many states but the majority of them are from Rajasthan and Bihar. An organized network of contractors and brick kiln owners operates in the area, moving from village to village, hiring workers, and then transporting them to the site of work. They contact the workers for contractual labor year after year. The wages are not paid at the end of the day's work, or even at the end of the week. Instead, the contractor gives each family a small sum for daily expenses (Rs.500–600) once in fifteen days. The contractor also arranges for a place for them to stay near the kiln area. These are generally *katchcha* mud huts or tents for which they are not

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supposed to pay any rent. The settlement is quite large, almost like a small village because many families migrate together, sometimes from the same village also. They generally migrate with eight to ten families in a group.

They are usually not allowed to return home in between, or, at the most, for a day or two, but they cannot leave the work in between and take up other work elsewhere. The final payment is done only at the end of the work period when the rainy season starts.

The work is very hard and backbreaking and endless. A typical working day begins early in the morning at 6 a.m. and stretches right through the day till 6 p.m. There are no holidays. All the workers including women and children have

to work seven days a week. The wages depend on the number of bricks made by the family. The men prepare the clay, the children transport it to the site, and women fill the mold and prepare the bricks for drying. An average family of four (husband-wife-two children) can prepare up to 4,000 bricks a day. They are paid Rs. 25

for every thousand bricks. This averages to 100 rupees a day (approximately US\$2) for the whole family. They do not get paid per person. After meeting their expenses, they can save between 500–700 rupees (US\$10–

14) in a month. At the end of the contract, which can extend up to a year or more the final payments are made. They return with 5,000–7,000 rupees (US\$100–140) after ten months, generally during the rains because there is no activity during this time in the brick kilns.

Besides making the bricks there is other kind of work in the kilns, e.g., loading the firing hearth, firing the bricks, loading and unloading of trucks etc. For this some workers are paid according to the number of bricks, while some are paid daily wages also. But Banwari Lal and Kishandas were not sure of the amount the workers were paid or the terms and conditions in these cases as they had never done other work themselves. However, they were sure that all the workers were paid at the end of the contract and no final payments were made at any other time. They felt that the contractor did this to ensure that they did not leave the job in between.

Women do not migrate alone; they only travel with their families. If there is a single woman (widow) she will also move with relatives. The working conditions are harsh but there is no sexual harassment at the workplace because they migrate in large groups, which is safer for women.

The life in the village is much better, but there is no work. The children do not go to school because each year the family moves to another town, another location.

The tribal belt in Southwest Rajasthan exhibits distinct traits from the rest of the State. Badly affected by the depletion of the forests, the tribal blocks are increasingly impoverished and are an ecologically, economically, and socially vulnerable group. The central issues in the area are those of land rights and environmental degradation, and the resultant

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loss of livelihoods, health, and education. There has been very little investment in the area—for example, literacy rates for women in the last census was 2 percent. Ignorance and lack of facilities, as well as erosion of local healing systems, make health a critically neglected issue.

While seasonal migration of men for wage labor in the cities has been the norm in the last decade, the volume of migrants has increased phenomenally, and now includes women going into the cities to look for wage labor. A unique phenomenon is the seasonal migration of young tribal adolescent girls to work primarily in the cotton-picking fields in Gujarat, and also other sectors such as the tobacco industries and oil pressing mills, and for cleaning machinery. The young girls—from thirteen years of age onward—go in groups, with a contractor from the village or with a group of young boys going to work, and are particularly vulnerable to exploitation by the contractor or the *Seth* for whom they work, or even by some of their village boys. Cases of girls being sexually exploited and “kept” by the *Seth*, and her family’s subsequent rejection and violence when she returns are common, but the Panchayat (local governing bodies) are intolerant of engaging with this issue. The silence around the issue and the pressure on the girls to continue this earning, as well as little knowledge of women’s bodies and reproductive health issues, make it all the more difficult to address these particular vulnerabilities.

MIGRATION TRENDS IN GUJARAT

In Gujarat, the spectrum of migration stretches from seasonal migration of pastoral communities at one end to large numbers of Gujaratis migrating out of the country at the other. Rajasthan and Gujarat share a common border and common geographical areas and there are many commonalities in trends of migration in the two states. The migration patterns in the state can be broadly divided into four major patterns: pastoral migration, migration from tribal areas, migration to coastal Gujarat, and migration to the industrial belt that includes Ahmedabad, Surat, and Alang.

Pastoral movements in Gujarat, as in Rajasthan, have been the traditional form of migration. Before partition, people moved toward the northwest, to the banks

of the Indus River. Now they migrate to the southeast, toward neighboring states. Over the years their access to grazing lands has been restricted due to deforestation and policies which restrict open access. Thus, over the past fifty years the migration patterns have been changing and adapting to availability and access.

Fourteen percent of Gujarat's population is tribal, mainly consisting of the Bhils, Rathwas, and Kolis. The tribals of the Panchmahals

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migrate as families to other parts of Gujarat—both to nearby cities to engage in work within the informal sector and to agricultural fields nearby. Though many may own small landholdings, they are unable to earn enough to support themselves due to several reasons, including the small size of these landholdings and lack of irrigation. Tribals of the hilly Dang district migrate to the plains of south Gujarat (to the Surat and Valsad areas) in search of employment. Usually they are hired by the sugar factories and are paid according to the piece-rate system (on the basis of the quantity of sugarcane they cut). But this migration is seasonal and lasts for six to eight months. They return to their villages as soon as the monsoon begins in order to carry out the agricultural activities. Migration is undertaken in families or larger units and thus women do not migrate alone.

In the 1980s the export-oriented fish processing zones grew and expanded in Gujarat. According to one local NGO, there are around forty to fifty units along the coastline starting from Veraval up to Dwarka.

Gujarat boasts 25 percent of the total continental shelf for fishing and 20

percent of the country's total coastline. This is a major site of work for migrant women. Local women who were previously from fishing communities and other lower castes are employed in these units. They travel up and down the length of the coast each season. They work at the ports where the fish are downloaded from the trawlers and they are involved in storing and transporting. Some women work in the processing plants. Women involved with storing and transporting live near the workplace in temporary makeshift shelters provided by the owners of the units. They have long working hours and can be called at any time of the day and night as required. The majority of workers inside the processing units are women, many of them migrant contract workers hired from

the southern state of Kerala who specialize in shelling, peeling, and grading prawns. They handle frozen prawns for hours at a stretch, working in damp and dirty halls. At night, they sleep in dingy hostels located above the units. A large chunk of the wages is deducted as charges for the food provided (Warrier 2001).

The hostels ensure that the factory owner has a captive workforce, which can be put on the job at any time of the night or day, whenever the fish arrive. The units have been given a special exemption from the ban on night work for women. The average worker works for 12 hours at a stretch. The majority of the workers are young girls (preferably unmarried and childless) between sixteen and twenty-five years old.

They generally work for eight to ten years in this trade, saving up money for dowry for their marriage or to support impoverished families. Most women are unaware of the method of recruitment, the name of the company for which they work, or the name of the contractor. They only know the sub-agent who recruited them from their villages. Since the

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units close down during the monsoons, the industry claims that it is seasonal and thus escapes the provisions of the Factories Act, which would include more rights and benefits for the workers. It has also lobbied for relaxation of all labor legislation. Many units are run in mafia style, with security guards who do not permit free entry or exit. The workers are virtually captive.

The saltpan workers migrate in families and sometimes as a group of families from the same village or nearby villages. They travel to the various sites (Jamnagar, Bhavnagar, Kutch, amongst others) of saltpan plants, where they are employed in couples. The wages are paid to each couple (a man and a woman) and not to individuals. The majority of the workers come from the lower castes. They leave for work at the salt plants after the festival of Diwali (November–December) and return to their villages before the monsoons, when the saltpan work stops. The work is contractual, the Mukadam or contractor comes to the villages and collects them and transports them to the worksite. They live in makeshift shelters near the saltpan fields, made from polythene sheets and bamboo, which are supplied by the owner of the plants. Here they live, braving

the vagaries of the harsh weather. While the smaller fields employ twenty to thirty workers, at least 200–300 men and women work the larger fields. Most of the workers were not sure of the amount of wages paid. The wages varied from Rs. 25 to 50 (approx 50 cents—

US\$1.00) per couple per day. Working in the saltpan exposes them to high levels of concentrated salt as they have to stand in the salt water.

They develop sores and many women complained that their hair steadily thins and falls off. Some young girls showed bald patches on their head.

The main problem they face is of clean drinking water.

In 1982 there were sixty-five textile mills in Gujarat, which have now dwindled to only ten. Of these most were in Ahmedabad. Nearly 50,000 workers were rendered jobless by the closure of these mills and of these, 36,000 were in Ahmedabad alone. The job of a mill worker was a prestigious job and for those who were thrown out, taking up petty jobs was very problematic and a matter of shame. Some started petty businesses and set up small kiosks, shops, etc. But this was not enough to sustain the family and keep up the middleclass lifestyle. The women in these families were gradually pushed out into the work force, mostly in the unorganized sector. In a situation of scarcity of jobs, women did take up sex work or work related to prostitution, such as renting out rooms.

Though there are no red light areas in Ahmedabad, there is a flourishing sex trade, involving housewives, college girls, and others who are brought in from West Bengal, Orissa, and even from Bangladesh. Gujarat, being a relatively wealthy state in India, has always attracted migrant workers from other states. We found organized networks for women coming in from the eastern states of Orissa and West Bengal for different kinds of

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work, including domestic work and sex work. The conditions under which these women migrate are often very precarious, and facilitated by layers of middlemen. This does sometimes lead to women being deceived or exploited in the process, especially as these are very poor and often uneducated women. The women find work in the cities of Ahmedabad, Surat, and Alang.

Surat has emerged as the city of the migrant with nearly half its population

comprised of migrants. Surat attracts workers from all over the state as well as from Bihar, Orissa, and eastern Uttar Pradesh. The city is highly industrialized and known for its power looms, artificial silk factories, diamond cutting, and other industries. Nearly 100,000

migrants work in the power loom factories. There are three kinds of migration to Surat—those who come to set up industry, skilled workers coming to work in the industry, and the unskilled migrant workers.

Finally, Alang, the port near Bhavnagar, is a unique place to study migration of men. The port which is famous for its ship-breaking yards attracts migrant workers from eastern Uttar Pradesh, Bihar, and Orissa.

The work is backbreaking and very risky. The workers are exposed to tremendous danger as they are untrained for such a specialized job.

They have to use sophisticated machinery for cutting through the hard steel of the ship and in the process become victims of numerous accidents (Abdi 2003). The material taken from these ships and the steel sheets have to be transported to various locations in the country. Because of the heavy traffic, a large sex industry has flourished along the highways to Alang in addition to catering to the men working in Alang.

CONCERNS AND CONCLUSIONS

The study reveals broad trends, yet also provides a glimpse of the various kinds of migration, sites of work, and vulnerabilities that women in India face, both in the process of migration and at sites of work. Globalization and neoliberal economic policies have precipitated migration due to increased opportunities for finding work in certain areas and impoverishment and disruption of livelihoods in others. The growth of export-oriented industries like garments and electronics, and practices such as outsourcing and flexible labor, have created a demand for female labor in certain locations. In addition, migrant women are in demand in jobs of care, specifically domestic work, child and elder care. Another feature of contemporary migration which has contributed to the demand for female labor has been the growing sex, entertainment, and tourism sector.

Our initial study in the two states shows that women's migration is a very complex issue and needs to be analyzed both within a broad

*Jagori***A Saltpan Worker in Gujarat**

It is a hot scorching day as we approach the village of Kharchia, near Jhodia in Gujarat. As we bump along the practically non-existent road we can see the white, salt-ridden soil through the fresh green grass. This area has had good rain after three years of drought. Soon one can see the red tiled roofs of the temporary shelters made for the villagers who have lost all their houses and possessions in the earthquake.

Vijayaben Karsan Bai has been working in the saltpans for the past twenty-two years. She is forty-five years old. She goes with her family every year to work on different sites. The *Mukadam*, or contractor (who could sometimes be from the same village), contacts them and offers them work with a certain company. This could change every year. Vijayaben has traveled to Bhuvaniya Taluka in Rajkot, Khejadia, Gagwa, and Sikka in Jamnagar. She has also migrated toward Bhavnagar, Surat, and to Kutch.

Her family, consisting of one son, one daughter in law, and three children, moves every year for eight months to work in the saltpans.

The work is hard and painfully slow. Vijayaben says: "First we have to fill the saltpans or fields when the tide is high. Then we make the boundaries to keep the water in. Guarding the boundaries is also a major work. They keep breaking down and a constant vigil has to be kept up.

After about a month the salt gets 'cooked.' During this time there is not much work and we have to wait. The Mukadam gives us expenses but these are later deducted from our wages." After the salt starts crystallizing, it has to be taken out and pulled along the sides to be kept in huge mounds. This is then loaded on the trucks to send to the plants where it is cleaned, iodized and packed. Each truck can carry up to 62,400 kilos of salt. The women and men both work on loading.

On the saltpan or field, Vijayaben works as a pair with her husband and, together, they are paid 700 rupees at the end of fifteen days. On probing further about the wages, she seems confused.

“The women do not know what they get as wages,” one of the men explains. “As long as there is food to feed the families.” The majority are illiterate so they do not know how much their wages come to at the end of the fortnight. Feeding the family is the major concern.

“In the beginning we eat bajra roti (bread) with potatoes and onion sabzi (curry), sometimes daal (lentils), also urad, and chana. But the money is not sufficient to keep this up everyday. Then we eat only bajra roti and chillies or onions. We never get milk, not even for the children. Even our tea is black!” Vijayaben grimaces. “When the money is over we just go hungry... What can we do? If we get a little time, we go to catch fish and eat it roasted with salt when we have no more money.”

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The workers have to stand for long hours in the salt water, which is very harmful for their health. Most develop sores and rashes on their skins. “See?” She shows us the scars on her hands and feet. “We all have them.” The scorching heat coupled with salt water burns their skin black.

“We are thirsty all the time and our hair starts falling off.” She pulls her granddaughter toward us to show the bald patches on her head. Vijayaben herself has lost a lot of hair. “What will we do with long hair if our stom-achs are empty? This is a small price to pay,” she says philosophically.

“Salt gets into every pore of our body—on our skin, in our hair, our mouth, noses and eyes. In our clothes. We feel nauseated at times and sick. Even when we sleep we feel the itching and irritation from the salt. We have to bathe at least twice a day or our bodies will itch terribly and the skin will get rashes.” Bathing and washing clothes needs clean water and that is a valuable commodity for the workers. The owner sends one tanker of water every three or four days and this has to be used for everything—bathing, washing, cleaning and cooking. The women have a tough time. They have to bath and defecate in the open. The stark surroundings, sometimes with not even a bush in sight, add to their exposure and shame. They sleep on the hard floor, which becomes like stone in the harsh winters.

Sometimes, when the sand gets soaked with dew, sleep can be a punishment.

Life for Vijayaben is not easy when she returns home. Most of her earnings and

that of her family have already been spent during the eight months they lived away. When she gets back she has to find work on the fields of the landed people, mostly Patels, in the area. Her two daughters have gone to work in the fields. There is not enough work for all the members of the family. "We have to live somehow," she says. "We have started making coal from the wood we cut from the thorny shrubs around."

The wood is burnt in closed furnaces and then water is poured over it to make coal. This is sold to the Patels in the next village who take it in bulk from them. Vijayaben knows that the Patels do not pay them enough for the coal and that they make much more money out of this business, but she and her family have no way of selling it themselves.

macro framework and at the level of the experience of migration and work. It is as important to locate how globalization has led to increasing impoverishment of many people as it is to understand the actual experience of working at a construction site (for example). It is a fact that women are moving today, on their own and with their families, in order to earn a livelihood. There is indeed a feminization of poverty and migration: women's migration has increasingly become a prominent feature

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of globalization. In our study, we found women in a variety of worksites.

The experience of the process of migration, of finding work, and conditions of work all told stories of vulnerability to exploitation, and different forms of abuse.

The debate in the South Asian context over the past decade on women and migration has to a large extent been framed within the discourses of trafficking for sexual exploitation. While completely agreeing that trafficking is an extreme violation of women's human rights, women face different kinds of abuse, exploitation, and violation of rights almost routinely in the process of migration or finding work. Particularly, the state looks at women as victims who must be protected from trafficking, and such protection often becomes a tool for the violation of women's rights by restricting their right to move. Moreover the focus on prostitution as the main site of trafficking has diverted the debate from

one of rights and vulnerabilities to issues of morality.

The contexts within which trafficking takes place are similar to those within which migration takes place and include economic compulsions, social and cultural practices, historical and political factors, and the systemic gender discrimination and violence that girls and women face. There are multiple factors that increase women's vulnerabilities which are enhanced because of their structural position within patriarchal society. The conditions which allow for deception, coercion, bondage, violence, and exploitation of labor are the daily realities of the lives of many girls and women. The inherent vulnerability that women face is enhanced when it operates in conjunction with other factors that limit the rights of workers in general—for instance, the nature of work (sex work, domestic work, dangerous work, prohibited work, and so on) and the location of work (own country/foreign country, at home/outside home, and so on).

Our study shows that a focus on migration and informal and non-regulated sites of work allows us to take up such issues as labor rights and sexual harassment at the workplace. It is therefore through a vulnerabilities and rights framework, such as employed here, that we can begin to identify issues that frame the lives of migrant women and build strategies for change.

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Feminist Participatory Action

Research in the Mekong Region

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Over the past decade, the issue of trafficking in persons, especially women and children, has gained increasing attention at the national, regional, and international levels. In the Mekong sub-region, the socioeconomic and political changes that have taken place in countries like Cambodia and Vietnam in the past decades have been accompanied by greater mobility of people internally as well as across borders. Experience from a country like Thailand has shown that the movement of people, particularly women, into various types of labor and service sectors, including marriage, has been increasingly accompanied by deception, coercion, and exploitation.

The Research and Action Project on Trafficking in Women in the

[Mekong Region—in short, the RA Project¹—was a response to the growing concern over the increasing number of women who had been “trafficked” in Cambodia and Vietnam in the late 1980s and early 1990s. At that time, there was a general lack of reliable data on the trafficking situation as well as a lack of appropriate strategies to provide support to affected women. The main objectives of the RA Project were to document the situation of trafficking in women in Cambodia and Vietnam and to develop appropriate strategies to address the problems and support the women concerned. The methodology employed was one of 175](#)

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action research with a feminist and participatory approach. This methodology had been shown to be effective in giving involved women a voice and a chance to improve their conditions through taking actions for themselves. The project was divided into two phases: a research phase and an action phase. It was implemented by four partner organizations: the Cambodian Women’s Development Agency (CWDA) in Cambodia, the Youth Research Institute (YRI) based in Hanoi for the work in Northern Vietnam, the Women’s Union of Ho Chi Minh City, and Tay Ninh Women’s Union in Southern Vietnam. The Global Alliance Against Traffic in Women (GAATW), based in Bangkok, Thailand, acted as a coordinating agency, providing assistance and facilitating the project.

When the RA Project was implemented in early 1997, there had been very few projects or studies about trafficking in this region, and in addition the issue was perceived to be very sensitive in certain political environments. These factors impacted on the implementation, as well as the outcome of the project. In this sense, the project as a whole was challenging and a learning process for all involved. Nevertheless, this four-year-long project (1997–2001) brought about a number of tangible positive outcomes.

One special feature of the project was that it was an initiative of local organizations. GAATW recognized that there had been a number of research projects carried out and reports published on the issues related to trafficking in women in the Mekong region. However, many of these research projects were completed by external consultants rather than by local organizations working in the country. Such research reports contained useful information on the situation of trafficking (e.g., experiences of trafficked women, their families and communities, forms and patterns of trafficking, trafficking networks, and working conditions). They also made policy recommendations and suggested programs to address the problem. However, the discussion in the reports did not always reflect the perception of the issue by local groups and the women concerned.

The RA Project was probably the first of its kind in the region. The project set out to achieve many objectives. The process toward achieving these objectives was certainly a challenging one due to the complexity of the issue as well as the particular sociopolitical contexts of Cambodia and Vietnam. The overview of the process and outcome of the project, including an analysis of the research findings, is presented and discussed in the full report (GAATW 2002). This paper describes the complexities that surrounded research on trafficking, discusses the challenges in using the Feminist Participatory Action Research (FPAR) methodology in particular sociopolitical contexts, and reflects upon some of the main research findings.

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THE IDEA OF TRAFFICKING: AN EVOLVING DISCUSSION

The conceptual understanding of the issue of trafficking is perhaps one of the most important factors that influenced the RA Project. However, when the project was conceived in 1995–1996, there was no internationally agreed

definition of trafficking in persons. For the project partner in Cambodia, the concept of trafficking was understood in the context of a human rights violation, connected to the growth in prostitution.

For the project partners in Vietnam, trafficking was perceived as related to women being forced or deceived into prostitution or into becoming wives of foreign men. While the perception of the issue by the project partners may reflect the actual trend of trafficking phenomenon at that time, it must be recognized that the understanding of the trafficking issue by project partners—particularly those in Vietnam—also followed the legal concept of trafficking in each country. This understanding was largely based on the historical understanding of trafficking in international law that focused on the recruitment and movement of women across borders for the purpose of prostitution, as in the 1949 Convention for the Suppression of the Traffick in Persons and of the Exploitation

[of the Prostitution of Others.](#)² Thus, despite the absence of an internation-

ally agreed upon definition, trafficking was often associated with the crime of harboring or facilitating prostitution. In Vietnam, trafficking was also linked to kidnapping, false adoption, illegal migration, or immigration, as well as illegally staying abroad. All of these acts are considered a crime under the Vietnamese Criminal Code (YRI 2000, 166–167).

To set a common conceptual framework for the research, GAATW

as the coordinating agency shared an analysis of the issues of migration, trafficking, and prostitution based on the research experience in Thailand (Foundation For Women 1996). After the initial phase of data collection GAATW organized a meeting to synthesize and share the findings. During the presentation of the findings by each team, it became clear that there was a need to discuss and analyze the terms and concepts that each research team was using. Terms such as trafficker, brothel owner, pimp, matchmaker/recruiter, buyer, and prostitute/sex worker were used to imply a trafficking case although it was not always clear that there were situations of deception, coercion, or exploitation taking place. For example, there was generally no or little distinction made between voluntary migration and trafficking. As there seemed to be a lack of a clear understanding of what constituted trafficking, GAATW

provided a two-part definition that was used in the International Report Project on Trafficking in [Women in 1997.3](#)

The researchers were also cautioned that although the term trafficking was often used to describe situations of illegal migration and/or

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situations of women going into prostitution, they needed to recognize that each of these phenomenon was separate, although they may be interrelated. It was important for clarity, therefore, that the research team be very specific (or give detailed explanations) when describing a situation. To be able to be specific, a number of elements were identified and discussed as follows:

1. Deception (usually about the nature of work), coercion in recruitment;
2. Force, coercion, and/or the threat of violence during transportation process;
3. Force, coercion, and violence or threat of violence at destination, e.g., worksites;
4. Deprivation of freedom (of movement and personal choice); 5. Abuse of authority/dominant position—e.g., a mother may use her position to get her daughter to work in prostitution. She may or may not know what it involves. It may also be government officials, teacher, village head, etc.;
6. Debt bondage—a situation where a woman is told that she is now indebted to the person who facilitated her travel and that she must pay back the debt by working. Equally, a situation where the deduction of the debt was not done in a reasonable manner (possibly in order to ensure that the woman remained in debt for as long as possible).

It was also explained to the researchers that not all of the above elements have to be present in order to talk about trafficking—it was important to consider that there were two key processes in trafficking, i.e., the abusive, coercive recruitment/movement and the exploitative condition at the end point. The research teams were encouraged to identify these elements through their research.

Gaining conceptual depth and clarity on the trafficking issue has been an evolving process, both for GAATW and for the project partners. In the last few years, discussion on the definition of trafficking, and measures to combat it, has been progressing at the international level. The Special Rapporteur on Violence Against Women commented in her report to the UN Commission on Human Rights during its 56th session in April 2000, that definition of trafficking should focus on forced-labor and slavery-like practices rather than narrowly focusing on prostitution or sexual exploitation. She also noted that “the 1949 Convention for the Suppression of Traffick in Persons and of the Exploitation of the Prostitution of Others . . . [which] seeks to criminalize acts associated with prostitution . . . has proven ineffective in protecting the rights of trafficked women and combatting trafficking” (Coomaraswamy 2000).

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COMPLEX REALITIES

Recognizing that the scope of trafficking in women included more than just forced prostitution or sexual exploitation, GAATW encouraged the project partners in Vietnam and Cambodia to look beyond the original research scope. This was done during a monitoring visit in the first phase of the project. In Cambodia, the local partner (the CWDA) already had a good grasp on the elements of trafficking although the actual level of understanding may have varied among the project staff.

The director of CWDA was instrumental in giving direction and training to the project staff regarding the broader areas of trafficking. During the first phase, researchers in Cambodia found many cases of trafficking of women for [forced labor or for begging in Thailand](#).⁴ In Vietnam, the discussion and understanding of the issue was more complex because the implementing agencies had to operate within the existing legal framework and the official perception of the trafficking issue in the country. In this regard, it was also more difficult to expand the scope of the research here and it was particularly clear in Vietnam during the course of the project that the official perception of the trafficking issue influenced the research process and the nature of the research findings.

There were also other challenges related to the project in Vietnam. First, at the start of the research process trafficking was perceived as a sensitive, cross-

border issue with China. It took almost one year after the project was actually launched to get official approval for the project from the government. The lack of official status of the project created some negative impact on project activities, particularly those involving the support of GAATW (which implied the presence of foreigners). Second, training for researchers and monitoring of fieldwork during the initial research stage by GAATW, for example, could not take place as planned. Much of the preparation and the actual research process had to be undertaken by the implementing agencies themselves without added support from GAATW.

The conceptual conflation between trafficking in women and prostitution that was employed had some impact on the quality and character of data collected. This was particularly the case with the initial research in Southern Vietnam, in which much of the findings only described the situation of women who had to resort to prostitution because of their difficult circumstances or that of their family. Although the project partners in Southern Vietnam generally agreed on the basic elements of trafficking such as deception, coercion, the use of violence, abuse by authorities, debt bondage, forced labor, and slavery-like practices, these elements were not always highlighted in the project reports. This was perhaps because of the focus on prostitution rather than on elements of trafficking. The Northern Vietnam research team also discussed living

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and working conditions of prostitutes as those of trafficked women, without making any distinction between the two groups.

The conflation between trafficking and illegal migration, which was consistent with the official line in Vietnam, also had an impact upon the quality of the research findings and analysis presented in the reports.

For example, the statistics on “trafficked” women cited in the final report largely referred to the number of women who had migrated clandestinely. The researchers included data on women sent back by the Chinese authorities, those who had gone away and lost contact with their families, and those who did not give official notification to, nor receive permission from, local authorities before migrating. No distinction was made between these different groups. Researchers

obtained these figures mostly from local authorities, the border police, or the local Women's Union and cited them in the report without further explanation. Cross-checking with local authorities by GAATW during a monitoring visit clarified the detail of these figures. Moreover, at the beginning of the project, it was difficult for the researchers to gain support for women returnees from the local authority. The women returning from China, especially those in rural Northern Vietnam, were seen as law-breakers by local authorities.

This was because local authorities viewed trafficking and illegal migration only as a matter of law-and-order, in line with the country's legal framework. Most of the women and their families did not approach local authorities for help because they were afraid of punishment.

In rural Northern Vietnam, the general community attitude toward migration, especially to China, did not seem to be a positive one. Thus, researchers encountered some resistance from community people when they tried to set up women's groups to support returnees from China.

Some people asked the researchers why the project was helping those who had left their homeland to seek a better life in China while many people were trying to make ends meet at home.

In spite of these complications and the fact that trafficking and prostitution were conflated—and that illegal migration was an ongoing issue—some changes in the perception were noted on both individual and organizational levels. In the context of Northern Vietnam, the researchers were instrumental in engaging in discussion with local authorities concerning the latter's view on the status of returnees. Instead of seeing them as criminals, the local authorities gradually developed an understanding about the situation of women who had been cheated and had to leave the country illegally. In the later stage of the project, this shift in perception resulted in the involvement of local authorities in the provision of support to the women returnees and their families, as well as to the women's support groups that had been formed. Similarly, more openness and a change in perception about trafficking were developed during the project in Southern Vietnam. For example, both the

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researchers and the local authorities initially saw the phenomenon of Vietnamese

women in the southern provinces marrying Taiwanese men through arrangement of agents only as a disguise for trafficking. However, through further survey and discussion, the later project report from the Southern Vietnam team remarked that there were also cases of happy marriages. In both Ho Chi Minh City and Tay Ninh province, local authorities and researchers also acknowledged the fact that there were many women who voluntarily worked as prostitutes to earn a living. Nevertheless, the general attitude toward these women remained that they had chosen the wrong path and needed to be reeducated.

Developing conceptual clarity of trafficking with the local partners in Vietnam was a challenging and interesting process.

METHODOLOGY: FEMINIST PARTICIPATORY ACTION

RESEARCH (FPAR) The project framework was one of action research with a feminist and participatory approach, which would give women a voice and a chance to improve their living conditions (or to address their situation) through taking actions themselves. The research methodology included both quantitative and qualitative techniques. Questionnaire surveys were carried out during the project extension period on the situation of Vietnamese women marrying foreigners. Secondary information was also collected from published reports and newspapers. However, the project relied mostly on primary data gathered from interviews with women and other informants. The concepts of participation, participatory action research, and feminist research as understood by GAATW for the RA project are [summarized below](#).⁵

Participation

Participation is a powerful but slippery concept. Within the context of development projects it may mean anything from having people contribute to the project with cash or labor, to involving them in planning and decisions, or taking part in research and evaluation of projects.

Clearly this last type of involvement means that people are able to share ideas about problems and possible solutions. The participants are seen as “insiders”—they are not simply sources of data or sanctioners of studies and reports, but actively codetermine every phase of the research process. Through this form of research the participants’ knowledge and experiences are valued and their confidence in their ability to analyze their situation themselves is enhanced.

Another very important aspect of participatory research is the involvement of participants as a group, not just as individuals. By

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encouraging participants to share information and analyze problems among themselves, it is possible to develop an even clearer view on the issues being studied. In this way, the research process can function as a conscientization process. The importance of working with groups of participants, rather than with individuals only, is reflected in the methods specifically developed for participatory research. Almost all of these methods, or techniques, have been adopted to be used in group discussions. Such techniques are also useful in social-science research. They can yield very valuable information, not only for the researcher but notably also for the participants themselves. As each of them contributes to the activity, they will share views and discuss and clarify their ideas. At the same time the techniques can assist in clarifying ways of taking action.

Participatory Action Research

The purpose of participatory research is not only to describe and interpret social reality in a more reliable way, but to radically change it as well. Moreover, it aims to transform reality *with* rather than *for* oppressed people. This is the concept of “partnership approaches.” Participatory action research combines three activities: investigation, evaluation, and action. The link between research and action is the most important aspect—when people are directly involved in an analysis of their situation, it follows that they want to find solutions to the problems they have identified. In the action process new insights and new solutions may emerge. Not only the participants, but also the researcher can change ideas about social reality. By taking action, the participants and the researcher can work together to change the existing social structures.

An important aspect of action research is its cyclic nature: it starts with studying, learning, and analyzing the situation and problems. From this emerges planning of possible solutions, and then action is taken.

The result of the action is then evaluated, a new analysis of the changed situation is made, new planning with new action follows, and so on.

These repeated assessments further improve and consolidate the action. By bringing research and action together in this way, it is possible to study the process of change over a long period of time. This type of research is supposed to break down the distinction between the

“knowers” (researchers, scholars, experts) and “not-knowers” (peasants, women, poor people; in short, all those who are “subjects” of research). Outcomes and knowledge coming from the research are directly processed and used by the participants, with support and assistance of the researcher.

Participatory action research contrasts sharply with the conventional model of research, in which participants are treated mostly as

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passive subjects only, and sometimes as receivers of the results. It is not always recognized that this still unconventional type of research can also enhance the validity of the findings. Causal inferences about the behavior of people are likely to be more valid and able to be acted upon when the people themselves take part in developing and testing them.

Clearly, participatory action research not only requires considerable skills of the researcher in using participatory techniques as indicated above, but also open-mindedness and a pleasant manner with the participants.

Her attitude and her role are different from that of a “traditional” researcher—she not only gathers information, but also clarifies, stimulates, supports, and assists. Her work will always include a transfer of organizational, technical, and analytical skills from the researcher to the participants

Feminist Research

The most important premises which govern this research can be summarized as follows:

- a focus on the lives, the opinions, and the experiences of women; this includes women’s relations with children and men;
- a focus on possibilities for changes in thinking and behavior, in order to fight against oppression and exploitation and to improve living conditions and

interpersonal relationships;

- to abandon the conventional idea that knowledge is something that exists by itself and for itself, free of the scientist or researcher and his or her background and environment (sex, culture, language, position, etc.);
- knowledge should be accessible to everyone, not only to the researcher or the scientific community.

Comparing these premises with the principles of participatory research and action research described above, it becomes clear that there is a considerable overlap in basic thinking for all three research modes.

Feminist research is mainly different in its main focus on women, and in rejecting any male bias or androcentrism in research. This grew out of the feminist critique of social sciences, when it was found that in many theories and studies women's experiences are omitted or falsely represented. It is believed that looking at the world through the eyes of women and studying women's experiences will adjust the male-biased view on reality which is still not uncommon in the social sciences.

An important aim of feminist research is to understand the extent, the dimensions, the forms, and the causes of exploitation and oppression of women. Then, it is also thought important to study the means

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through which women may already challenge systems and institutions which limit their choices. Oppression is an extraordinarily complex process in which women (and people in general) are not necessarily totally powerless, in that they may utilize a range of resources—verbal, interactional, and others—as forms of everyday resistance.

Because feminism is committed to changing the conditions of exploitation and oppression, a large section of feminist research focuses on possibilities for such changes. This requires new methodologies and new approaches in doing research, as have been developed in the participatory and action research approaches. Central in these approaches are, firstly, sharing of data and findings

with participants, and secondly, using the research as a means toward conscientization, for both the women participants and for the researcher. A heightened awareness, and enhanced skills to analyze their situation, will then encourage and empower the women to take action, to find solutions to their problems, and to change their lives. These concepts are far from those usually accepted in conventional research, where knowledge and theories are supposed to be detached from any practical use. Not only feminists, but also those advocating participatory and action research take the opposite view: research should be executed to serve the interests of the participants in the first place, who will use the knowledge gained for their own empowerment.

Another important requirement in conventional social science is that researchers must be objective—their personal ideas are not supposed to color the research. Feminist scholars point to the impossibility and even the undesirability of this view. Researchers should not only look at their own “hidden” values on moral issues, but take a clear stand in reciprocity and solidarity with the participants in their research. It is also generally agreed that it is preferable that women researchers should be working with women participants. Female researchers usually have an advantage over males in communicating with other women; in addition they may share a set of common experiences with other women and therefore be able to identify with their situations and problems.

The development and application of feminist participatory action research in projects on trafficking and migration is still at a stage of infancy. Prior to the RA Project, it was applied and tested out in the Research and Action Project on Traffick in Women in Thailand that was implemented by the Foundation For Women between 1992–1994. Experience in the earlier project had shown that FPAR was a useful methodology for research on the trafficking issue. Through its “bottom-up” approach, the views of women were heard and their rights promoted. Nevertheless it was thought that application of FPAR in the research in Vietnam and Cambodia could further validate the concept and methodology.

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THE FPAR METHODOLOGY IN ACTION

First and foremost, the understanding of FPAR itself by the implementing agencies was a crucial factor. To really understand the principles and practice of the methodology, extensive training, discussion, and hands-on experience in

practical exercises were required, especially for those who were not familiar with such a concept. Given the limitations of the training, it could be expected that the understanding and the use of FPAR by the implementing agencies might not have been optimal.

The application of FPAR was challenging in the particular sociopolitical contexts of Cambodia and Vietnam. Specifically, these contexts determine the structure of the society and the degree of openness and control within that society. Such factors influence the freedom to which a research methodology can be applied in that situation and the success of its outcome. Moreover, the sensitive nature of the issue of trafficking in these countries and confusion over the understanding of what it involved further complicated the application of FPAR (see earlier discussion). The role of researchers, local project coordinators, and implementing agencies was also critical in the application. This included the dynamics and relationships between the researchers and research participants, and between the project coordinators and the researchers.

In addition, the mandate and experience of the particular organization as the implementing agency of the project also influenced the way in which the FPAR methodology was applied.

Cambodia

In Cambodia, data collection was done in the first phase of the project in order for researchers to have an understanding of the situation and problems of trafficking. This period was also an important time for the researchers to establish contact with research participants and community people. All of the researchers were either local social or development workers. Some of them were involved in HIV/AIDS education programs at the community level or in brothel areas. With the use of a checklist developed at the start of the project, the researchers were able to make contact with, and interview people in the villages and women in brothels. The researchers reported some difficulties in talking to local people in the villages due to the situation of political unrest during the time of the research (CWDA 1997). The local leaders and the village women perceived them as working for a political group and thus did not trust talking to them. Furthermore, security of the researchers and of the women they talked to was of concern since the trafficking network were connected to some powerful people including some in the armed forces. As for interviews with sex workers, some researchers

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also found it difficult to talk in detail to the women in brothels because of the close watch kept by the brothel owners. After the process of data collection, the researchers arranged for meetings to share and discuss research findings with the women concerned, i.e., those in the villages and brothels.

In the villages, sharing of research findings, namely the situation of trafficked women from the villages, led to discussion on causes of the problems and actions that needed to be taken to address them. Consequently, information-sharing groups were formed to monitor what was happening to women locally. Subsequent activities that developed in the communities, including literacy classes, a reading room, and income-generating activities, can be seen as responses to some of the problems identified—i.e., low literacy rate and high levels of poverty. Although the focus on and participation of women was central in all activities initiated, the impact of this approach could also be seen at the family and community level in terms of increased gender awareness. In most of the project villages, the number of domestic violence cases has reportedly declined.

Researchers also tried to arrange such sharing sessions with sex workers in the brothel areas. However, this process proved to be more difficult, especially in the area where the majority of the sex workers were under strict supervision of brothel owners. Nevertheless, researchers were able to negotiate with brothel owners to allow some of the sex workers to gather for one or two hours during the days when they were not working. In the red-light district of the Toul Kork area in Phnom Penh, there were more women who operated as “room-rented girls” rather than sex workers in brothels under control of owners, although previously many of them had worked in brothels. These women had more freedom of movement and they were able to meet when researchers invited them to the meeting. Through the facilitation of the researcher, these women shared and discussed their problems and the problems of sex workers in brothels. Such problems included trafficking women from one brothel to another, violence and abuse of women by brothel owners, police harassment and crackdowns. All sex workers also faced problems of discrimination from the community. This sharing and discussion among sex workers in the Toul Kork area led to the formation of the Cambodian Prostitute Union.

In this way, the application of FPAR in the project in Cambodia contributed to the conscientization of women sex workers to demand their rights. In the villages, the use of FPAR also contributed to the empowerment of women to address some common problems. The women felt that they were involved in identifying problems and in the planning and initiating of activities which addressed some of those problems.

For both women in the villages and sex workers, impacts and changes

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could be seen at different levels in different project sites. In general, the use of FPAR in the Cambodian project was seen as a positive experience by the project partners and the women who participated in it.

Vietnam

As in the project in Cambodia, data collection took place during the first phase of the project in Vietnam. Unlike the Cambodian researchers however, in Northern Vietnam the researchers were not locals of the project communities. They were based in Hanoi and they traveled to the research areas in the provinces. Initially, the researchers relied on assistance from local authorities in providing information on the situation in the villages and in identifying research participants. In order to get to know the research participants in the communities, researchers stayed in or near the villages for 10–14 days at a time. They engaged in daily activities with the research participants in order to become familiar with their life situation and to talk to them. The researchers felt that, despite some difficulties, the process was successful in helping them to gain the trust of the women and that the information obtained was accurate and useful in understanding the situation of trafficking and the conditions that the women faced.

For Southern Vietnam, the research team contacted women who had engaged in sex work (those returned from “reeducation” centers), or families with daughters working in prostitution. This identification of research participants was done largely through VWU staff at the district level (in the case of the two research areas in Ho Chi Minh City), and through local VWU offices (in the case of the villages in Tay Ninh province). Because of their background as social workers of the VWU, some of the researchers already had contact with some of the research

participants. When making a visit to the women and interviewing them, the researchers offered a small amount of money to the women or their family as a token of appreciation for their time. According to the researchers, this gesture was necessary because most of the women were in difficult economic situations.

In the project in Vietnam, the process after the completion of the research phase was somewhat different than in Cambodia. Sharing of research findings with the research participants did not happen in the first step as in the Cambodian project. In Vietnam, the focus at the beginning of the second phase was on the formation of women's groups.

Researchers and project staff invited potential participants (returnees, mothers of trafficked women, high-risk women) to a meeting and to join the group. They informed the women of the objectives of the group including the aim of helping one another both financially and personally. Researchers also told the women that they would be entitled to take a loan from the project. It seemed that formation of women's groups

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in Vietnam required active facilitation by the researchers in comparison with the more spontaneous coming together of women in the Cambodian project.

For the project in Northern Vietnam, the observation regarding the formation of women's groups was made based on the fact that many women refused or were hesitant to join the groups at the invitation of the researchers. In the researchers' view, this was because the women were busy making a living and also because they had inferiority complexes and therefore were not open to and avoided the researchers.

However, looking at it from the women's perspective, some of them were afraid that the researchers were making investigations in order to arrest them (YRI 2000, 211). There was also a negative perception about the women's groups that would be formed. Some parents remarked that if they let their unmarried daughter join the group of "social evil"

women, then the daughter would "lose her honour." Another woman said that "if I need a fund I can borrow anywhere, it is not necessary to join your meetings"

(YRI 2000, 237). The researchers, however, were very patient in trying to explain the purpose of the group to the women.

It appeared that some women did not see the need to come together with other women and the researchers had to convince them to join the group by offering benefits for the women themselves.

For the project in Southern Vietnam, the process of bringing women together to form groups was similar to that in Northern Vietnam. However, the VWU was already running a number of programs, including some credit schemes, skills training, and HIV/AIDS and health education. The researchers and project staff already had contact with many women, including former prostitutes, those still working in prostitution, and women in difficult circumstances who were identified as high-risk women. Many of those women were invited to come together and form a group of “women in especially difficult circumstances” and told that they would be eligible to take out a loan from the project and participate in other activities. In this regard, the establishment of women’s groups was nothing new for the VWU. It was only that in the context of the RA Project, groups of women with different specific needs became the focus. Nevertheless, there was a new element in the work of both research teams, i.e., the use of participatory techniques. Sharing and discussion took place after the group formation. Women who joined in the group were encouraged to share and discuss their situation and problems. Together, they also tried to identify some possible ways to address the problems.

Whilst the major activities of the women’s groups that were formed during this RA Project were similar among the groups in Northern and Southern Vietnam, the impact and the outcomes were somewhat different. Most evidently, there seemed to be more cohesion and the sense of

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bonding among members of the women’s groups in Northern Vietnam.

This was an interesting outcome considering the difficulties and ambiguity in the initial process of group formation. After the women agreed to join the groups, the process of sharing of experiences among the group members helped create a positive impact on the empowerment of the women. Even now, after the project has officially ended, the group members still meet and support one another. The

cohesion that developed within the groups in Northern Vietnam was less apparent in the groups in Southern Vietnam, especially in Tay Ninh province.

A number of factors may have contributed to the different dynamics found between the women's groups in Northern Vietnam and Southern Vietnam. The first is the different geographical context of the project sites and the various basic livelihood strategies of the women in project areas. Most of the women in the project area in rural Northern Vietnam had land for housing and basic cultivation. In comparison, the women in Southern Vietnam lived in the city in squatter areas and were trying to make a living from petty trading. They were more interested in the prospect of having regular employment and income. Moreover, life in the countryside moved at a slower pace while poor women in the city struggled to make a daily living. These situations had some impact on the women's ability to participate in the women's groups.

Second, the backgrounds of the members of the women's groups in Northern Vietnam and Southern Vietnam were different. Amongst the general public, there appeared to be less stigma attached to women who had been trafficked to China than those who had worked in prostitution. It was also the case that discrimination against trafficked women (for purposes other than prostitution) could be removed more easily than that against former prostitutes. While trafficked women were seen as being cheated or deceived, many people saw those who engaged in prostitution as being "greedy," "lazy," or "wanting easy money." It was generally believed too that former prostitutes needed to be "rehabilitated." In Vietnam, this meant that the women were made to go through a period at a "reeducation" center where, aside from learning some vocational skills, they were taught moral standards and the dignity of being "good" women and citizens. The latter kind of teaching also took place during women's group meetings facilitated by VWU staff in Southern Vietnam, including groups that had been formed during the RA Project. In such groups the women may have felt further stigmatized and perhaps were not comfortable to discuss and share their real problems with the group. This factor, together with the fact that for most women group members joining the group served their economic purpose (i.e., they could borrow some funds from the project), funds may have meant that the women's groups in Southern Vietnam did not develop the same degree of cohesion.

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Third, the researchers and project staff in the Northern Vietnam and Southern Vietnam teams had different experiences. Prior to the implementation of the RA Project, project staff and researchers from VWU

had their own “top-down” approach to working with the women. The old style of interaction with women was still observed, especially during the initial period of the project. It was not very easy for the VWU

staff to understand and practice the bottom-up approach that was introduced in the RA Project. To do this, they had to learn to trust and respect the women and to listen to their views. The women themselves were also perhaps used to interacting with the VWU staff in a more reserved manner—i.e., they were not encouraged to speak out or share their views but only to accept what was told. These factors may have had some impact on initial trust building between project staff and the women and the process of sharing and discussion during group meetings. On the contrary, the researchers from the YRI did not have experience working with a community at the grassroots level. In this respect, it was perhaps easier for them to embrace the participatory and bottom-up approach and apply it in the work with the women’s groups once they had been formed. Participation and the open sharing among the women certainly had positive impact on group dynamics.

REFLECTIONS ON THE FPAR METHODOLOGY

To a large extent, the application of feminist participatory action in the project was influenced by the sociopolitical context of the countries in which it was run, especially in Vietnam. In this regard, preparation for the project that took into account the country’s sociopolitical context was essential. Similarly, providing orientation and training for researchers and project staff on FPAR and the conceptual understanding of trafficking was crucial for the effective implementation of the project. However, as mentioned earlier, the use of FPAR in a project on trafficking, especially in countries like Vietnam and Cambodia, was new. It was therefore not easy to anticipate the difficulties that would arise from the sociopolitical context of the countries. From the experience in this RA Project, some observations can be made.

The use of economic incentive to attract women to join the group, as in Vietnam,

may be thought to be inappropriate or in conflict with the concepts of real participation and empowerment. However, once the groups formed, women became involved and participated in sharing and discussion as well as in other activities. The changes that were seen amongst women in the groups, particularly in Northern Vietnam, included an increased confidence to take action to improve their situation

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and an increased ability to support one another. This can be considered as an empowerment. Even among the women in the groups in Southern Vietnam, one could observe changes during the course of the project.

One criticism of the project in Southern Vietnam could be that it focused mostly on providing economic support to the women. However it should be mentioned that for many women, the ability to generate income could be an empowering process. Some women said that they felt more confident and that their families saw them as more capable when they had a loan to start a small business. For other women, more earning capacity meant more decision-making power for them. Nevertheless, the limitation of focusing in the project on economic activities alone must be recognized.

The use of feminist participatory action research in a project like this can have different impacts on different people involved in the project.

For the women, it allowed their voices to be heard and their needs and problems addressed. For the researchers, FPAR meant learning to listen to and to respect and trust the women as participants of the project.

They learned to work *with* rather than working *for* the women and the process became *bottom up* instead of *top down*. These changes were more significant for some researchers and project staff than for others. However, all project teams felt that experience gained from the use of this methodology in this project could be transferred or adapted to apply in other areas of work of the organizations.

For members of GAATW, coordinating this project was a reward-ing and challenging experience. We felt that our role in facilitating the learning and understanding of the issue of trafficking and the sharing of ideas and experiences on participatory approach was positive. Nevertheless, we also realized that while the key premises and the methodology of feminist research in combination with

participatory action research can offer an excellent base for the research on trafficking in women, the actual implementation of the methodology was not always easy and the results may not be the most desirable. Experience from the project shows that there is a need to be flexible in developing responses to the problems identified, particularly at the policy level. Such flexibility depends greatly on the country's political system and the existence of local non-governmental organization/civil groups that are able to challenge state policies. An important lesson learned from the project is that while policy responses may be more rigid and slow to change (especially in a country like Vietnam), some changes can be seen at the individual and local levels. In such a case, action at the grassroots level can bring about tangible positive outcomes. Finally, the experience in working with FPAR

in countries with different sociopolitical contexts like in Vietnam and Cambodia has taught us that we need to be able to use this approach innovatively without compromising its principles and aims.

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REFLECTIONS ON THE MAIN RESEARCH FINDINGS

One important issue that a number of research projects on trafficking, including the RA Project, seek to identify is the cause and contributing factors to trafficking. In the findings and discussion in the project reports from both Northern and Southern Vietnam, poverty and lack of

[education were identified as important causal factors.⁶ For Northern](#)

Vietnam it was concluded that “poverty and hunger constitute a socioeconomic basis for the formation and development of social evils including trafficking in women” (YRI 2000, 55). Poverty was measured here in terms of rice production capacity and annual income per person per year. A “very poor person” had below 50 kg of rice per year or an

[equivalent of VND 100,000 \(approximately US\\$10\).⁷ It should be noted,](#)

however, that the perception of poverty in the Vietnamese context was not confined only to “absolute” poverty. The importance of the widening income

gap between the rich and the poor as a result of changes in the economic structure was also discussed by both the Northern and Southern teams.

In the research in Northern Vietnam there were some indications of a number or a certain percentage of “trafficked” women who were considered “very poor.” For example, the researchers cited statistics provided by Quang Ninh police which indicated that 40 percent of women trafficked during 1991–1997 came from very poor families. It was also stated that thirteen out of fifty-four women trafficked in Kim Xuyen commune were very poor, with an annual income equivalent to VND

100,000 (YRI 2000, 67). A problem with linking poverty and trafficking is that the actual context of trafficking is simplified. In addition, statistics of trafficked women as given by the authorities were questionable. “Trafficked” women were largely identified as those who had left home without official reporting or those who had been “pushed back” from China because of their undocumented status. An important pattern observed in Northern Vietnam, although not always clearly formulated as such in the final research report, was that women were moving in order to look for ways to earn a living. However, because they lacked information about travel and contacts at the proposed destinations, or because of a general lack of experience, many of the women relied on friends or strangers to facilitate their movement and many times they were cheated.

In this regard, poverty may well be just one of the causes of female migration while other factors make these women vulnerable to deceit and exploitation during the travel process and at the destination. The situation was similar in the context of Southern Vietnam and Cambodia.

For Southern Vietnam, the research indicated that a percentage of the women interviewed during the first phase of the project entered prostitution due to poverty and indebtedness. In this regard, poverty

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was one reason for women to resort to prostitution as a means of living, or in order to get out of a difficult economic situation. Nevertheless, it is important to note that poor women are placed in especially difficult circumstances because they have very limited access to assistance from the state. According to the researchers, poor women were unable to obtain a loan from the official sources

with low interest rates. This was because they could not guarantee their ability to pay back the money.

On the other hand, if they used moneylenders, the interest rate could be as high as 50 percent per month (VWU 1997). In this context, increased access for the women to a suitable credit scheme could help them in such difficult situations and reduce their need to migrate elsewhere.

For Cambodia, poverty was referred to as one of the main factors pushing women and girls into leaving home. The majority of the interviewees stated that they left home because of the promise of a job or because they were looking for work or additional income in order to improve the family's plight or social status. In this regard, there seems to be a clear indication of the desire of women and girls to improve their life and their family's situation through migration.

The research findings from both Vietnam and Cambodia indicated that many women chose migration as a means of escaping domestic violence, boring or abusive marriages, or relationship problems. Women told stories of having had to endure drunken and irresponsible husbands, and they felt compelled to look for what they perceived as a

“better” alternative. While these underlying causes need further research and analysis, they have often been explained under headings such as failed love affairs or broken marriages. Such terminology appears again to have negative connotations for women, reflecting the attitude of society at large toward them. There is a social stigma associated with such breakdowns in relationships, especially for women. However, it should be noted that not all women were compelled to migrate by difficult circumstances. Findings by the implementing agencies showed that there were also a number of women coming from well-to-do families who still made the decision to migrate for some adventure.

A low level of education has often been cited as a contributing factor to women being trafficked. For example, the report from Northern Vietnam stated “Our research findings show that women with low educational level are more likely to fall into the trap of traffickers” (YRI 2000, 57). The research in Southern Vietnam also indicated that “girls who fell victims to women-trading rings and who were forced to work as prostitutes were often very poor, with low education level” (VWU

1997, 40). It is important to note here that the low level of education referred to in the Vietnamese context was a primary school level of education. Among the women interviewed, very few were illiterate. However, the majority of them only had a primary school level of

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[education.8 In contrast, the majority of girls and women interviewed in](#)

Cambodia were illiterate, as they had no school education at all.

Lack of or minimal formal education alone may not be the most important factor contributing to the vulnerability of women to deception, or to lack of choices in life. The research in Northern Vietnam indicated that a lack of information and services—for example; TV, radio, and newspaper—in poor rural areas prevented many women from being aware about trafficking; hence they were easily deceived. Indeed, in most of the cases interviewed, the women had never left the village before they were cheated. Lack of experience made them dependent on friends/neighbors who may want to take advantage of them. It should be noted, however, that even when informed about the risk of being trafficked, many women still took the chance, since staying in their villages was not always a good alternative.

Education may provide access to a better opportunity. However, one needs to question the kind of education and skills that really give that option. Having literacy skills is certainly an advantage which helps the women in many situations. For example, a sex worker in Cambodia was under debt bondage because she had signed a false contract with brothel owners without being able to read it. In another case, literacy skills saved a Vietnamese woman who had been forced to marry a man in China, since she was able to write to her friend to ask for help. Nevertheless, simply being able to read and write does not seem to be adequate in giving access to better life conditions, especially in Vietnam where the standard of education is relatively high. However, in a country like Cambodia where the education level is low among the general population, literacy may be a very important factor in assisting women in gaining access to better opportunities. In any case, what is necessary is education to empower women. It is probable that providing access to a combination of formal

education and appropriate vocational and life-skills training could assist in reducing the vulnerability of women and girls to being trafficked. The impact of the level of education in preventing trafficking requires further study.

LESSONS LEARNED

The Research and Action Project on Trafficking in Women in the Mekong Region (Cambodia and Vietnam) that was implemented during 1997–2000

was probably the first of its kind. The project set out to achieve many objectives, including the generation of reliable information on the situation of trafficking in women in Cambodia and Vietnam. It aimed as well to develop strategies, both at a local and policy level, to address the problem of trafficking. The process to achieve these aims was certainly a challeng-

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ing one due to the complexity of the issue as well as the particular sociopolitical contexts of Cambodia and Vietnam. Despite many difficulties and limitations, the RA project generated interesting and useful information that can contribute to further understanding and discussion on the phenomena of trafficking in women, female migration, and prostitution in Cambodia and Vietnam. This contribution is important considering the significance of trafficking at the international and regional levels, and would also have implications on national and local level responses.

An important lesson learned from the project is that while changes at the policy level may be more difficult and slow to take effect, actions can happen more quickly at the individual and local levels. In such cases, initiatives at the grassroots level can bring about tangible, positive outcomes.

The RA Project with its specific methodology contributed positively to strengthening individual and community support of women returnees as well as empowering women. This was particularly evident in the project outcomes seen in Northern Vietnam and Cambodia. Furthermore, the formation of the Cambodian Prostitute Union (CPU) can be seen as action by an “affected” grassroots group to challenge policies and practices that violate and discriminate against women in prostitution.

The RA Project provided an important learning ground for the implementing

agencies in the understanding and application of feminist research and participatory methodology. While the use of the FPAR concept and methodology in a project like this was considered innovative, particularly in Vietnam, the implementing agencies felt that this new approach brought about many positive results. Nevertheless, experience from the RA Project has also pointed to the need for further validation and consolidation of the use of FPAR in the context of trafficking in

[women.9 Finally](#), the project was essentially about the lives of women in particular contexts and circumstances. These are women who have lived and are still living. Their lives are real and their voices need to be listened to. The Global Alliance Against Traffic in Women concluded that research with and for women must continue in order that the types of violations of women's human rights that were uncovered through this project can be successfully challenged.

NOTES

[1.](#) The basic framework of the RA Project was based on a project—"The Research and Action Project on Trafficking in Women in Thailand" (RATW)—that was an action-oriented research project carried out by the Foundation For Women (FFW). This project was designed to develop a reliable database about trafficking in women in Thailand and to define workable strategies to fight this problem. When the results of the RATW Project were presented during the International Workshop on Migration and Traffic in Women held in Chiang Mai, Thailand, in October 1994, participants from Vietnam and Cambodia expressed their

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concern over the emerging problems of trafficking in their countries. They also expressed a strong interest in, and a need to, carry out a similar project to the RATW in their own countries. This was the inception of the RA Project.

[2.](#) The 1949 Convention did not give a definition of trafficking but described punishable acts related to prostitution.

[3.](#) This report was coordinated by GAATW and the Foundation Against Trafficking in Women (STV) and created the following definitions:

Trafficking in Women:

All acts involved in the recruitment and/or transportation of women by means of violence or threat of violence, abuse of authority or dominant position, debt bondage or other forms of coercion.

Forced Labor and Slavery-like Practices:

The extraction of work or services from any woman or the appropriation of the legal identity and/or physical person of any women by means of violence or threat of violence, abuse of authority or dominant position, debt bondage or other forms of coercion.

See Marjan Wijers and Lin Lap-Chew, *Trafficking in Women, Forced Labor and Slavery-Like Practices in Marriage, Domestic Labor and Prostitution* (Utrecht: STV, 1997).

[4.](#) However, information regarding other forms of trafficking was not discussed in detail in the CWDA report.

[5.](#) This section relies on a preliminary paper written by Mary Boesveld for an internal GAATW discussion on the research methodology. The paper was revised in collaboration with Jan Boontinand. See Mary Boesveld and Jan Boontinand, “Practicing Feminist Participatory Research Methodologies. *GAATW Newsletter* no. 11 (January 1999):14–17.

[6.](#) In Vietnam, Kelly and Le (1999) comment that description of root causes of trafficking becomes rhetoric with the focus on “poverty,” “lack of education,” and “doi moi.”

While this may be rhetorical description, the examination and analysis of these factors by implementing agencies contributes to further understanding of the complexity and contextuality of the root causes of trafficking.

[7.](#) However, the indicator varies by geographical areas.

[8.](#) 50.9 percent in Southern Vietnam and 57 percent (30 of the 57 interviewees) in Northern Vietnam had less than 6 years education.

[9.](#) A separate review and evaluation of the project was conducted, and a sharing

of this review with external audience was organized in December 2001. During this external sharing, the three implementing agencies also made their presentations on process and outcome of the project as seen in their own context.

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11

**Using a Dynamic, Interactive, and
Participatory Process to Develop
and Redefine the Human Trafficking
Paradigm in Bangladesh**

Aftab Ahmed

For the past ten years, the phrase “human trafficking” in Bangladesh has been used to address a wide variety of crimes and human rights abuses associated with the recruitment, movement, and sale of people into a range of “exploitative” and/or “slave-like [circumstances.](#)”¹ A basic problem with the “human trafficking paradigm” in Bangladesh is that many of the elements and definitions for this social phenomenon are often limited in their scope and do not adequately reflect the totality of the problem. Likewise, few attempts have been made to develop usable conceptual frameworks that allow for the many variables to be

[encompassed under a single umbrella.](#)² For example, when several professionals in Bangladesh who were directly associated with addressing the “human trafficking” sector were asked what the phrase really meant to them, a wide variety of different descriptions were given. Depending on the person questioned, trafficking was defined any number of ways—

as a legal problem, a human rights problem, a gender problem, a child labor problem, a health problem, a migration problem, or a combination of one or more of these. Those who felt that trafficking was a legal problem 199

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indicated that if adequate laws were established and law enforcement agencies and systems were further strengthened, then traffickers could easily be arrested and prosecuted and the problem would go away.

Those focusing on trafficking as a migration problem indicated that if appropriate migration policies could be established, implemented, and monitored systematically within Bangladesh, a less irregular, less vulnerable movement of people would occur, thus resulting in a reduction in trafficking. Similar explanations were given for the other problem classifications. Thus, depending on how a given person defined the problem, his/her definitions often dictated what solutions were proposed—

legal problems required legal solutions, gender problems required gender solutions, etc. In summary, even after nearly ten years, the sector has continued to lack a standardized and consistent conceptual clarity among those who are working to reduce the problem.

In order for our responses to this sector to grow and expand, the frameworks we use to describe and define it must keep pace with our basic understanding of the problem. For example, over the past twenty years, the HIV/AIDS sector has “reinvented” itself many times to take into consideration new information and insights that continually arise.

In Bangladesh, it was felt that a similar process was needed in the “human trafficking” sector—for us to move from “first generation” thinking on trafficking to a new, [refined, and expanded “second generation.”](#)³

The purpose of this chapter is to describe a process that was carried out in Bangladesh that has allowed those working in the anti-trafficking sector to develop a comprehensive “human trafficking” paradigm for adults and a clearer sense of conceptual clarity; and to provide an expanded framework for better articulating a concept of “second genera-

[tion” thinking for the trafficking sector within Bangladesh.](#)⁴

ADDRESSING THE NEED FOR CONCEPTUAL CLARITY

Over the years, as many issues and inconsistencies in the trafficking sector in

Bangladesh came to light, a regular pattern emerged at anti-trafficking meetings and workshops. As part of routine discussions, various ideological problems regularly came up that would often result in long, drawn-out debates. These arguments focused on the definitional problems, the issue of migration and trafficking, the question of trafficking and the sex industry, etc. In other words, they focused on inconsistencies that were brought about because there appeared to be a lack of consistent conceptual clarity within the trafficking sector. As it became clearer to many of the regular attendees that this was becoming a dysfunctional situation, it was decided that some kind of a process in Bangladesh was needed to tackle this recurrent impasse.

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To help address some of these issues, on September 26, 2001, the International Organization for Migration (IOM) organized a roundtable discussion, entitled “Anti-Trafficking Initiatives: Bangladesh and Regional Perspectives.” The meeting included representatives from various Government of Bangladesh ministries, donors, nongovernmental organizations (NGOs), and community-based organizations, as well as private institutions and universities. The main objective of this event was “to review various conceptual and definitional aspects of the human trafficking sector in Bangladesh and South Asia.” The initial suggestion for this specific event came up during an informal discussion at IOM during which several donor and NGO representatives expressed a strong desire for more conceptual clarity in the [trafficking sector](#).⁵

Following a series of presentations that were made during this roundtable, the assembled group discussed and debated long-standing problems that they felt presently existed in the trafficking sector. As one person stated, “I sometimes feel like we have the same meeting over and over again when we talk about trafficking. Within the first fifteen minutes, we end up arguing about the same things that have come up in past meetings. This is why I think we need to really sit down and sort what we mean by trafficking once and for all.” Another person indicated, “It is time that we re-look at what trafficking is after ten years.

We need to be thinking about a ‘second generation’ understanding of the trafficking problem.”

During the discussions, a number of relevant “inconsistencies” that often arise in the human trafficking sector in Bangladesh were discussed in detail. For

example, several participants noted that many definitions used in Bangladesh to articulate the human trafficking problem include statements that focus almost exclusively on what “occurs” as part of this process of moving and placing a person into a particular “slave-like condition.” The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, which is used by most of the multilateral donors in Bangladesh, was cited as an example. Several participants pointed out that this definition, along with others, tended to focus on three basic elements: the movement and trade/sale of a person; the techniques used to bring about a condition for this movement (e.g., deception, fraud, violence, etc.); and a listing that relates to the “purpose” for the above-mentioned actions (e.g., forced labor, slave-like practices, etc.). By stating it this way, however, they felt that the definitions did not directly “include”

or focus on the outcome of this placement—the “slave-like condition”

itself. Thus, although the “outcome” is often implied within “trafficking paradigms,” technically, for many, it is not explicitly present within the definitions.

Second, another basic inconsistency discussed focused on the fact that while most definitions implied that the process is open to a range of

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different exploitative outcomes, there seemed to be a disproportionate

[emphasis on “human trafficking” into the sex trade.](#)⁶ [In the absence of](#)

more research and programming in Bangladesh regarding most of the other “slave-like” conditions, the emphasis on “sex work/prostitution”

continues to grow at the expense of addressing the full range of exploitative outcomes. The participants felt that in the years to come, it is imperative that the “human trafficking” framework place an emphasis on addressing *all* of the abuses inherent, not just the trafficking of women and girls into the sex industry—which represents a subset within the overall human trafficking sector.

Third, the group felt that in Bangladesh and throughout South Asia, illegal or

irregular migration is often confused with trafficking. In some ways, many trafficking events are defined by the endpoint of a migratory process—if the process goes well, it is migration; if the process does not, it is trafficking. While most trafficking has an element of migration involved (at least for adults), there are many migration stories that have happy endings—e.g., the person is content with the outcome.

To better understand the violation of human rights, prevention, rescue, rehabilitation, and integration interventions for trafficked survivors, the participants felt that the sector must be explored in the context of migration, migratory trends, patterns, and outcomes. To achieve this goal, they felt that policy guidelines to address trafficking for adults must have provisions for subverting trafficking by enabling access to affordable and safe migration. [7](#)

Fourth, another problem in the “human trafficking” sector that was discussed was the regular association of women and children in the same category as if they shared the same level of dependency and inability to exert their own “will” or “agency.” The group felt that when women and children are combined together under the same heading like this, it implies that women are unable to make any choices for themselves and that they are totally dependent on others for their life decisions. This does a disservice to women and tends to underestimate their ability to make major life choices. Likewise, the interventions that are required to address the needs of women versus children in the trafficking sector are often very different.

Finally, several participants mentioned that there was a tendency in the trafficking sector to look at a trafficking episode as an “event.” A person is trafficked—an event has occurred. In reality, the trafficking experience is seldom a single event. Instead, they felt that it was a series of interrelated steps along an extended continuum that spans from when a person is recruited, the movement of that person to the “trafficking harm/outcome,” and through the recovery and integration process. The participants felt that the trafficking sector needs to recognize the importance of understanding this extended continuum.

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At the end of a two-hour, in-depth discussion, the representatives concluded that many trafficking definitions being used in Bangladesh tended to be limited in their scope and did not reflect the totality of the problem; that there were many

inconsistencies in the existing human trafficking paradigm that had yet to be resolved in Bangladesh; that the sector lacked conceptual clarity among even those who were working to reduce the problem; and that there was a need to “rethink” some of our previous assumptions to restructure and revise/expand our under-

[standing of the problem.⁸](#)

To begin addressing these conclusions, the participants attending the roundtable recommended that a systematic process be adopted to formally “come to terms” with the trafficking paradigm in Bangladesh.

As an outcome of this suggestion, a series of thematic subgroups were formed, which would meet monthly to review various elements of the trafficking paradigm. The themes of the subgroups included: definition and conceptualization; prevention; rehabilitation, recovery, and reinte-

[gration; and prosecution.⁹ IOM was selected to coordinate the initia-](#)

tive. To help manage the process, the Canadian International Development Agency (CIDA) provided a small grant to IOM to hire a project coordinator to help with the day-to-day coordination of a thematic group secretariat. It was decided that the program would last between fourteen and sixteen months.

The first set of meetings for each of the four subgroups occurred in October 2001. Each subsequent meeting took place every three or four weeks. To begin the first session, a conceptual diagram with boxes and arrows was created for the specific subgroups to initiate the discussion.

From the first set of meetings, it was decided that these “visual representations” (diagrams) would be emphasized. The participants reviewed the diagrams and made suggestions that often resulted in complete revisions. Each subsequent meeting further refined these materials. After four meetings of each of the subgroups, the “definition,” “prevention,”

and “rehabilitation” representatives decided that these three groups should be combined together. It was felt that there were too many overlapping issues that needed to be addressed together and not in separate meetings. Thus, from this point onward, the subgroups were merged and a combined thematic group was formed (entitled the Bangladesh Thematic Group).¹⁰ [The “prosecution”](#)

subgroup, however, remained separate since this subject was considered more technical and required more detailed discussions to better understand the dynamics of the legal system.

From the beginning, the new “combined” Bangladesh Thematic Group set the following guiding principles for each session: a) the “process” itself was as important as the outcome; b) the outcome of the process had “no ownership” (e.g., diagrams, text, flowcharts, etc.)—anyone could use the materials for whatever purpose they wanted; c) anyone

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was welcome to attend the meetings; d) the conceptualization process should be based on what the group felt was important and relevant, not necessarily what existed within the literature; e) anything and every-

[thing should be questioned and debated until a consensus was reached;11](#)

f) there was no limit to what element of the problem could be introduced; g) all views were welcomed and would be given due consideration; and h) there would be three different paradigms produced over time: one for adults (18 years and older), one for adolescents (13–18),

[and one for young children \(1–12\).12](#)

The participants attending these meetings included representatives from the Government of Bangladesh, donors, INGOs (international nongovernmental organizations), NGOs, universities, and law enforcement agencies. The numbers ranged from twenty to fifty, with each meeting lasting approximately two hours. On occasion, guest speakers were asked to make short presentations related to a specific trafficking subject. This added new insights to the discussions. Between October 2001 and June 2003, a total of forty-one meetings were held.

The persons regularly attending these meetings offered a wide range of different experience and expertise, and included donor fund managers, NGO program officers, counselors, lawyers, teachers, researchers, law enforcement officials, medical doctors, health professionals, sociologists, migration experts, and generalists. While it was clear from the beginning that many of the participants

were not like-minded, over time most issues discussed were agreed upon by consensus—thus, the process itself helped to standardize the thinking of the overall group.

To manage major ideological differences, the group offered sufficient time for discussions to take place, often breaking down concepts into their component parts. For example, when addressing the issue of trafficking versus prostitution, the members of the group repeatedly returned to the “trafficking harm/exploitation” definition derived by the Thematic Group in the early sessions. This helped the participants to see that trafficking issues must focus on generalized “exploitation” in a generic sense. This also helped to ensure that everyone clearly understood what was being argued from the differing perspectives. In many cases, when this process was followed, a breakthrough, of sorts, occurred when it became clear that the differences between the participants were merely a matter of perception, not substance.

By the fourth set of meetings, what started off as a series of single-sheet conceptual diagrams began to change into a large flowchart made up of ten pages that were taped together. Each page contained boxes and circles, which had text inside that was linked with arrows and lines. The advantage of this consolidation was that it allowed for all of the conceptual elements to be brought together in one place. This change helped the representatives to better understand the linkages that existed throughout the entire trafficking process. As one person stated: “I can now see the

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relationships between prevention and rehabilitation when I look at the flowchart. I am also better able to understand the elements that make up the problem.” Another person made the statement, “after seeing the various elements that motivate a person to migrate, I can now see that poverty is just one contributing factor—this will help us to come up with information campaigns that allow us to really tailor our messages.”

During each meeting, the Thematic Group revisited the flowchart. If there were elements that were unclear, which required changes, the participants made suggestions. This helped to ensure that the flowchart truly reflected Bangladesh and South Asia’s trafficking realities.

OUTCOMES OF THE THEMATIC GROUP PROCESS

There were two basic outcomes of this project—the “process” itself and the “flowchart.” For many, the discussions that took place during these meetings were found to be invaluable. As one participant stated, “I really enjoy attending these meetings. They help me to understand things that I was confused about.” Another person stated, “This is the first forum I’ve sat in that has people who used to argue all the time, agree-ing with each other. Since the elements of the problem are discussed from a logical and rational perspective, it is easier to get a consensus.”

Thus, the flowchart development process itself had considerable value in enabling people to better understand and visualize the complexities of the trafficking phenomena.

From the beginning, the group immediately recognized the usefulness of a flowchart as a conceptual tool. Unlike detailed reports that describe a problem using text (often in an abstract way), a flowchart can help a person to instantly visualize the interrelated elements of a problem. Like a road map, 100 percent of the information a person needs is available right in front of them. This allows for a group of people to be brought “up to speed” very quickly.

Another important difference between the Thematic Group’s flowchart and most others is that it is “person-centered.” In other words, the various boxes and arrows are used to depict that a person goes through a particular process from the point at which they are recruited to the point at which they are integrated back into society. This makes it easier for people to understand the overall trafficking experience, with its multitude of steps.

To test the validity of the flowchart, real-life case examples were regularly identified and then tracked on the flowchart. If the case didn’t seem to fit, there were two explanations for this: 1) it was not a trafficking case; or 2) the chart was wrong. This process allowed the group to revise and improve the flowchart to ensure that it was consistent with reality.

Since most trafficking frameworks try to take a macro-level perspective, they tend to overgeneralize the problem—thus creating

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confusion. Such approaches make it more difficult to clearly define the many factors that make up a trafficking experience and also make it difficult to integrate “human rights” principles (many of which are person-centered) into the conceptualization. An attempt was made to avoid this problem during the flowchart development process by making the chart “trafficked-person-centered.”

From the first meeting, the Thematic Group members felt that their findings should be shared with others. To date, the adult version of the flowchart has been developed into an “interim flowchart” (poster size), which is being circulated within Bangladesh and throughout South Asia.

This flowchart is in both English and Bengali. The purpose of this step was to collect feedback to further refine and improve the overall product and to offer others a tool that will help them to better understand the problem.

In November 2002, a two-day “Expert Meeting” took place to bring together nine professionals from within the South and Southeast Asia to further refine and conceptualize the elements presented in the flowchart. Following this event, the adult paradigm went through another round of revisions. To help explain the rationale and justification for the various boxes/arrows that make up the flowchart, a detailed, comprehensive report was written. In addition, a *PowerPoint* version is also being developed that can be used as a tool to educate managers who are working in the trafficking sector. Since this first flowchart focused on the trafficking paradigm for adults, beginning in June 2002, a second “child trafficking paradigm” was initiated.

The flowchart itself has become a useful tool. For example, a woman in Canada who works with exploited persons has taught them to use the flowchart to teach others about exploitation. She stated in an email, “The chart (flowchart) helps these women to organize their thoughts and also provides them with some credibility—to show that they have a brain and know how to use it.” Several women from this group traveled to a UN-sponsored youth conference in The Hague (January 2002). There, they presented the flowchart to 500 high school students from around the world who spent several hours discussing and debating its elements to help them to better understand the trafficking problem. The

program was considered a great success. The High Commissioner for Human Rights also used the flowchart as a reference while developing the United Nations Principles on Human Rights and Human Trafficking.¹³ In addition, researchers working for the Asian Development Bank have used the material in formulating an overview conceptual approach for Bangladesh and South Asia.

Some of the participating organizations regularly use the flowchart in preparing documents and papers relating to trafficking for national and international forums. Thus, as a reconstruction of the trafficking paradigm, the flowchart offers a comprehensive set of reference points that help guide agencies seeking to better understand the concept of trafficking.

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In addition to the work being done to develop the trafficking paradigm, the Thematic Group also came together on several occasions to prepare an Action Plan for the South Asian Association for Regional Cooperation (SAARC) Secretariat that would address its recently signed Convention on Trafficking.¹⁴ During this process, the need for a set of policy guidelines for the trafficking sector in Bangladesh came up and a decision was made that the Thematic Group would work closely with the government to help formulate them. Since the group had developed a good working relationship in coming up with conceptual clarity, this was able to be transferred to the program realm.

SECOND GENERATION THINKING

From the first day the Bangladesh Thematic Group was formed, the concept of addressing “second generation thinking” for the trafficking

sector within Bangladesh was introduced.¹⁵ For the Thematic Group,

first generation thinking in Bangladesh included ideas such as: trafficking and migration are unrelated; women and children should be treated the same when addressing trafficking outcomes; trafficking should be treated separate from other developmental issues; trafficking is predominately related to prostitution; the “movement” of people within a trafficking event is the major issue; trafficking is a specific event; etc. As the Thematic Group progressed, this concept began to take on a life of its own, as the various conceptual elements were refined and expanded.

During a major anti-trafficking conference held in Hawaii (November 2002), Bangladesh's second generation concept was introduced to others working in the anti-trafficking movement as part of several

[Bangladesh presentations.](#)¹⁶ [Based on these presentations, a number of](#)

other presenters repeatedly made calls for having other countries move from their own "first" to "second generation thinking" within the trafficking sector.

During a South Asia regional conference entitled "Workshop to Explore a New Paradigm for Addressing Trafficking in Persons" (March

[2003](#)),¹⁷ [thirty-five participants](#) from throughout South Asia came to Dhaka to debate and contribute to the development of a second generation conceptualization of trafficking for Bangladesh. Some of the key outcomes of the workshop were 1) a consensus on the parameters/

guidelines on Bangladesh's second generation thinking; 2) an agreement that the Bangladesh Thematic Group would now be expanded into a South Asian Thematic Group; and 3) an agreement that other countries in the region will initiate a similar country-specific process.

To better articulate the basic components of Bangladesh's "second generation thinking" as expressed in the expanded thematic group, a number of specific suggestions emerged. First, the Thematic Group felt

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that "second generation thinking" needed to begin by focusing on all of the various steps involved in the trafficking process—from when a person is recruited, to the movement of that person to the "trafficking harm/

outcome," and through the recovery and integration process. The idea is to avoid presenting "trafficking" as a single event—but to present it instead as a series of interrelated events along an extended continuum that spans a given period of time.

Second, the group felt that more approaches were needed to visually present the

process (e.g., through mapping, flowchart development, etc.) so that those addressing the problem can better see and understand the complexity of the various elements that make up a trafficking episode. For example, the flowchart format can be used to: link appropriate “interventions” with the various stages of a trafficking episode; link research needs/gaps to the various stages of the trafficking episode; and introduce indicators and methods of measuring impact as a part of everything the sector does to address the trafficking problem. This approach allows for more “science” (supporting research, focus group testing to create targeted messages, etc.) to be introduced into the sector in terms of what interventions should be used to reduce the problem in an environment of limited funding. Since trafficking scenarios differ from country to country, however, each flowchart should be adapted to accommodate the specific needs of a given setting.

Third, the group felt that all trafficking outcomes (e.g., domestic servitude, camel jockeys, beggars, factory workers, and prostitution) should be given equal attention when addressing the trafficking problem. In the past, there has been more emphasis on trafficking into the sex trade, at the expense of other exploitative outcomes. For this change to happen, more research is required to further explore other trafficking outcomes, especially in the destination countries.

Fourth, the group felt that there was a need for a clear distinction between the approaches and interventions used to address the different needs of women who have been trafficked versus children who have been trafficked, as separate target groups. When addressing trafficked persons, women and children are often combined together in the same category as if they share the same level of dependency and inability to exert their own will. When women and children are put into the same category like this, it implies that women are unable to make any choices for themselves and that they are totally dependent on others for their life decisions. This does a disservice to women and tends to underestimate their abilities to make major life choices.

Fifth, the Thematic Group felt that more time and effort is needed to show how the migratory process coincides with many trafficking events for adults (this does not always hold true for children). This is not to legitimize the problem, but instead to help provide a better un-

derstanding of how traffickers “deceive” victims through a promise of migratory benefits or outcomes (e.g., a marriage, a good job, etc.). As noted above, our present traditional, theoretical understanding can no longer resolve the ambiguities and uncertainties concerning migration and trafficking. It warrants a new theoretical framework for providing a clear picture and analytical understanding of the issue.

Sixth, the Thematic Group felt the need to further emphasize the importance of “demand” factors in understanding the trafficking phenomenon. Human trafficking is driven by two basic factors: a) the available supply of people who can be tricked, manipulated, and/or forced into slave-like situations; and b) the demand created by those who use these people to fill a need for cheap, vulnerable, and highly exploitative commercial sexual services and/or exploitative labor. Up until recently, most reports related to the human trafficking sector have focused only on the supply side—the trafficked persons, their experiences, what happens to them, etc. In contrast to this, only a handful of studies have tried to address the question of “demand dynamics.” In this case, demand refers to those people/organizations/syndicates that create or influence an environment that allows for exploitative commercial sexual services or exploitative labor to exist.

Other elements discussed included that the health of trafficked persons should get special attention; the recovery process in trafficking can have both progressive and regressive elements; the integration process can be facilitated or self-initiated; that participation of trafficked persons is necessary at all stages of counter-trafficking interventions; power relations and a person’s own level of “agency” need to be understood in the context of trafficking events; and that trafficking is a development concern and should not be treated as a “political” one.

CONCLUDING REMARKS

As a conclusion to this chapter, there are three overarching observations that the Thematic Group has repeatedly emphasized. First, the Thematic Group has shown that an effective, positive process can be established to reconceptualize and outline a new way of looking at the human trafficking sector in Bangladesh. Second, this participatory and interactive process can help to educate and bring about increased conceptual clarity for those who participate in the process and move people forward in their thinking about human trafficking. And finally, a

Thematic Working Group–format can be used to reduce “political/ideological” tensions that often plague the trafficking sector. The overall experience has demonstrated that by structuring group dynamics, a process can be productive, educational, transferable, and conducive to building strong alliances and coalitions in anti-trafficking work. While significant

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advances have been made in creating a new paradigm, it is important to note that over time this outcome must continue to be developed, refined, and redefined—in other words, this is an open-ended process.

NOTES

- [1.](#) Other related phrases that are often used include “girl trafficking,” “child trafficking,” “women and child trafficking,” or simply “trafficking.”
- [2.](#) Informal survey carried out among managers overseeing trafficking programs in Dhaka, Bangladesh, May 2001 (unpublished).
- [3.](#) The “Second Generation” concept was first formally introduced at a conference entitled “Anti-Trafficking Initiatives: Bangladesh and Regional Perspectives.” The event was sponsored by the International Organization for Migration (IOM) on September 26, 2001.
- [4.](#) The concept of “Second Generation” thinking was further refined during the conference entitled The Human Rights Challenge of Globalization in Asia-Pacific-US: The Trafficking in Persons, especially Women and Children, in Honolulu, Hawaii, USA, November 13–15, 2002.
- [5.](#) Those present at this meeting included IOM.
- [6.](#) Jyoti Sanghera, “Towards the Construction of an Empowered Subject: A Human Rights Analysis of Anti-trafficking Legal Interventions and Trends in South Asia.” Technical Consultative Meeting on Anti-Trafficking Programs in South Asia, Kathmandu, and Nepal, September 11–13, 2001: 2.

[7.](#) “Revisiting the Human Trafficking Paradigm: The Bangladesh Experience,”

Bangladesh Thematic Group, Dhaka, Bangladesh, IOM, unpublished work.

[8.](#) Proceedings of the “Anti-Trafficking Initiatives: Bangladesh and Regional Perspectives,” IOM, September 26, 2001.

[9.](#) Each subgroup had its own chairperson. All were invited to attend these meetings.

[10.](#) The “Bangladesh Thematic Group” name was discussed and decided by the group after several individual meetings had taken place.

[11.](#) In some cases a vote was taken to break a deadlock. But this was the exception, not the rule.

[12.](#) From the beginning, these guiding principles served to ensure that the process was all-inclusive and open to anyone. This offered all the participants a safe environment in which to express their views and opinions. This was one of the most important outcomes of the overall process.

[13.](#) Experts Group Meeting, March 24–25 2002, HCHR, Geneva.

[14.](#) The Bangladesh Thematic Group met four times to develop a paper to provide recommendations for how SAARC should begin addressing the trafficking problem in the region, (July 2002).

[15.](#) “Revisiting the Human Trafficking Paradigm: The Bangladesh Experience,”

Bangladesh Thematic Group, Dhaka, Bangladesh, IOM, unpublished work.

[16.](#) *The Human Rights Challenge of Globalization in Asia-Pacific-US: The Trafficking in Persons, especially Women and Children*, Honolulu, Hawaii, USA, November 13–15, 2002.

[17.](#) IOM-sponsored event in Dhaka from March 4–6, 2003. A total of fifty-six participants representing forty-two organizations, including the Ministries of Bangladesh Government, UN agencies, donor agencies, INGOs, intergovernmental agencies, and NGOs participated in the workshop. Apart from the participants from Bangladesh, thirteen participants from other South Asian

countries also joined in the workshop: two from India, four from Pakistan, and seven from Nepal.

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Bangladeshis in India

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A study of the situation of trafficked Bangladeshi women and children in India was carried out during 2000 and 2001, sponsored by IOM (International Organization for Migration)—Bangladesh chapter.¹ Through the research we found that for every “trafficked” person from Bangladesh, there are hundreds who migrate “illegally” to the same destination, and who often face similar conditions. Whether considered trafficked or not, all arrive in India because of a dream: a dream to feed themselves, and a dream to have more options in life. Through the study we interviewed sixty-five migrants, mostly women. The main objective of the original study was to research trafficking in women and children with a view to examining how people from Bangladesh move to India, what they do after their arrival, what their work and living situations are like, and what their future plans are. We also wanted to investigate the socioeconomic background and reasons for leaving home—the circumstances under which people decide to leave their country of birth and move to an unknown place. The main idea was to understand the pull and push factors and also the reasons a person stays in India. Most importantly the study was to be focused on the views, needs, and wishes of the persons concerned.

To track down and identify the trafficked women to India, investigations were carried out in brothels, rehabilitation centers, and slums.

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It was in the slums in the big cities that we came across a large number of migrants who did not have legal status and who often faced harsh treatment from

the authorities. However, due to the initial focus of the study, and the original idea that trafficking was attached exclusively to the sex trade, there was an overrepresentation of women from the brothels in the research population. Further research on migrants, within and outside the sex trade, would help to further our understandings of the differences and similarities we found in this study, and about where, or whether, a clear distinction can be made between trafficking and illegal/

undocumented economic migration.

REASONS FOR LEAVING

In our study most movements, involving men and women, appeared to be voluntary. But behind each voluntary movement there were reasons that ranged from sheer poverty, to deception by known persons, to legal complications. Individual reasons for leaving the home country were also influenced by persons who were involved with the respondent's movement. These were people who, for various reasons of their own, held information (sometimes incorrect) regarding the options and opportunities across the border, and who helped others to be smuggled out of the country. Specific reasons might have been different for women and men, but economic compulsions remained a major factor that triggered the undocumented, but voluntary, movement across the border. In our sample of sixty-five, as much as 61 percent (thirty-nine persons) claimed to have migrated for direct economic reasons.

While poverty and therefore economic factors were important in motivating people to migrate or in making them easy targets of "trafficking," the economic factor may be compounded by other social factors or special circumstances. In real-life situations, it was not always possible to identify the relative importance of the various factors. Keeping this in mind, the term "economic factors" is used here in a very broad sense.

An important factor was that for a large segment of our research population (44/65), the rural family did not have any agricultural land.

For those who had agricultural land, the amount possessed was very small. Some respondents reported loss of land to meet such basic expenses as medical treatment and social compulsions of dowry. There were also a few families who had lost their land due to river erosion.

Although these were not unique cases, as the national picture (in Bangladesh) regarding landlessness is more or less similar, in a country where the vast majority of the people are directly dependent on agriculture, loss of land for any reason can be devastating. A major section of

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the sample came from a background of poverty, landlessness, and unemployment. For such people, the economic factor took various forms.

It was also found that a vast majority of the women were poorly educated. For men also, the basic level of education was low. One important issue is that the specific factors of illiteracy, landlessness, and poverty are not unique to those who migrate to India. For every such migrant person, there are many more who stay in Bangladesh. There may be, then, some critical factors that influence the process in an environment of general poverty. Following is an attempt to discern a pattern from our research findings. The case studies illustrating the various reasons and factors behind leaving home have been drawn from the three cities of Kolkata, Mumbai, and New Delhi.

MARITAL STATUS OF WOMEN

For many women, against the general background of poverty, certain social factors compounded their vulnerability. Marriage is universal, especially in Bangladesh, and the marital status of a woman is a very important determinant of her standing in the family and in the society.

For some, divorce, desertion, or remarriage by the husband, or even the death of the husband, leaves them with a status that is mostly to their disadvantage. The changed status leaves them with few options and they are forced to return, mostly with the children, to their parental homes for support. However, parents or brothers are often reluctant to take care of the woman. The situation is further exacerbated by the presence of step-parents/-mothers at home. Even in some families where the woman owns land, she has little effective right over it. Soon the women discover that they have to leave home and support themselves and the children alone. Migration to India seems to be an easy option for such women.

However, poverty and a lack of education make the women easy targets for traffickers. Moreover, the pressure of getting married on one hand and the prevailing dowry system on the other makes it easier for the traffickers to attract unmarried young women out of their homes.

Taking advantage of their situation, some men pretend to become lovers, promise marriage, or even go through the process of marriage. Later the women are persuaded or deceived into going to India with the promise of a better life. Often the parents aid in their decision to cross borders.

In our study we came across two women who were forced into marriage and sold as brides.

Among the sixty-five respondents we identified three cases of kidnapping/abduction. With the abducted and then trafficked cases into India it was apparent that women and/or girls were taken away with

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the help of people who they knew—as a sequence to enmity, or with the explicit motive of selling them. Not every kidnapped girl or woman ended up in the brothels. While visiting a NGO-run Rehabilitation/Short Stay Home where trafficked persons, especially women and young girls, stay after their rescue, we came across a Bangladeshi woman who was kidnapped from her home in Bangladesh, smuggled to India, rescued by the Indian police, and sent back to her country of origin.

LOSS OF LAND

In a country like Bangladesh, where land as a resource is of prime importance, landlessness is a major problem. Despite people trying to “hold on” to whatever amount of land they have, many are compelled to dispossess it for various reasons. Along with meeting medical treatment expenses or paying dowry for marriages, land loss to river erosion leaves hundreds of households in utter destitution. Homeless and landless—

these are desperate people. A workplace with a semblance of shelter is all that they look for. Thousands throng the big cities within the country while tales of

prospects on the other side of the border lure many to cross over to India.

SUPPORTING THE FAMILY

Gone are the days when a man's world comprised of a few adjoining villages along with his own, while a woman's activity was restricted within the four walls of her *bari*/homestead. Today women, along with other family members, have been observed to migrate to India and elsewhere, for work and income, and remit as much as they can to the remaining family members at home in their country of origin. Take Sohana, for example. She belonged to a poor peasant family. Because of their poverty, the mother had migrated to India (New Delhi) in the early 1980s and sent money home from time to time. Sohana married, but after the birth of her first child, her husband deserted her. With her child of one year, Sohana returned to her father's house. Seeing the poverty of her family, Sohana decided that she too would go to New Delhi, join her mother, and help her father's family in Bangladesh. At the time of the interview, both Sohana and her mother worked as domestic help with relatively low-income families, who themselves worked as darwans (doormen), ayahs (childcare domestic workers), cooks, or domestic help, and both sent money to Sohana's father through the *dalals* who frequented India.

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THE MICROCREDIT TRAP

There is yet another category, which should be a matter of concern for those who advocate microcredit programs for women. In our sample, there was at least one case where the woman had borrowed money from three well-known microcredit schemes and had to run away from her debtors. Kohinoor, over forty years old, used to live in Jessore. She was married when young but was ill-treated by her husband, who had already been married and divorced. Kohinoor went back to her parent's family with one child. Desperate to earn some money, Kohinoor became a member of a microcredit program offered by BRAC—the largest development NGO in the world—for buying cattle. After some time, she joined two other microcredit programs under local NGOs. She took loans for poultry and for leasing land. She was doing well and was also able to buy some land. Her credit worthiness was rated high. That Kohinoor could take a loan of 10,000

Bangladesh Taka (US\$1 = 63 BdT) at a time from BRAC is an indication that she was prompt in her repayment. During this time, she entered into a business deal with a person who was married to a girl from her village. The man persuaded her to take a loan of 10,000 BdT from BRAC and another NGO (RRC Samity/

Islamic Samity). The money was handed over to the man in good faith.

But soon the man fled with the money. For a loan of 10,000 BdT, Kohinoor had to pay 800 BdT per month as repayment. She could pay for only two months, which she did by selling off her land and cattle. Unable to repay the rest of the loan and meet her debt obligations any further, and afraid of the probable consequences, she decided to enter India with her son, leaving her country behind. She virtually fled from Bangladesh. When we interviewed her, Kohinoor worked in Mumbai as a domestic helper. She regularly sent money to Bangladesh from her earnings in India in order to clear her debts (loans and interest) in-curred with BRAC and other local NGOs.

INDIA AS A GATEWAY TO GREENER PASTURES

According to some respondents, India was a stepping stone to realizing all their future dreams. They treated India as the first lap of their aspirations for going further. It was also revealed that some aspiring to go to Pakistan and the Gulf countries felt it was easier and less expensive for them to try from places like New Delhi or Mumbai than from Bangladesh itself. In our sample, there were two men in Mumbai whose wives were able to get five-year contracts as domestic workers in Saudi Arabia through agents and organizations in New Delhi and Mumbai specializing in this

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business. According to Noorjahan of New Delhi, agents approached them with job offers and the rate for going to Pakistan was as low as Rs.600

(approximately US\$12). For Gulf countries and Malaysia, the rates were Rs.10,000 for women and Rs.30,000 for men. There were thus some people who went to India to earn and save enough money so that one day they could go further. The countries/cities where most respondents aspired to go were Saudi

Arabia, Dubai, Riyad, Italy, and Malaysia. Greece is a new addition to the list of countries, and the rates for Greece vary from Rs.80,000–100,000. Going to Pakistan was not a problem. One only needed a passport and a visa, which were available in New Delhi for only Rs.600.

IN SEARCH OF DREAMS

For many, the dream of making it good in India does not die easily. Take the case of Khadija. She and her husband had reached Mumbai just the day before the interview for this study. This was their second visit to Mumbai in eight years. Eight years earlier, when they had arrived for the first time, they were able to stay for seven to eight months before they were arrested and “pushed back” to Bangladesh. Back in Bangladesh, they tried to make a new life by starting a shrimp farm, but due to local rivalry the farm was poisoned and the shrimp perished.

The couple took another loan to start afresh. This time, the entire crop was washed away by floods. After the second disaster they found it impossible to continue with their investments at home any further and decided to go to India. Khadija had already started working as a daily laborer at the fish market (peeling shrimp). Her husband was still looking for a job. They did not have any shelter yet. They had spent the first night on the pavement on newspapers. But she was optimistic. With the first day’s earnings (Rs.40) in hand, she was planning to buy a stove and cooking pan. She had already started looking for a job as domestic help.

She had heard from a “reliable” source that a room in another slum would be vacant and that they could possibly rent it.

OCCUPATIONS PURSUED

Case studies gave an insight into the conditions of the respondents in terms of the occupations that they pursued. For the women, a fairly large segment were associated with the sex trade (45 percent, or twenty-three women). Of these, two had “risen” to the position of brothel owner and another two had jobs as peer educators for HIV/AIDS projects. Most of the sex workers interviewed were based in Kolkata. After sex workers,

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the next most common category was domestic workers. In this group, five were based in Mumbai and seven in New Delhi. Three women did not get anything better and became ragpickers, two begged on the streets, while three others managed their own households. One became a drug peddler and another a wholesaler of scrap metals and waste paper.

Of the fourteen men in our sample, around a third had started their own business, however small. Three had joined the workforce as wage laborers, either skilled or unskilled. Two boys were students, and others became self-employed as doctor, taxi-owner/driver, or tailor.

One became a ragpicker.

STARTING LIFE ANEW

Other than the three women who had been physically kidnapped and taken to India, all others had gone “voluntarily” to start a new life. It is another matter that many women were victims of deception and were taken to India for a life that was not of their own choice. Still others had gone with expectations that turned out to be different from the reality they now faced. However, leaving behind one’s own country and roots—

all familiar faces and places—and making a new life in an unfamiliar environment in another country was not an easy task.

For the respondents, apart from becoming engaged in remunerative activities, there had to be a search for accommodation, and struggles to overcome problems of language, to get to know the surroundings, and to enroll children in school—activities all aimed at (gradual) assimilation into the mainstream. The process of assimilation was difficult and drawn out. Time was an important factor in terms of adaptation and blending. When asked how long the respondents had been living in India, most, presumably to assert their rights for residents’ status, stated a time span of ten to fifteen years.

As soon as the migrants reached their destination the priority was a place to stay. Most often the persons who accompanied them allowed them to stay under their care at least for a few days. Respondents also stayed with people known to them from before, including people from the same village and relatives (if any), until

such time as they could find independent accommodation. Staying on footpaths by spreading out newspapers was also observed. Almost simultaneously, the search for a job began. For those who were brought with the explicit intention of the sex trade, there was no search for accommodation or occupation—they were almost immediately handed over to the brothel owners.

To get a job and to communicate with the locals, on the job or elsewhere, respondents were required to learn the language (Hindi), especially in Mumbai and New Delhi. In Kolkata the problem of language

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was not so great, as the language spoken in Kolkata is Bengali. There, however, for those involved in the sex trade, a conscious effort was needed in the use of certain words (*jal* instead of *pani*, for water; *bhogoban* and not *allah*, for God; etc.) in their daily parlance. Muslim names were also changed, in order to attract less attention and more easily integrate into the new society. For women, a name change could help them to get jobs as domestic help in Hindu families. In Mumbai and New Delhi, language proved to be the greatest barrier for all in merging with the locals. Apart from learning the language, all women in New Delhi were found to have discarded their *saris* and changed over to *shalwar kameez*—this too was an attempt to fit in, observed also in Mumbai but not in the same scale. Such a scheme was not necessary in Kolkata.

Evidently most of the children (girls and boys of migrants) had been enrolled in *Madrasahs* (Islamic schools) functioning within the slums. Some NGO-run schools in New Delhi and Mumbai were frequented, mostly by the boys. The main reason for this discrimination was the Hindi medium of instructions in these schools. The parents aspired to have the girls married in Bangladesh and wanted them to be fluent in Bangali by staying home. Moreover, the girls helped with the household chores.

In the Indian context, the ration card is a document used for buying certain food grains and other commodities from the (subsidized) public distribution system. It is widely accepted as an identification document (ID). For many undocumented migrants, getting a ration card through the help of corrupt politicians and officials is thus a high priority. In our study, seven of the thirty-four respondents

in Kolkata, ten out of the fifteen in New Delhi, and two of the sixteen in Mumbai had been able to procure ration cards.

Another important ID that legitimizes one's stay in India is getting one's name on the voters list. Like ration cards, those who want to stay in India also try for this. In our sample, two persons in Kolkata, nine in New Delhi, and none in Mumbai had his or her name on the voters list.

The information unfortunately could be collected from only twenty-eight respondents. The others were either not asked the question or did not give any clear answer as it was apparent that they were not in favor of giving out such information.

In Kolkata, of the thirty-four people interviewed, five had bank accounts. In New Delhi the number was two, and in Mumbai, one. Of these eight who had bank accounts, five also had ration cards or a voter ID. Five were women. Of the sixty-five respondents, only three had been able to procure the final document legitimizing their stay—an Indian passport. Of them, two were women in New Delhi and one was a man in Mumbai.

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FREEDOM OF MOVEMENT

It was expected that undocumented migrant women would have restricted movement, even when they had the advantage of not being easily identified, due to similarity of looks and, to an extent, a common language (in Kolkata). In New Delhi and Mumbai, as stated earlier, language restricted free movement, as did the insecurity of living without immigration documents in a foreign land, harassment of the law enforcing agencies, and the threat of being caught and “pushed back.” The respondents, when asked about problems they faced in moving about from one place to another, gave mixed answers. About 77 percent of the women and 64 percent of the men felt they could move about freely. For those who felt otherwise, four men in New Delhi reported restricted movement as two of them lived in a rehabilitation home, and the other two men were worried about police raids. In Kolkata, eight women mentioned experiencing problems. Of them, two young girls were inmates of a rescue home and obviously had restricted movement. The other six were young sex workers who

worked under brothel owners, where half of their income was taken by the brothel owner or madam.

They felt restricted in their movements due to the control of the brothel owners.

In Mumbai and New Delhi, three women were not comfortable in moving from one place to another. Of them, one was a newcomer. Two others (in New Delhi) were nervous because of increased raids by the police. By and large, there was no problem in movement in Kolkata except for the special circumstances of some sex workers or young girls in rescue homes. New Delhi is the only city where at least a few felt uncomfortable because of the fear of authorities.

STRIKING ROOTS

Of the women and men interviewed for the study, a difference in needs, attitudes, and planning for the future was apparent. There were three distinct groups among the respondents. In the first group were people who had settled themselves comfortably and wanted to stay in the country of destination (India). These were the people who wanted to make India their permanent residence and not go back to their country of origin. The second group, of almost equal size to the first, wanted to return some day. According to them, they could return only if they could get a secure job or better earning opportunities in Bangladesh. The third group was relatively small—eleven persons. They were the ones who had not been able to make up their minds.

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Apparently a large segment of the population was in a dilemma.

Amongst them were people who had gone to India destitute, due to dire economic conditions. They had no land or had lost whatever land they had to river erosion and were thus without a place to live or a job that gave a decent income. The women among this group had been deserted or divorced by their husbands and had to make an independent living. Some amongst them had been deceived and forced into a profession (the sex trade) that was not to their liking then, but they were willing to continue with it. Of all the people interviewed, some were doing well in the place of destination, while others had not fared that well, and between these two groups of people a difference in attitude appeared.

The persons who were destitute in the place of origin, but fared well after migration, stated they wanted to stay on at the present place of residence at least while their age permitted them to work and earn. They were the ones who bought land or married their daughters in Bangladesh, trying to maintain a relationship with the home country, and thought of going back someday. On the other hand, the people who were not doing so well, but had also been destitute before migration, were the ones who had not decided about, or did not have any specific plans for, the future. It may also be mentioned that people who worked in Mumbai and New Delhi for several years and had invested in land or business felt that they had a “right” to stay on in their present residence.

All the cases suggest that, at least economically speaking, the respondents were better off than they had been in Bangladesh. Many had settled down, and some were quite satisfied with their work. Thirteen women and two men sent money home. Some had not been able to make it that well, but thought they were still economically better off than they were, or would have been, if they had stayed at home. Twenty of the fifty-one women did not want to change their occupation, ten of whom were sex workers. Among men, this was different. Only four did not want to change their occupation. It is important to note that although nearly half of the women who expressed a desire to change their jobs were sex workers, some women in the sex trade stated they would like to settle down in India with their *babus*, or steady clients with whom they had a special relationship

ACCEPTANCE IN INDIA

For a migrant, particularly for an undocumented migrant, it may be possible to eke out a living and even to do better economically than at home. But that does not necessarily mean that they feel comfortable in their daily life. The respondents were asked if they felt any problem in

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mixing with the locals or in sending their children to school. Of the fifty-one women and fourteen men interviewed, twenty-seven and ten, respectively, answered that they had free social access, although about half of the women and a third of the men felt they were not acceptable to the locals. A substantial proportion of the respondents thus felt that they had social acceptance. However,

many of those who had problems had them for occupational reasons. For example, in Kolkata, among the fourteen women who stated they encountered problems, ten were sex workers and the inmates of the NGO rehabilitation home. Two others lived in a particular area where people pointed them out as Bangladeshis. The remaining two, who lived on the footpaths of Kolkata as ragpickers, were derided by locals as “Beggar Bangladeshis.” As Bangladeshis in Kolkata, some were also denied renting of houses, even in slums. In Mumbai, the migrants had no such problem. In New Delhi, however, around a quarter of the women and half the men mentioned that they faced problems. They felt that they were pointed out as “illegal immigrants” from Bangladesh. Because of frequent police raids, this identity enhanced a feeling of insecurity amongst them. However, in general, with an increasing number of migrants, the attitude of the locals toward those from Bangladesh has undergone a distinct change. In Mumbai in the past, migrants who stayed on the footpaths were fed by the wealthy locals. In 2003 this was rare. Instead, young children, especially boys, were branded as thieves. There were still others, in all cities, who felt that there was pressure on local resources and an increase in the rate of crimes due to the migrants.

POLITICAL SITUATION AND LAW ENFORCING AUTHORITIES

The women and men who lived and worked in New Delhi were very uncertain about their lives and livelihood as the political party in power was against undocumented migrants, especially those from Bangladesh.

There were frequent police raids taking place in the areas, mostly in slums, where the Bangladeshis normally resided. According to the respondents, unlike the previous government, the government in power at the time of the study was against them. They however felt that the situation would get better just before the election time. All the people interviewed in New Delhi had some affiliation with political parties. In

[the past, when there were regular fires in the slums,2 important political](#)

leaders, such as Indira Gandhi and V.P. Singh, would visit the slums and distribute ration cards and money to rebuild their houses. The politicians would go with food, and medical teams would provide health support. In 2002 there was no such thing. The migrants in the slums were identified as “illegal foreign nationals” and instead of receiving government assistance, the police made raids

and arrests.

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Respondents informed us that the police who patrolled the (slum) area harassed and threatened both men and women by saying that they would be picked up during the next raid and that they should leave the country immediately. Once picked up they would be placed in lock-ups for an uncertain period of time, to be shipped to the bordering districts in order to be pushed back to their country of origin. The women alleged that there were cases of police taking the young girls and sexually harassing and abusing them. However they did not wish to talk about it, as the life of the young girl would be stigmatized.

Respondents in New Delhi reported that previously the police would pick up slum dwellers and keep them in the local station lock-ups, releasing them after several days. At the time of the study, the time in lock-ups was more than three weeks and those held were beaten brutally. During the period in which the study took place, there was a raid in the slums of Jamuna pusta in New Delhi at around 3 a.m. The police picked up the outspoken, prominent leaders of this community, and the residents became scared, fearing that the next time the authorities would be more strict and would drive all Bangladeshis out of the country. The respondents further informed us that the men (ages seventeen and older) did not sleep in the huts; right after dark they would leave their homes and stay on the footpaths away from the locality. They returned around noon and left again in the evenings. The police also verbally abused and harassed the women.

In New Delhi we also visited other slum areas, such as Jahangirpura, and became aware that some slums housing people from West Bengal had been demolished. The homeless people reported that because they were Muslims and spoke Bengali their huts had been demolished—“even the dogs are better treated in this country,” they remarked.

The respondents in Mumbai also reported increased police raids and the demolition of many of the slums. There was a constant patrolling of police in all the slums. Some of our respondents and/or their family members had been taken to the police lock-ups. They had been released after their family paid a handsome amount of money (i.e., Rs.

2,500–3,500, approximately US\$500–850) to the local police station.

ROOTS OF INSECURITY

The people we spoke to had left behind their countries of origin. Most had gone in search of a new life. Many were successful in striking roots in India. Some were still striving to do so, and very few wanted to return to Bangladesh in the near future.

The process of striking roots was not an easy one. Apart from material problems, there were problems, as stated above, of social accep-

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tance and legality. But apart from this, disaster struck in other forms.

For some it was communal riots. The major factor in generating insecurity, however, was the nagging fear that they would be marked as an

“illegal foreign national” and pushed back to their own country. From time to time this feeling of insecurity was accentuated because of harassment and raids by the authorities for hounding out people from Bangladesh. This insecurity was very strong among the people we spoke to in New Delhi. In Mumbai also, this fear prevailed, but to a lesser extent. Kolkata is the only place where the people we interviewed did not seem to be under any such threat—there they appeared to have no fear of raids, detentions, or deportations. When asked about why they did not move from New Delhi and Mumbai to Kolkata, where they could feel more secure, our respondents replied that Kolkata was a relatively poor place and had little to offer in terms of jobs or better earnings. To us, this was an indication of the fact that despite all odds, earning a decent living, albeit in a foreign country, was the prime objective of all the respondents interviewed for this study.

FUTURE PLANS AND EXPECTATIONS

Interestingly, people with children articulated their plans and expectations for the future, while those without any children were fatalistic, and left all future actions to “fate.” This was emphasized among the sex workers. Those with

children expressed their desire to leave the brothels and start anew elsewhere in India or go back home someday—but to what, they had no idea. The others wanted to stay in India in their present trade but wanted to be able periodically to visit parents or relations in Bangladesh, although they were concerned and wary about their present status vis-à-vis their acceptance in the community. Those in rehabilitation centers expressed a desire to go back, but they too were unsure about how they would be received at home due to the stigmatization of sex work and the criminalization and victimization of women within the sex trade. The boys, on the other hand, were studying and receiving skills training. All dreamt of going back home and using their skills for work/trade.

Some migrants had more concrete plans for the future. Those who wanted to stay on in India had bought landed property in order to establish their right to stay. Those who had married Indian men or women planned on leaving their present residence in the city and setting up home in their in-laws' villages. This group of migrants stated they would like their sons and daughters to get married in Bangladesh—

that daughters would go back to Bangladesh with their husbands and that sons would take brides from Bangladesh but stay and work in

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India. There were also those who planned to return to Bangladesh someday because “there is no peace of mind in a foreign country.” These people were working toward saving enough, acquiring landed property, and then returning home. However, the migrants who had not fared well, and had not been able to acquire any property, stated they would like to stay on in India and not return.

All the migrants felt that the Indian government could not stop people like them from coming to India. According to them, “at home there is no work, we have no food...people like us...we will come.”

They had pinned their hopes on the government of Bangladesh to take responsibility and make their life comfortable while in India—“if Hasina

[the Prime Minister of Bangladesh from 1996–2000, who Bangladeshis widely believe had a good relationship with the Indian government]

had accepted our presence, things would have been better...we would have been spared of our constant harassment.”

ECONOMIC MIGRANTS

We found that most people had migrated voluntarily to India and were not deceived or coerced into crossing the border. All had undergone a similar process—destitution at home, underground transportation across the border, and work or a new life fraught with bribes, exploitation, harassment, and abuse. Most lived as undocumented immigrants in India. There was a clear distinction within the total population, however, between those who had moved independently and those who came otherwise. The first group went willingly, and with an explicit intention and expectation to make a living, even if it was as a sex worker. They had made the decision to cross the border alone or with consultation with a near relative/friend, after some circumstance (economic/social) at home triggered their decision to move. The other group was forced, deceived, or lured into migrating for various reasons. The decisions about migrating, the destination, and the type of work once there, were often somebody else’s. For the first group, the expectation of making a living was more or less fulfilled. Some felt cheated as they had expected more—a result of a lack of proper prior information—but once in India most had a place to live, their jobs/trade gave them a substantial income, some opened bank accounts, saved, and also invested in India and in Bangladesh. Amongst them many had married in India (mostly men), and were raising a family with the children going to schools. Still others had acquired ration cards, enrolled themselves as voters, and had passports. Maintaining ties with their original homes, through investments and the marriages of their sons and daughters, some—after acquiring property and with money in hand—hoped to return one day.

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The majority, despite an environment of harassment and insecurity including, often, restricted movements and barriers of language, aspired to stay on. They had also invested in India. Evidently, the majority were, in general, better off than they were in Bangladesh.

The second group, who were initially tricked or deceived into leaving home,

were mostly women, many of whom were later forced into prostitution—a situation from which one usually “cannot completely come out,” due to the stigma attached to it. They had left home with people they knew and trusted, to better their position economically and/

or socially, but were turned over to brothel owners instead. Among the sex workers, only those with children looked forward to getting out of the brothels and to starting life anew elsewhere in India and/or to returning home to Bangladesh someday. Those with no such ties had no intention of going back and seemed more or less resigned to fate/ *bhaggo*.

A commonality between the two groups of people was that in their movement across the border, the persons who facilitated their movement were the same. Both groups resorted to fraudulent means aided by professional *dalals* and went through the same process in order to be smuggled across the border. The difference that existed was in terms of money spent and sexual harassment. People who had migrated independently had to bear all expenses themselves, while those who were deceived and/or forced did not have to spend any. However, even those who willingly moved to join the sex trade had to pay a price of a different kind—they were often sexually abused by *dalals* and law enforcement agents positioned on both sides of the border, before being passed on to the brothel owners. We were unable to establish whether migrants who worked in India as domestic help, in factories, etc., were subjected to such harassment or abuse.

It became apparent through the study that an organized network was actively engaged on both sides of the border. From the way money changed hands—often openly, from respondent to *dalals* to law enforcement personnel to another third party—transporting or smuggling people across borders appeared to be a lucrative business. People who wanted to better their economic position took advantage of this organized group who helped in their clandestine movement. On the other hand, with a demand for girls/women in the brothels of especially Kolkata and Mumbai, the members of the organized networks on both sides of the border took advantage of the border situation and actively sought out gullible, often unmarried or deserted girls and women from poor households. The primary reason for the majority of the respondents to leave the country of origin was to have a better life socially or economically, in a country that had apparently more to offer. The majority who left were those who did not have food security or a secure livelihood in their country of origin.

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India is a vast country and also has many (im)migrants from different neighboring countries, such as Afghanistan, Myanmar, and Tibet, who have been given refugee status. Having legal status as refugees, they are not harassed by the law enforcement agencies, nor threatened with deportation, whereas the economically disadvantaged people of Bangladesh who are working in India, doing various odd jobs, and thereby fulfilling the demand for certain services for which there is a dearth of local labor, are harassed and abused at every step. Moreover, while conducting this study we found hundreds of Bangladeshis living in constant fear. As “illegal foreign nationals” some had experienced brutal behavior from the law enforcing agencies, some had been arrested and were in the lock-ups and no one was allowed to visit them.

There were still others who were being threatened with eviction.

The (im)migrants from Bangladesh engage in a variety of activities and play a major role in managing waste in the big cities of India. It is often said that had it not been for the migrants, Mumbai would have had a “smoky mountain” like Manila. India, the receiving country, benefits from these undocumented migrants who do a great many odd jobs and form the bulk of cheap labor. In turn, the migrants from Bangladesh are benefited as they have a secure livelihood that was not available at home. Migration is acknowledged as a fundamental human right, but there is no policy or mechanism to recognize the rights to life and security of livelihood for the “illegal foreign nationals” who have been living in India for years, and who we would rather term as *economic refugees* or *economic migrants*.

TOWARD A FUTURE

The geographical location of India and Bangladesh is such that despite wire fences and tight controls, people wanting to cross the border are able to do so. But had the authorities or law enforcement agencies on both sides of the border been less corrupt and more honest in carrying out their duties, the wave of clandestine migrants could have been reduced from a stream to a trickle. Moreover, inside the countries there is a need to build up awareness through proper information about the networks that take advantage of migrants and also

about the harsh treatment that one can confront in the place of destination. Women's freedom of movement should be ensured so that they are not made to be accompanied in their travel by a male guardian, which could result in further deception and exploitation. Most importantly, food and livelihood security within the country has to be ensured for all, irrespective of gender, class, and religion, through proper development policies and projects, if clandestine movement is to be combated.

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Economic migrants such as the people in our study technically have no legal rights in the receiving country, but viewed from a humanitarian angle they deserve better treatment than what is meted out to them, and it falls on the State to shoulder responsibility so that the migrant's right to life is not at stake. The respondents in the study apparently had easy access to health and legal services, but few had legal status. They were tracked by the police in (periodic) raids, and sometimes detained or arrested. In the courts, cases drag on for years as the countries concerned take their time to determine the nationality of the "rescued victim." Meanwhile trafficking serves as a front for undocumented economic migrants to be hounded and rounded up, followed by forced eviction or deportation by the authorities. Moreover, in the name of rooting out migrants from Bangladesh, Bangla-speaking persons, including Indians, have often become victims of anti-Muslim sentiments from certain political parties and law enforcing agencies. It is important for the countries concerned to create conditions through cooperation and a spirit of accommodation to enable the people—trafficked and/or economic migrants—to live in India and/or return to the country of origin voluntarily, and with dignity. With a proper policy that recognizes the reality, migrants need not be victims of any communal cleans-ing, pushed in and/or pushed back, in either India or Bangladesh.

NOTES

- [1.](#) The original report of the study was entitled "In Search of Dreams."
- [2.](#) A regular event—often an accident but sometimes caused intentionally; during such incidents the firefighters cannot enter the area through very narrow roads and all card-board and plastic huts are burnt along with the important

papers/documents collected with such great difficulty.



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