



Alliance News

Issue 22, December 2004

A Rights Based Approach to Trafficking



*Global Alliance Against
Traffic in Women*

◆CONTENTS◆

Contents

A Rights based Approach to Trafficking

Editorial Team

Helen Dobby
Amy Penfold
Bandana Pattanaik

Layout & Design

Suphattra Chaithaisong
Apivot Chaison

Picture

Google image



Articles contained in this issue of the GAATW newsletter represent the views of the respective authors and not necessarily those of the entire GAATW network. The editorial team reserves the right to edit all articles before publication.



For more information on the stories in this newsletter, or any aspect of GAATW and our work, please contact the Secretariat.

PO BOX 36
Bangkok Noi Post Office
Bangkok 10700 Thailand
Tel: (662) 864-1427/8
Fax: (662) 864-1637
E-mail: gaatw@gaatw.org
Web Site: <http://www.gaatw.org>

Editorial

- Looking back to look forward 3

Essays

- An exploration of the meaning of a human rights based approach to trafficking by Marjan Wijers 7
- Sex worker rights, abolitionism, and the possibilities for a rights-based approach to trafficking by Jo Doezema 15
- Children's Rights in the Balance: Prevention of trafficking interventions and the freedom to migrate by Mike Dottridge 23
- Europeans Confused About Sex and Rights, Say Migrant Workers by Laura María Agustín 35
- 'Traffic Controls': Legal Responses to Transnational Migrations by Ratna Kapur 38

Photo File

- GAATW 10th year Anniversary 52

Interviews

- Interview with Kim Warren, ICMC Indonesia and Fifi Rahayaan, Solidaritas Perempuan, Indonesia 54
- Interview with Yuriko Saito, JNATIP, Japan 60
- Interview with Aegile Fernandez, Tenaganita, Malaysia 65

Activity Update

- Self-Help Health Training 69
- Asia Consultation 71
- European Consultation 72

Publications

- A Rights Based Approach to Trafficking in Persons 74
- Critiques of a Rights Based Approach and the Human Rights Discourse 77

GAATW Publications 82

About Us 84

GAATW is 10 years old in 2004



Dear Friends

Looking back to look forward

The launch of this Alliance in 1994 was a natural development of the work of many women in various parts of the world. Years of involvement with the situation of migrant women both in the countries of origin and destination had led many women activists to engage with the issues of migration and trafficking. The migrant women had told stories of their multiple journeys in search of work; from villages to cities, from cities to far away foreign lands and sometimes to yet another new country. Typically, the stories were narrated while the women were in a difficult situation. Promises made to them by the recruiters were broken, conditions at work were unbearable, or after years of hard work they had returned home without much financial gain. However, each story was a testimony to the women's courage, enterprise and determination. Complex, powerful and openended, the stories were challenging the stereotype of the victim as well as the prevailing understanding of trafficking.

GAATW started her work by asking simple questions; why do women migrate, why do some of them end up in a trafficked situation, what indeed are the elements of trafficking and what could be done so that the human rights of trafficked women would not be further violated. A multi country research study led to the conclusion that the issue of trafficking needed to be placed firmly within the context of globalization, expansion of the informal economy, increase in female labour migration and existing inequalities of gender, race, class and nationalities. Human rights violation was found to be both the cause and the consequence of trafficking. A study of existing international conventions and treaties showed that indeed possible measures for human rights protection of trafficked persons exist in many of those documents although their implementation was a problem. Activities of the Alliance in the early years included organising human rights training workshops for NGO colleagues in various parts of the world and putting together a document called Human Rights Standards for the Treatment of Trafficked Persons, (HRS)

and lobbying for an internationally recognised definition of trafficking. Complimenting the training and advocacy efforts, feminist participatory action research projects were also carried out to ensure that members of the Alliance do not lose sight of the ground reality.

Those were the years of heady optimism. As Barbara Limanowska, who worked in the GAATW secretariat in those early years recalls, "Everything looked so simple ten years ago!" It seemed logical that the combined efforts of so many people would go a long way in solving the problems, states would soon formulate adequate legislation on trafficking and NGOs trained in the human rights approach would complement the states.

10 years down the road, how do we assess our work? There are many more organizations working on trafficking than before. Researches have been conducted and reports written on the situation of trafficking virtually in all parts of the world. There is an internationally recognised definition of human trafficking now and some countries are working towards national legislations in accordance with the Palermo Protocol. But we are still very far from achieving human rights protection for trafficked persons. Year after year, every report on the situation of trafficking claims that the problem is getting worse. But anyone working on the ground knows that it is incredibly difficult to identify a trafficked person. Often migrants take dangerous risks only because either the legal and safe channels to find work in another country are non-existent, or adequate

information about the situation does not reach everyone. Many migrant workers whose experience has some elements of trafficking are reluctant to be labeled as a victim of trafficking for that would mean immediate or eventual deportation. Therefore many colleagues are of the opinion that unless a sustained advocacy for the protection of the rights of all migrants is launched, human trafficking will continue to increase. Another concern raised by human rights activists is the violation of rights caused by zealous anti-trafficking efforts. In other words, it is time we take stock of our work, consolidate the gains and find new strategies to address persistent problems. With those aims, during 2004 GAATW secretariat has organised formal and informal consultations with colleagues around the world. The International Congress scheduled to be held on 7-10 December, 2004 will bring many activists together for an intensive discussion on future strategies.

For the anniversary issue of Alliance News we chose to focus on a rights based approach to trafficking. In the last decade the human rights framework has gained popularity among many development workers. Since her inception GAATW has also consciously and explicitly worked to promote a human rights based approach to trafficking. But does everyone share the same understandings of this approach? How much of it is rhetoric (which has its own value) and to what extent is the approach able to ensure justice for marginalized people? What are the obstacles people face while trying to apply this approach

to their work? We requested some of our colleagues from across the globe to share their thoughts on a rights based approach to human trafficking. As ever, we are greatly appreciative of their contributions and we are sure that they will stimulate thinking on the issue.

Marjan Wijers explores in depth the meaning of a rights based approach to trafficking in persons. She explains that trafficking in persons is both a cause and consequence of human rights violations and considers how the human rights based approach impacts upon our anti-trafficking work. Marjan concludes that there is still a lack of mechanisms to evaluate the human rights impact of the ever-increasing number of anti trafficking policies and measures.

Jo Doezema provides us with a sex worker rights perspective on the rights-based approach to trafficking. She questions whether or not the trafficking framework is the appropriate means to address all our concerns especially in light of the rise of abolitionism. Jo concludes that in order to face this growing challenge we must continue to strengthen and expand our political alliances in order to generate a new political vision for the future.

Mike Dottridge examines how we can work to prevent trafficking in children without curtailing their freedom to migrate. He also relays how some anti-trafficking measures can actually, albeit unintentionally, inflict further harm on the children that they purport to assist. Mike considers the aspects involved with

adopting a child rights approach to combating trafficking in children and explores what criteria should be put in place for evaluating counter trafficking initiatives.

From her extensive work with migrant workers Laura Agustín discusses their perspectives on the European attitude to migrants' rights. Given the rise of abolitionism and the anti-immigration attitudes that are currently prevalent in Europe Laura considers whether or not the trafficking framework and a rights based approach are suitable mechanisms for protecting migrants.

In her article Ratna Kapur outlines the three major approaches being taken to combat trafficking in persons: the criminal justice approach, labour rights approach and human rights approach. Ratna provides a clear critique of each of these approaches highlighting both their positive and negative aspects. She argues that trafficking in persons operates within the wider context of trans-national migration and globalisation and that it will continue until these broader issues are recognised and addressed.

We were also able to interview some of our colleagues during the Asia Regional Consultation (PP: 71) Kim Warren (ICMC) and Fifi Rahayaan (Solidaritas Perempuan), spoke to us about the trafficking situation in Indonesia, their prevention interventions and how they apply the rights based approach in their work. Yuriko Saito, who is currently working in Japan as part of the Japanese network JNATIP, provided an update on the

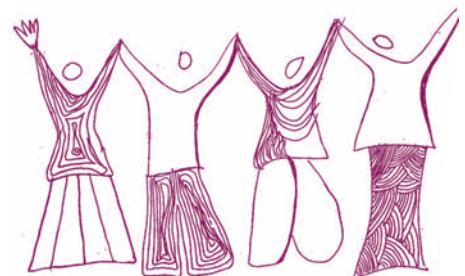
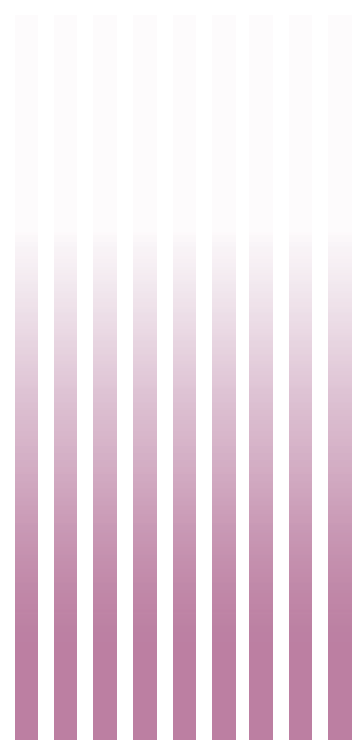
current measures being undertaken to combat trafficking in Japan and the government's response to calls for adopting a rights based approach. Aegile Fernandez, Programme Coordinator of Tenaganita, Malaysia, advocates tirelessly for migrants' rights in Malaysia and is currently working to provide assistance to trafficked persons. We spoke to her about the advantages of forming alliances between migrants' rights groups and those working within an anti- trafficking framework.

In the activity update section of this issue we report a self-help training on health which was carried out with women migrant workers in Maesot, Thailand and our Asia and Europe consultations. For those of you who would like to do some extra reading on the issue we have a select list of publications focusing broadly on the human rights discourse. Finally, we also have a photo file for you. A random selection of some of the activities of the Alliance, these pictures may take some of you down memory lane.

We hope that you enjoy this edition and we welcome all feedback.

Hope to see you all at the International Congress in December.

Bandana Pattanaik & Helen Dobby



An exploration of the meaning of a human rights based approach to trafficking

by Marjan Wijers



Over the last years there has been increasing discussion about the need for a human rights based approach to trafficking. However, what exactly is meant by this is not always clear. This paper tries to give an impetus to further explore the meaning of such an approach in the field of trafficking.¹

Until now, defenders of a human rights based approach to trafficking have mostly focused on the protection of the human rights of trafficked persons and - to a lesser extent - on prevention. However, a human rights based approach can be conceived to also imply a number of principles that relate to the programming

process or method of working. This latter aspect has been hardly systematically addressed within the trafficking debate, although some of these principles, such as empowerment and participation, are regularly put forward by NGOs working in this area. One of the fields in which this is more elaborated is the development debate. I have tried to translate some of the ideas developed in this area into the field of trafficking.²

Underlying the call for a human rights approach is the recognition that trafficking in human beings constitutes both a cause and a consequence of human rights violations. According to the former UN High Commissioner for Human Rights (UNHCHR), Mary Robinson, trafficking is a cause of human rights violation because it violates fundamental human

¹ This article is based on a paper written by the author for the draft report for the European Experts Group on Trafficking in Human Beings, October 2004, to be found at http://europa.eu.int/comm/justice_home/fsj/crime/forum/fsj_crime_forum_en.html.

² I have used in particular the following documents: "Human rights in development, Rights based approaches", www.unhcr.ch/development/approaches-04.html; "The Human Rights Based Approach, Statement of Common Understanding", developed at the inter-Agency Workshop on a human rights based approach in the context of UN Reform, 3-5 May 2003, UNDP, and, in the area of violence against women: "Working Paper on a Human Rights Based Approach to Implementation of the Beijing Platform for Action", Center for Women's Global Leadership, www.cwgl.ruthgers.edu/globalcentre/approach.html.

rights, such as the right to life, the right to dignity and security, the right to just and favorable conditions of work, the right to health, the right to equality and the right to be recognized as a person before the law. It is a consequence because it is rooted in poverty, inequality and discrimination.³

Essentially, a human rights based approach integrates the norms, standards and principles of the international human rights system into legislation, policies, programs and processes.

The norms and standards are those enshrined in the range of international treaties and declarations, including the principle of non-discrimination. Other principles include the recognition of human beings as subjects and holders of rights, equality and equity, standard setting and accountability, empowerment and participation.

As such, a human rights based approach offers a conceptual and normative framework that can give direction to the further development of policies in the area of trafficking. At the same time it offers a framework to monitor and

evaluate anti-trafficking policies, practices and actions for their real and potential impact on trafficked persons and other groups affected, such as sex workers, domestic workers, migrants, asylum seekers, etc.

Observance of human rights norms

Under international human rights law States have a legal responsibility to protect and promote the rights of all persons within their jurisdiction. This obligation includes the duty to prevent, investigate and punish human rights violations and to provide effective remedies to victims of such violations.⁴ This duty extends to violations by both State and non-State actors.

In addition, measures should comply with existing obligations of States under international human rights law as set forth in the major human rights instruments - in particular the International Covenant on Civil and Political Rights, the

³ See Ann Gallagher, "Trafficking and the Global Sex Industry: The need for a human rights framework", edited extract from an address delivered by the High Commissioner on Human Rights Mary Robinson to an NGO/IGO consultation on trafficking, Geneva, June 21 1999, in: Women's Rights are Human Rights, Special issue on Women's rights - Spring 2000, OHCHR, www.unhchr.ch/html/menu2/womenpub2000.html

⁴ See inter alia Art. 2 ICCPR and Art. 2 and 3 CEDAW. See also e.g.: Integration of the Human Rights of Women and the Gender Perspective, Violence Against Women, 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, submitted in accordance with Commission on Human Rights Resolution 1997/44, ECOSOC, Commission on Human Rights, Fifty-sixth session, 29 February 2000 (E/CN.4/2000/68).

International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination of Women and the Convention on the Rights of the Child and other standard setting documents. At a minimum they must not conflict with or otherwise undermine human rights law.

Treatment of trafficked persons

First, this implies that States have an obligation to assist and provide redress to trafficked persons as victims of human rights violations.

This is the area in which a human rights based approach is most developed in the context of trafficking. Both the former UN High Commissioner for Human Rights (UNHCHR) and the former Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, have at several occasions pointed out the link between the prevention and eradication of trafficking and the protection of the human rights of trafficked persons.

Assistance and protection provisions must, at a minimum, meet basic international human rights standards. Concrete examples of a set of state responsibilities which ensure the protection of the human rights of trafficked persons are the Human Rights Standards for the Treatment of Trafficked Persons, developed by the Dutch Foundation Against Trafficking in Women, the International Human Rights Law Group and GAATW, and the Recommended Principles and Guidelines on human rights and human trafficking of the Office of the High Commissioner for Human Rights.⁵ Both contain an extensive list of assistance and protections that should be provided to trafficked persons based on international human rights law. These include access to justice, private actions and reparations; procedural protections in court cases, witness protection and legal assistance; access to temporary and, if necessary, permanent residence status; access to social, psychological and health care and help with a safe, and to the extent possible voluntary, return to their country of origin.⁶ Important to note is that the right to a safe return includes the right not to be repatriated if such repatriation would expose the trafficked person to a

⁵ OHCHR, United Nations, New York and Geneva, 2002.

⁶ See for a comprehensive survey of the necessary safeguards: Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the High Commissioner for Human Rights to the Economic and Social Council, 20 May 2002 (E/2002/68/Add.1); and Human Rights Standards for the Treatment of Trafficked Persons (1999), developed by the Global Alliance Against Trafficking in Women, the Foundation against Trafficking in Women and the International Human Rights Law Group (online available: <http://www.inet.co.th/org/gaatw/ISMR99.htm>).

real risk of further human rights abuses, such as the risk of reprisals by the traffickers, of being re-trafficked, of oppressive or discriminatory measures from the authorities and/or of being subjected to inhuman or degrading treatment.

Prevention

Secondly, it means that States not only have a duty to prevent trafficking - that is to address the root causes - but also must ensure that anti trafficking measures do not undermine or adversely affect the human rights of trafficked persons or other affected groups, e.g. the freedom of movement, the right to leave one's country, the right to legally migrate or the right to privacy. To this aim safeguards should be incorporated in the development of all instruments and measures. This is particularly relevant in the area of trafficking as the prevailing anti-immigration and law-and- order approach, adopted by most Governments to combat trafficking, easily risk infringement upon the rights of the groups involved, in particular trafficked persons, female migrants and sex workers.

Thus anti-trafficking instruments should not only be consistent with the respect

for, and the protection of, human rights but should also be careful not to create or exacerbate existing situations that cause or contribute to trafficking by instituting policies and practices that further undermine or adversely affect the human rights of persons, in particular the rights of trafficked persons, female migrants, asylum seekers and sex workers. For this reason, any measures that can add to the marginalisation or stigmatisation of the concerned groups must be rejected.

This is, for example, reiterated by the UNHCHR, where she urges for the integration of human rights into the analysis of the problem of trafficking and the development of an effective international legislative response, as, in her view, that is the only way "(...) to ensure that well-intentioned anti-trafficking initiatives do not compound discrimination against female migrants or further endanger the precariously held rights of individuals working in prostitution".⁷

Principle of Non-discrimination

A fundamental rule of international human rights law, which is of special importance to the situation of irregular or illegal migrants and other vulnerable

⁷ Message from the UN High Commissioner for Human Rights, Mary Robinson, to the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime, Fourth session, Vienna 28 June-9 July, 1999

or marginalised groups, including sex workers, is respect for the principle of non-discrimination.⁸

Following this principle, it should be ensured that anti-trafficking measures, especially, but not only, those aiming at prevention, cannot be used to directly or indirectly discriminate against women or other groups. Moreover, it must be ensured that trafficked persons are not subjected to discriminatory treatment in practice or law and that protections for trafficked persons are applied without discrimination, particularly with respect to gender, ethnicity, immigration status, and/or the fact of a trafficked person's having been trafficked formerly or having participated in the sex industry.

Elements of a human rights based approach thus are:

- the obligation of States to investigate and punish trafficking and to provide assistance, protection and redress to its victims. Assistance and protection should, at a minimum, meet basic international human rights standards;
- the obligation to ensure that anti trafficking measures comply with the legal norms and standards enshrined in human rights instruments, including the principle of non discrimination;
- the obligation to address the root causes of trafficking;

- the obligation to ensure that measures do not undermine or adversely affect the human rights of the groups concerned.

Apart from the above discussed human rights norms, a human rights approach implies a number of principles that are relevant for the way policies, programs and measures are developed and implemented. These include standard setting and accountability, the recognition of human beings as subjects and holders of rights, empowerment, participation and the integration of a gender and ethnic perspective. Moreover, human rights should inform all phases of the process of policy development, including assessment and analysis, planning and design (setting goals, objectives and strategies), implementation, monitoring and evaluation.

Standard setting and accountability

In a rights based approach human rights determine the relationship between individuals and groups with valid claims (rights holders) and the corresponding duty bearers. While the primary responsibility under the human rights system

⁸ See inter alia Art. 2 and 7 UDHR, Art. 2 and 26 ICCPR and Art. 2 ICESR, but also the Statute of the International Criminal Court, Art. 21 (3).

lies with individual States, also non state-actors, including NGOs and international institutions, are duty bound. Obligations include both positive obligations (to promote, protect and provide) and negative obligations (to abstain from violations).

Strategies focus on raising the levels of accountability by States and relevant non-state actors to all involved stakeholders. Steps within such a strategy are: the identification of the human rights of rights-holders and the corresponding human rights obligations of duty-bearers, assessment of the capacity of rights-holders to claim their rights and of duty-bearers to fulfil their obligations, followed by the development of strategies to strengthen these capacities.

Accountability can more easily be determined by the translation of human rights commitments into concrete standards and by setting out goals and specific targets and benchmarks, along with indicators by which progress can be measured. An example is the development of standards of treatment to which all trafficked persons are entitled.

Moreover, mechanisms should be established to monitor and evaluate the human rights impact of anti-trafficking laws, policies and programs, both in terms of processes and outcomes. NGOs and grassroots organisations can play an important role in this process.

Recognition of human beings as subjects and holders of rights

Human beings are seen as subjects and holders of rights. A human rights approach thus opposes the instrumentalising of trafficked persons. The right to protection, assistance and redress of trafficked persons, for example, is considered a right in its own based on international human rights law, and is not made contingent upon the willingness or capacity of the trafficked person to co-operate in legal proceedings and/or to give evidence.

By definition such an approach is incompatible with policies, measures or programs that have the effect of violating rights. There is no trade off between combating trafficking and rights.

Moreover, human beings are seen as active actors in changing their own situation, rather than as passive recipients of services or victims “in need of rescue”. Corresponding strategies aim for empowerment, participation and self-organisation of the people concerned.

Empowerment

Strategies and measures should work towards strengthening the capacities of rights holders to claim their rights. They aim at giving them the power, capacities, capabilities and access needed to change

their situation, to speak up for their own rights and, in the case of trafficked persons, to take back control of their lives.

As a consequence, preventive measures should primarily aim at strengthening the position of the affected groups and at providing them with the (legal) instruments to defend themselves against human rights abuses, along with the right to be defended by the state against coercion and exploitation

Moreover, preventive strategies must be based on an analysis of the factors that increase vulnerability to trafficking, including economic factors such as poverty, unemployment and indebtedness; social and cultural factors such as violence against women, gender discrimination and other forms of discrimination; legal factors such as a lack of appropriate legislation and corruption in the public sector; and international factors such as the growing feminisation of labour migration on the one hand and the increasingly restrictive immigration policies of recipient countries on the other hand in combination with a demand for cheap, unprotected and exploitable migrant labour and services.

Participation and inclusion

Human rights based approaches require a high degree of participation and cooperation of all stakeholders, both as

a means and a goal. Stakeholders include relevant sectors of civil society (e.g. national human rights institutions and NGOs dealing with trafficked persons), as well as the groups that are affected by trafficking (directly, through their advocates and through organisations of civil society). Participation of the groups affected is seen as conditional to the development of effective change strategies.

An important aspect of participation is accessibility, including access to policymaking processes, information, resources and redress or complaint mechanisms. Building links and partnerships between governmental agencies, relevant sectors of civil society and international organisations forms an essential part of the development, implementation and evaluation of anti-trafficking measures.

Integration of a gender and ethnic perspective

Particular attention is given to discrimination, equality, equity and marginalised groups. Although trafficking affects both men and women, it is not a gender-neutral phenomenon. Women are affected in different ways than men in terms of the sectors into which they are trafficked, the forms of abuse they suffer and the consequences thereof. To understand the specific ways in which women are affected, trafficking should be placed in the perspective of gender-



Marjan Wijers is currently working as a consultant in the field of human rights and trafficking in human beings. She is also President of the European Experts Group on Trafficking in Human Beings and is a member of the working group on the International Protection of Human Rights of the Dutch Section of the International Commission of Jurists. She is a co-writer of an international research on trafficking in women (Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution, Marjan Wijers & Lin Lap-Chew, Utrecht 1997/1999).

inequality, traditional female roles, a gendered labour market and the worldwide feminisation of poverty and labour migration. Also in other aspects, trafficking is not a “neutral” phenomenon, but is closely related to and generated by discriminatory practices and unequal power relations, including those based on race or ethnic background. The integration of a gender and ethnic perspective is therefore essential for the analysis of trafficking, the development of counter policies and the provision of protection and assistance.

The above adds the following elements to a human rights approach

- human rights should inform all phases of the process of policy development, including assessment and analysis, planning and design (setting goals, objectives and strategies), implementation, monitoring and evaluation;
- standard setting and accountability: mechanisms should be in place to hold duty bearers answerable for the observance of human rights and to monitor and evaluate the human rights impact of anti-trafficking laws, policies and programs;
- express linkage to rights: trafficked persons and other stakeholders are seen as subjects accorded with rights. This implies, among other things, the identification of minimum standards of treatment to which all trafficked persons are entitled, regardless of their assistance to or value for the prosecution;

- strategies aim for empowerment, emancipation and participation of trafficked persons and other affected groups;
- the integration of a gender and ethnic perspective.

Human Rights impact assessment

While policies and measures to combat trafficking have mushroomed, up until now instruments to assess the human rights impact of anti-trafficking measures have been lacking. This is all the more serious because of repeated reports of anti trafficking measures violating human rights and contributing to the further marginalisation and stigmatisation of, in particular, sex workers. My hopes are that this paper will contribute to remedy this gap.



Sex worker rights, abolitionism, and the possibilities for a rights-based approach to trafficking

by Jo Doezema



Introduction

What does a sex worker rights perspective say about the future of a rights-based approach to trafficking? Can a better appreciation of sex worker rights help defeat abolitionism in the global arena? Or does trafficking need to be abandoned as a framework for positive change? These are some of the questions that GAATW asked me to consider in an article for their newsletter. As the editorial team at GAATW, describe it in a letter to me:

A couple of years ago some of us had a strong feeling that a rights based approach to human trafficking can no longer ignore the emerging voices from the sex workers rights movement. We felt that sex workers organizing worldwide have had an impact and zealous anti-trafficking activists will no longer make uninformed comments/genera-

lizations about prostitution without consulting with sex workers groups. To be sure there were still unresolved issues like whether creating the two categories of forced and voluntary prostitution was also problematic or not. There were still fundamental concerns over the anti-trafficking framework's ability to deliver even under the best of circumstances. But some of us were still feeling quite hopeful that limited as it is, the framework does work to a certain extent.

But now, one has the worried feeling that abolitionists have come back with renewed vigour, strong support from many quarters and huge funding of course. While we were trying to see trafficking in the forced labour framework now the US categorises trafficking as sex trafficking and labour trafficking. So those who want to fight prostitutes can do so in the name of addressing trafficking.

What accounts for this and what are your comments on this?

The rise of abolitionism is one of the greatest changes, and challenges, in the global politics around sex work to take place since GAATW, and the NSWP, began their work. Like GAATW, the NSWP is a global network of organisations and individuals with a common vision: in the case of the NSWP, this vision is of a world in which sex workers are free from discrimination, persecution and violence; where sex work is considered to be a legitimate and even honourable occupation; and where sex workers' health and human rights are held to be as important as anyone else's.¹ This vision intersects in a number of ways with GAATW's rights-based approach to trafficking, which bases its solution to trafficking on the needs and concerns of the people involved, and includes the idea of respect for sex worker's self-determination.

From Beijing to Vienna: the rise of abolitionism

In 1995, I and other sex worker activists from the Network of Sex Work Projects joined with activists from the newly formed GAATW at the Beijing UN Conference on Women, to lobby on the issues of trafficking and sex worker rights. Three years later, the NSWP and GAATW again worked together to lobby, this time around a proposed new UN agreement on trafficking. This UN Trafficking Protocol, negotiated in Vienna, was completed in 2000.²

For me, these two events represent both encouraging and discouraging things. On the encouraging side, it showed how sex worker rights and anti-trafficking groups could put aside their differences and find common ground when the political stakes were high. These commonalities included the need for human rights protections and the idea of sex work as work, as well as the need for a human rights, rather than a criminal, response to sex work and trafficking. The differences included the question of whether even a rights-based approach to trafficking could result in policies that effectively protected migrants to the sex trade and other forms of work, rather than policies that slammed shut borders and persecuted sex workers under the guise of human rights.

¹ The NSWP website is at www.nswp.org.

² For accounts of the lobby efforts around the UN Trafficking Protocol, see Jo Doezema, 'Now you see her, now you don't: sex workers at the UN Trafficking Protocol negotiations' in *Social and Legal Studies*, forthcoming Spring 2005, and Melissa Ditmore, 2002, *Trafficking and Sex Work: A Problematic Conflation*. PhD Dissertation, Department of Sociology, City University of New York, New York.

In the five years since these two significant collaborations between sex worker and anti-trafficking organisations, there has been a change in the way the world approaches the issue of trafficking. At the time of the Beijing conference, it seemed as though the global community had largely rejected abolitionist responses to prostitution as the solution to trafficking. While this did not necessarily mean an acceptance of the sex worker rights agenda, it at least recognised that trafficking and prostitution were different things. It also left the way open for rights-based approaches to take hold, as they did in a number of countries. It was during the negotiations for the Trafficking Protocol that the renewed strength of the abolitionist movement became evident, as the increasingly well-organised and well-funded abolitionist lobby challenged the rights-based approach at every step.

The rise of abolitionism globally is linked to US policy and how it is expressed in the 'war on terror'. Since 9-11, trafficking has taken on potent new meanings in American politics. The rise of abolitionism at the same time as President Bush's 'war on terror' is no coincidence. The context for this convergence was set

before the present administration. Under the Clinton administration, certain anti-trafficking feminists in the US were forging links with conservatives, particularly conservative religious groups, in order to pass the US domestic trafficking legislation.³ Though this legislation distinguishes between 'sex trafficking' and 'severe forms of trafficking', with harsh penalties only for those who commit the latter, it set the stage for an approach that equated fighting prostitution with fighting trafficking.

This abolitionist/conservative religious coalition was also able to significantly influence US Aid policy and development policy. This means that the US abolitionist position has serious effects domestically and abroad, and on both governments and non-governmental organisations.⁴ In his September 24, 2003 speech to the UN justifying the war in Iraq, President Bush put trafficking on par with terrorism. I would argue that the rise of abolitionism fits in with the Manichean world view currently dominant in the US, with its simplistic ideas about 'evildoers' and that pits the rhetoric of 'civilisation' against that of 'Islamic terrorism'.

³ For documentation and analysis of the links between US feminists and conservative/religious groups, see Anna Louise Crago, 'Unholy Alliance', *Alternet*, www.alternet.org. August 21, 2003; Wendy Chapkis, 2003. 'Trafficking, migration and the law: protecting innocents, punishing immigrants'. *Gender and Society* 17 (6): 938-957; and Nina Shapiro, 'The New Abolitionists', *Seattle Weekly*, August 25-31, 2004.

⁴ See Penelope Saunders, 2004, 'Prohibiting Sex Work Projects, Restricting Women's Rights: The International Impact of the 2003 US Global Aids Act', in *Health and Human Rights*, 7: 2 pp.179 -192.

A great irony of the rise of US-backed abolitionism is that abolitionist feminists claim that the abolitionist voice is the true voice of the third world.⁵ At the same time, they back stringent and arguably imperialist measures to force developing countries to comply with the US anti-prostitution stance. These measures extend both to governments and NGOs, as development assistance, loans, and NGO funding are denied to those that do not actively oppose prostitution. It is also ironic that the other most prominent abolitionist country is Sweden, firmly located in the West. Swedish feminists were successful in enacting legislation which penalises customers of sex workers. Arresting sex workers' customers hasn't been shown to have any effect on 'trafficking'. In fact, research shows sex workers in Sweden are now at greater risk of violence being used against them.⁶ Sweden also seeks to export its anti-sex work policies, both to the European Union and to the developing world. If developing countries are indeed so in favour of abolitionist policies, the threat of Western sanctions should be unnecessary. This pressure from the West has a strong smell of colonialism about it, a neo-colonialism backed by notions of superior Western morality.

Rescue, diversity and demand

In their letter to me, the editorial team also ask a series of questions about 'rescue' programmes and the focus on client 'demand' - both essential elements of an abolitionist strategy. They write:

There are statistics going around on how little women get out of the huge amounts of money that circulate in the sex industry. What do you think of programmes which aim to fight the industry and the violence within it and protect the women? What do you think of agendas/programmes that say let us not focus on the women any more, let us not talk about choice and force but let us target men and study demand?

Anti-trafficking programmes which aim to 'fight the industry and protect the women' often have good intentions but negative effects. These programmes often operate with the help of the police, a particular problem in countries where sex workers find that the police are the

⁵ For example, the abolitionist CATW misleadingly suggests a split between 'developing' and 'developed' countries around abolitionism in their report on the Trafficking Protocol. See Raymond, Janice. 1999. 'Report on the 6th Session of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime,' at www.catw.org

⁶ Carol Leigh's website provides an excellent overview of research on Swedish prostitution policy. See www.bayswan.org.

greatest perpetrators of violence.⁷ The ‘rescued’ women are often either; incarcerated, deported, or sent to prison-like ‘rehabilitation’ centres. There are cases in which rehabilitation centres are run by NGOs that want to help women, but actually keep them locked up ‘for their own protection’.

Other anti-trafficking programmes, which aim to fight violence, are more successful in countering abuse while respecting autonomy. These include those set up by sex workers themselves, such as the DMSC project in Sonagatchi.⁸ This approach is based on the concept of ‘self-regulatory boards’, and is derived from the principle that sex workers themselves are the best placed to detect and counter instances of coercion.

The existence of sex-worker run anti-trafficking projects points to the diversity within the global sex worker rights movement (or movements) about how to respond to the increasingly dominant anti-trafficking agenda. Like sex work itself, sex worker rights organisations are not homogenous. On the one hand, many sex workers and sex worker organisations

have argued that the anti-trafficking framework is harmful and needs to be abandoned. For example, the NSW commentary on the UN Trafficking Protocol states:

‘Historically, anti-trafficking measures have been more concerned with protecting women’s ‘purity’ than with ensuring the human rights of those in the sex industry. This approach limits the protection afforded by these instruments to those who can prove that they did not consent to work in the sex industry. It also ignores the abusive conditions within the sex industry, often facilitated by national laws that place (migrant) sex workers outside of the range of rights granted to others as citizens and workers’.⁹

Instead of decreasing human rights abuses and offering redress to the wronged, anti-trafficking has become a

⁷ For examples of sex worker’s groups responses to these raids, see Empower, 2003, ‘Report by Empower Chiang Mai on the human rights violations women are subjected to when “rescued” by anti-trafficking groups who employ methods using deception, force and coercion’, Empower Foundation. Chiang Mai, at www.nswp.org; and Joanna Busza, 2004, ‘Sex work and migration: the dangers of oversimplification - a case study of Vietnamese Women in Cambodia’, in *Health and Human Rights*, 7: 2, pp. 231-250.

⁸ See Smarajit Jana, Nandinee Bandyopadhyah, Mrinal Kanti Dutta, and Amitrajit Saha. 2002. ‘A tale of two cities: shifting the paradigm of anti-trafficking programmes’. *Gender and Development* 10 (1): 69-79.

⁹ Network of Sex Work Projects, (NSWP), 1999, ‘Commentary On The Draft Protocol To Combat International Trafficking In Women And Children Supplementary To The Draft Convention On Transnational Organized Crime’, at www.nswp.org/mobility.

rallying cry for a new wave of moralists. Persecution of sex workers has increased in many places as a direct result of anti-trafficking policies. For example, sex workers in South Korea say that their government's new anti-trafficking measures (adopted under threat of US sanctions) are being used to drive them out of business. Last month, they took to the streets of Seoul in the thousands, demanding that the government treat them as legitimate workers.¹⁰

On the other hand, sex workers are very concerned with protecting themselves and their colleagues. It is nearly impossible to talk about or organise against violence, particularly in the case of migration, without running up against the anti-trafficking framework. So while some sex workers and groups argue that the entire trafficking framework must be abandoned, others argue that the strategic engagement with it is necessary. Sometimes both of these positions are held simultaneously, and articulated according to the circumstances. These differences do not represent a split within the movement, but an ongoing discussion within a politically vibrant community, in which questions of philosophy, principles and strategy are constantly developing.

Regarding the question of 'demand', I would welcome the chance to move away from the stagnant and problematic categories of 'choice' and 'force'.

However, we need to carefully consider what the effects of the switch to talking about 'demand' are. It all depends on how 'demand' is seen: to put it simply, whether it is considered in a neutral, positive, or negative sense. Demand can be seen as neutral, for example in the case of HIV work. A non-judgmental approach to clients, as well as to sex workers, is increasingly recognised as key to successful HIV prevention programmes. The idea of 'demand' as something positive is something that is barely ever articulated. If the question of 'demand' could be opened up to look at the organisation of desire and the forms of its social control, it could represent an exciting new way to move beyond entrenched and calcified political positions. It could be a way to look at things like women's desire, same-sex desire, extra-monogamous desire, and the commercialisation of desire. Sadly, the focus on 'demand', as currently used, does not presage an exciting and invigorating way to examine the institutionalisation of desire. The talk of 'demand' is simply a way of putting old arguments in new language. When used by feminists, the 'demand' focus is simply a restatement of supposed female powerlessness and male power as the basis of sex work. When 'demand' is taken up by conservative groups, it is a way to push abstinence and marital fidelity, in keeping with their view of sexual morality.

¹⁰ Reported in Associated Press WorldStream, October 8 2004, and NT News, Tuesday October 12, 2004.

In both cases, it ignores the presence of women as clients and men as sex workers, and the positions of trans-genders altogether. This is explained by the fact that the focus on 'demand' has not come from sex workers themselves. Sex workers do not, in the main, see their clients as the problem. The terms of the debate on 'demand' have not been set by sex workers, but by outsiders. Thus the focus is not on what men, women, and transgender sex workers see as the main problems, which include police violence, societal discrimination and lack of civil rights. This is also the key problem with an anti-trafficking framework, even those derived from rights-based approaches. While sex workers are the prime object of concern to anti-trafficking activists, they are not the architects of the anti-trafficking agendas. Demands to stop trafficking did not arise from sex workers organisations. As a result, sex workers are left trying to fit their demands within a framework that was never designed to accommodate them: a framework that is increasingly setting the terms of public perceptions, debate, and policy.

Facing the challenges presented by the rise of abolitionism

The final question that the editorial team ask me to consider has to do with meeting the challenges presented by abolitionism's growing legitimacy:

Freeing the sex slaves is high on the Human Rights agenda now and the new alliance has the feminists, the religious right and the neo-conservatives. What would be the strategic steps for those anti-trafficking activists who see sex workers as their allies?

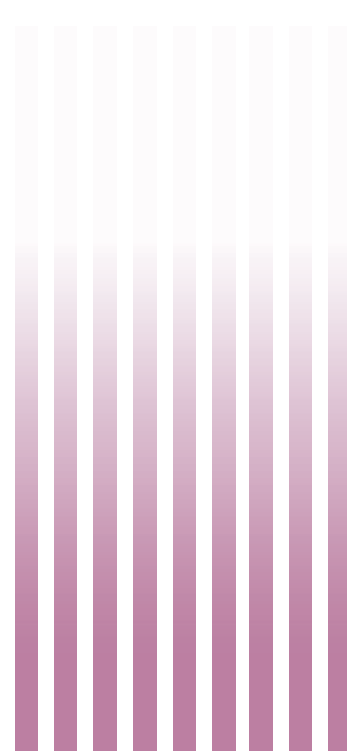
I believe the key to developing strategies is a keen awareness of the nature of the threat posed by the rise in abolitionism. This danger is two-fold; felt both at the political and intellectual level. Politically, there is the danger that we ourselves might move towards conservative policies, out of fear that otherwise all will be lost. Intellectually, there is the danger of letting political expediency or necessity come to stand in for radical thought. This is a common response to conservative threats, as groups with controversial agendas trade radicalism for political acceptance. This sort of manoeuvring may be strategically necessary to protect gains. But as our political space for experimentation, new policies, new ideas, collapses, as we are continually forced ever more on the defensive, we lose the space to think innovatively, to expand our thought horizons beyond the politically expedient.

The challenge, then, is to keep this space for radical thought open while at the same time responding strategically to the immediate threats posed by abolitionism. Keeping this space open starts by making sure that controversial voices are heard



Jo Doezema, Ph.D., is a sex worker and board member of the Network of Sex Work Projects (NSWP). She has published widely on trafficking and feminism. She is a consultant to a number of sex work projects, and works as a researcher at the Institute of Development Studies, University of Sussex.

and radical ideas debated. I believe that it is high time that the anti-trafficking framework be abandoned, and a new way found to articulate the concerns shared by sex workers, anti-trafficking activists, migrant and human rights activists. This is even more pressing now that due to the rise of abolitionism, anti-trafficking has become nearly synonymous with anti-prostitution. The answer to abolitionism lies not in a more nuanced version of anti-trafficking, but in a complete rejection of the moralising and victimising approach to sex work. While sex worker rights can offer a starting point, it is in itself not sufficient to deal with the wide range of issues and concerns raised under the heading of 'trafficking'. What is needed is an entirely new political vision. The elements of a replacement to the anti-trafficking framework do exist. They are waiting for the political will and strategic opportunity to bring them together in a coherent vision and political programme. These elements are to be found in various conceptual frameworks, including those of migrants rights, workers rights, feminism, anti-globalisation efforts, opposition to US dominance and the Iraq war, and sexual rights. In order to achieve this new analysis, a new political vision, I believe that GAATW and the NSWP should continue and strengthen efforts to broaden their analysis and their political alliances, and thus to create and keep open the radical space for this new political vision to emerge.



Children's Rights in the Balance: Prevention of trafficking interventions and the freedom to migrate

by Mike Dottridge



The scale of trafficking involving young people under 18, all of whom are categorised by international conventions as 'children', is horrendous. At the beginning of the new millennium, data collected by the United Nations' specialist agency dealing with the world of work, the International Labour Organization (ILO) estimated that a total of 1.2 million children (under 18) had been trafficked in the world, out of more than eight million young people estimated in 2000 to be involved in what the ILO called 'the unconditional worst forms of child labour'.¹ A huge number, but nevertheless a relatively small percentage of the 352 million young people under 18 whom the ILO reckoned were involved in economic activities at that time, and a fairly small proportion of the 246 million young workers whom the ILO believed

were involved in work which was harmful and inappropriate for anyone under 18.

The number of preventive programmes has increased in recent years, particularly since the United States government set up its Office to Monitor and Combat Trafficking in Persons and increased its funding for counter-trafficking programmes around the world. However, activities which are publicly justified by the benefits they bring to young children and adolescents do not necessarily bring benefits to the young people whom they ostensibly set out to help. A rapid review of counter-trafficking initiatives, whether oriented to adult women or to young people, soon reveals examples in which the supposed beneficiaries in fact suffered

¹ ILO, *A Future without Child Labour*, 2002, page 18. 'Unconditional worst forms of child labour' are defined by the ILO's Convention No. 182 and include commercial sexual exploitation and all forms of forced labour, slavery, debt bondage and other forms of servitude, as well as illicit activities such as drug smuggling, affecting anyone under the age of 18.

harm as a result of initiatives which were supposed to help them.

How can this be? Surely no agency, whether governmental or non-governmental, which receives money to stop children from being abused can actually be setting out to hurt children instead?

It is not deliberately inflicted harm which is the main problem, however (although there are cases of the staff of residential homes or others abusing children in their care): the bigger obstacle involves well intentioned initiatives which cause harm because they are not designed specifically to enhance the human rights of the children involved. They may be designed with some specific objectives in mind, such as 'ending trafficking' or 'releasing children in bondage', but unless they are designed with an eye to enabling young people to enjoy their human rights more fully, there is a good chance that they do some harm rather than only good.

Efforts to protect young people who have already been trafficked are rather easier to assess - and criticise - than initiatives to prevent trafficking from taking place in the first place. In projects providing protection, whether this involves their interception or rescue, their subsequent accommodation, their contacts with the police and questioning, or their subsequent treatment and possible repatriation, it is relatively easy to spot the cases which look like abuse, usually because the young person's best interests have not been a primary consideration (or, in a few cases, of any consideration at all). For example, a 'raid' to rescue

young teenagers from an Indian brothel, during which police are accompanied by cameramen who film the youngsters cowering in fear and show these images to the public without hiding the identity of the girls involved, is clearly abusive in many respects. There are many other examples of trafficked children suffering harm after leaving the hands of their traffickers, sometimes because they are imprisoned or ill-treated in residential homes, often when they are summarily deported and dumped at frontier posts by the authorities of the country in which they were being exploited, and also when they are left unassisted and unprotected after returning home, particularly if they are stigmatised on account of the commercial sexual exploitation to which they have been subjected.

Definitions of trafficking when under-18s are involved

First of all, however, it is useful to review what constitutes 'child trafficking' and to take note of some important differences between cases involving under-18s and over-18s. The differences may not be apparent to 17-year-olds and 18-year-olds, for whom the experience of being kept in virtual captivity and subjected to abuse are much the same, whatever their exact age. However, as international law provides for special forms of protection to be available to under-18s and as the current definition adopted by the

international community only a few years ago, in November 2000, to prohibit trafficking the 'Palermo Protocol' (United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, linked to the UN *Convention against Transnational Organized Crime*) defines trafficking in a significantly different way if under-18s are involved, the distinctions are important.

The Palermo Protocol suggests that the process of recruitment of an adult must be marked by coercion, deception or suchlike for them to be categorised as 'trafficked', but that no such coercion is required for the recruitment of children and adolescents under 18 to be regarded as trafficking. It is enough for them to be moved and subjected to exploitation in their destination - and the legal definition of 'exploitation' is the same for adults and children alike.

While the Palermo Protocol is fairly clear on what constitutes 'exploitation', however, in reality it is difficult to assess which cases of adolescents and particularly younger children constitute "forced labour or services, servitude or slavery or practices similar to slavery". This is because the levels of coercion required to make children do as they are told are quite different to those

required in adult cases. For example, most seven to ten-year-old children are totally dependent on adults to provide them with food and to look after them: once they are taken away from home and made dependent on an adult employer, little further coercion is required to make them do as they are told, even if this means toiling for twelve hours a day, unpaid, as a skivvy in the house or a sweatshop worker.

There are numerous variables involved in the way under 18s are trafficked and exploited.² Age and gender are the most obvious ones, with forms of trafficking and exploitation varying enormously between young children and 'almost adults' aged 15 and 17, as well as between girls and boys.

Trafficked children can be divided into at least three sub-groups according to their different age:

1. The main group which receives attention in the same breath as trafficked adult women involves adolescent girls (and some boys) who are 'almost adult', 16 or 17-year-olds, perhaps 15-year-olds, mature enough to decide to leave home themselves and not likely to regard themselves as 'children'. In most parts of the

² These are examined in greater detail in a report I prepared for Terre des Hommes earlier this year: Kids as commodities? Child trafficking and what to do about it. May 2004. Available at: http://www.stopchildtrafficking.org/site/fileadmin/stopchildtrafficking/downloads/presse/livre_fichier_final.pdf

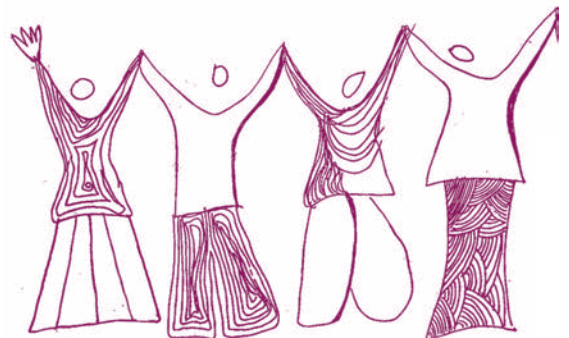
world, most girls in this age group who are trafficked are subjected to commercial sexual exploitation. Others are exploited for their labour, in sweatshops and as domestic workers.

2. The second group involves 'pre-puberty' children who are trafficked in some parts of the world for their labour, rather than for sexual exploitation. In West Africa, for example, the largest number are reported to be exploited as live-in child domestic workers or domestic servants. In Europe they include youngsters used to beg or steal.
3. The third group involves even younger children: babies (for the most part) trafficked for adoption.

With the exception of the third group, most of the other children who are trafficked leave home more-or-less voluntarily. Some are abducted, it is true, but it seems only a small minority. Among older adolescents, most of those who end up being trafficked make a decision themselves to migrate in search of a better future, but end up in situations of exploitation and abuse through no fault of their own. Of course, some have been encouraged to leave home by their families, while others depart against their parents' wishes. Among younger children, it is less likely to be the children themselves who make the decision: parents or relatives caring for them make the choice and, in the case of children

who are too young to take care of themselves, invariably depend on an intermediary or agent of some kind to accompany the children to their final destination. However, at least someone in the family is making the decision that it is in the child's or the family's interests for the young person to migrate.

Because of the way that the Palermo Protocol defines cases of trafficked children, trafficking in children is even more intrinsically linked to ordinary migration than it is in adult cases, when the recruitment process has to be marked by coercion, deception or such like. But, of course, not every teenager who migrates in search of a better future is subjected to 'exploitation' or what the ILO calls a 'worst form of child labour'. Some young people benefit from the process of migration, whatever age they leave home, and are able to exercise their human rights more fully than if they had stayed at home: human rights such as their right to education, to appropriate treatment if they experience ill-health and, most important of all, their right to survive.



Initiatives to prevent child trafficking: a child's right to seek a better future versus an obligation to stop children from being exploited

The result of the different definitions of trafficking for under-18s and adults is that it is even more difficult to assess whether a young person who is on the move, but has not reached her or his final destination, is being trafficked than in the case of an adult. An obvious implication is that, in the case of under-18s, counter-trafficking programmes should target the various forms of exploitation to which children are subjected, rather than the mere fact that children leave home and migrate to work elsewhere. For if these programmes aim to prevent everyone under 18 from leaving home or going to a city or abroad to work, their effect will be to harm those who would otherwise have benefited! Of course, at first sight this argument seems silly: if many or most young people who migrate abroad do suffer harm, then surely it is justifiable to suggest that no one should do so? This approach may be valid in a few cases where evidence is available that the vast majority of young migrants come to harm or where it is impossible to distinguish between the profile of young people who benefit and those who suffer harm from the migration process. However, in most cases the available evidence does not suggest that this is the case; a distinction can be made, based on age, origins or other factors.

In such cases, counter-trafficking initiatives should target the forms of recruitment, migration and exploitation/employment, which are known generally to result in young people being subjected to abuse. Indeed, failure to do so suggests that the motive of those organising a counter-trafficking programme is to stop migration (probably immigration into industrialised countries) rather than to end the abuse associated with trafficking.

At the moment, one response to the difficulty of distinguishing between migrating children who end up in abuse and those who end up better off is to assume that no-one at all should migrate before reaching the age of 18. Another approach involves identifying a younger cut-off age: for example, around 14, 15 or 16, depending on what the minimum age for admission to employment is in either the country where a child comes from or the country to which he or she might go to work. Are these the right approaches?

In Indonesia, a campaign against the trafficking of both children and women was launched in June 2003 by two non-governmental organisations, the International Catholic Migration Commission (ICMC) and the American Center for International Labor Solidarity (ACILS), which is linked to the trade union movement in the United States. They asked an Indonesian radio and television personality, Dewi Hughes, to act as the country's first National Spokesperson for the Campaign to Eliminate the Trafficking of Indonesian Women and Children. The idea of involving a media personality was not only to secure media coverage, but

also because she is evidently also regarded by many Indonesians as a more trustworthy source of advice than officials who speak out on the issues of trafficking or migration. At the press conference launching her role, Dewi Hughes addressed Indonesians who were thinking of migrating and the parents of children who might work abroad:

Let me start this dialogue with two simple messages. First, to people thinking of migrating abroad or within Indonesia to look for work: find out as much information about your recruiter, the job, the employer, addresses, and migration process BEFORE you migrate ... The second message I want to deliver is to parents. Children under 18 should not migrate for work. Let's work together to find ways to keep them at home and in school.³

My initial reaction was to consider this advice unrealistic. However desirable it might be in a perfect world for children to benefit from the protection of their families, to imagine that everyone under 18 in poor households with few economic opportunities should stay quietly at home just did not seem reasonable or to be in the young people's best interests. However, my response later on was to

wonder whether this message was really consistent with a human rights approach. Why shouldn't adolescents make their own way in the world? Might it be that we think some cultures are so inclined to abuse young people (particularly young women), that they should not be allowed out by themselves? This rather smacks of Saudi Arabia's attitude to women, a completely paternalist view which does nothing to empower young people.

A very different approach is taken in a handbook published at the end of 2003 by an organisation also based in the United States, the International Organization for Adolescents (IOFA), together with two others in Latvia, the Youth Health Center Council of Latvia (LJVCP) and GENDERS Community Youth Organization. The handbook is called *Smooth Flight, a Guide to Preventing Youth Trafficking*.⁴ Before drafting the handbook, the three organisations, working together as the Project for the Prevention of Adolescent Trafficking (PPAT), carried out a baseline survey in Latvia of more than 3,000 young people aged between 14 and 25 about their experiences and attitudes to working abroad. It found that 66 per cent aspired to work abroad, while 11 per cent (305) had already done so. In the light of this finding, the organisations involved concluded that it was better to give advice to the young people who were thinking of migrating, in other words to empower

³ From the ICMC web-site: www.icmc.net/docs/en/programs/indostate

⁴ Alison Boak, Amy Boldosser and Ofronamu Biu, *Smooth Flight: A Guide to Preventing Youth Trafficking*, 2003, available at <http://www.seerights.org>.

them and help them avoid falling into the standard traps which traffickers use, than to broadcast the message that “You shouldn’t leave Latvia.”

Their inclination to take this approach seems to have been strengthened by other findings. They discovered that among the young Latvians who had worked abroad, nearly half had not checked to see if the job agency or opportunity was safe and legitimate before setting off. Just over a third had not signed or reviewed an employment contract. As far as basic precautions against getting into trouble were concerned, more than a third had not kept a copy of their passport with relatives or friends and less than a quarter had informed friends or relatives of a codeword or message which would indicate that they had got into trouble and needed help. Clearly, there was a great deal more which they could be doing to protect themselves - not to prevent them going abroad, but to prevent them ending up in the forms of abuse associated with trafficking.

Also in Europe, a very different approach has been taken in circumstances where much younger children have been taken abroad to earn money in circumstances that appear invariably exploitative. For more than five years, younger Albanian children, aged from seven to twelve or so, have been taken to neighbouring Greece to earn money for their ‘controllers’ by begging and hawking. In

the late 1990s they looked visibly ragged, offering to wash car windscreens at traffic lights in towns such as Thessalonica. More recently, their appearance has improved and last year nine and ten-year-olds were to be seen playing musical instruments in the town’s restaurant area and asking diners for money. To make an analysis of their cases more difficult, some now attend school in Greece (but can still be seen begging late at night) and may be accompanied by their actual parents, rather than an unrelated (or distantly related) controller or ‘pimp’.⁵ However, most cases still involve trafficking, with children being brought to Greece to make money for people who are not related to them.

The Albanian youngsters were clearly taken out of school at home before finishing their compulsory education and are reported to have been subjected to systematic ill-treatment by their controllers. This puts them in a very different category to older teenagers who have left school and even to younger children who are not routinely subjected to ill-treatment. Shortly before the Olympic Games this year, the Swiss-based non-governmental organisation (NGO) *Terre des Hommes*, which had been investigating their predicament and collaborating closely with a Greece-based NGO, ARSIS, launched an appeal simply to stop young Albanian children being taken to earn money in Greece. This appeared justified because all the children

⁵ Terre des Hommes Foundation, *The Trafficking of Albanian Children in Greece*, Lausanne, January 2003.

involved appeared to be suffering harm as a result of being taken to Greece.

The difference in approach between Albania and Latvia is obviously based in large part on the different ages of the children involved. In other parts of the world, however, the school leaving age and laws stipulating a minimum age to enter employment are far less significant. In some regions it is virtually the norm for children to start work at the age of the Albanian youngsters being trafficked to Greece.

Programmes to prevent trafficking are not confined to broadcasting a message to young people or their parents, advising them against migration. In Southeast Asia and West Africa community level committees have been set up, usually within a village, to prevent children from being trafficked. However, there is a risk that those in charge of preventing trafficking either do not know or do not care how to distinguish between ordinary cases of emigration and cases specifically of trafficking.

Within West Africa, one country, Mali, has done more than any others to put an end to the trafficking of both young children and adolescents. The country has a long history of migration, for the agricultural season is relatively short, so teenagers as well as adults have for many decades left their villages during the dry season to seek work elsewhere. These

days, emigrants leave for longer periods. Huge numbers of adults travel to Europe and adults, adolescents and younger children all head south, to either Côte d'Ivoire (Ivory Coast) or Guinea in search of work.

In the late 1990s both the public and elected politicians reacted in horror at reports that some Malian youngsters were being seriously ill-treated in Côte d'Ivoire while working as domestic servants and as farm hands. The Malian Government signed a Cooperation Agreement with neighbouring Côte d'Ivoire in September 2000 to try and stop trafficking and to facilitate the return of young people who had been trafficked. The following year Mali introduced a requirement that all children under 18 travelling abroad should have a formal travel document ('titre de voyage'). This was supposed to be available from local government offices and required parents of any under 18s crossing a frontier to have signed it and to have specified the child's destination (which, of course, most adolescents migrating to look for work do not know in advance). Counter-trafficking surveillance committees were set up at village level in areas from which children were thought to have been trafficked; the penalty for child trafficking was increased from five to twenty years' imprisonment.

Two years after the counter-trafficking measures started, two independent researchers investigated their impact.⁶

⁶ Sarah Castle and A?sse Diarra, *The International Migration of Young Malians: Tradition, Necessity or Rite of Passage?* 2003.

They interviewed young people who had been abroad to work and found that, far from making their journeys safer, the new measures were causing hardships. Part of the problem was the preventive measures themselves, while a large part was the way they were being implemented. Forms to obtain travel documents were supposed to be available locally, but were not; and more than a year after they were formally introduced, community leaders and parents were still not aware that they were needed. The researchers noted that whether young migrants have correct documentation or not, "Police and gendarmes relieved them of very significant sums of money in exchange for letting them go over international borders". They found that the village level surveillance committees did not operate in the way that the authorities intended, in large part because the notion of 'trafficking' was not understood properly (or was not adequately translated into local languages, with the result that it was assumed to refer to all cases of young people going abroad). They noted that surveillance committees appeared to want to stop any young people from migrating: "Children appeared to be almost hunted down and 'arrested' by local leaders if they attempt to leave."

Evidently, well intentioned measures to stop human trafficking - in this case to stop Malian children from being subjected to abuse amounting to slavery abroad - may be undermined by the way they are implemented, especially if they have the effect of obliging people who are want to migrate to resort to even more

clandestine methods to do so. They also easily become counter-productive if they are 'blanket' measures, instead of carefully targeted ones. Preventing trafficking by warning parents and adolescents about the risks connected with migration is one thing, but using the slogan 'STOP' is another.

Stopping the migration of young people versus a 'child rights approach'

The 'child rights approach' argues that children should be allowed to migrate if this results in a general enhancement of their human rights. The disadvantage with advocating this approach is that it does not give a clear message to law enforcement personnel (including immigration officials), legislators or the public about what should or should not be allowed. While activists opposed to all child labour suggest that the minimum age for migration should either be 18 or fixed at the minimum age for legal employment (14 in many developing countries, sometimes 15), many human rights advocates think these minimum ages are too old and are at odds with the reality in areas of the world where children have to get involved in income-generating activities much younger if they (or others in their families) are not to go hungry.

Are there any obvious alternatives to setting a minimum age for migration?

Can we, from a human rights point of view, conclude that it is very unlikely that children below a certain age, such as eight or nine, or eleven or twelve, are going to benefit from being sent away from their family or home to live and work with others? Or are there always enough cases in which the experience has been positive to make this approach unacceptable? Is it quite reasonable, for example, for a young person to leave home in search of work when they make 'an informed decision' themselves, but not if their parents or relatives decide for them? This might sound like an empowering approach, but simply does not take into account the reality in which children find themselves.

A particular problem has arisen in our 'globalised world' when children from one region, where leaving school and starting work quite young are the norm are brought to industrialised countries, where the standards are quite different. Some are brought deliberately to be exploited, for example as domestic servants in France or the United Kingdom, but others are sent to richer European Union countries in the simple hope that they will fare better than at home. There has been a substantial rise in this second category of child migrants over the past decade, with the adolescents concerned referred to as 'unaccompanied minors' or 'separated children'. In the countries where they arrive, the authorities continue to view the various intermediaries who arrange their migration as 'traffickers' or 'people smugglers', rather than as intermediaries who may genuinely have the young

people's best interests at heart!

Perhaps the real issue is about what happens to young people after they have moved away from home, when they are exploited in a harmful way. In this case, as suggested early on, more emphasis should be put on identifying unacceptable forms of exploitation and ending them, than on stopping children or adolescents from moving around.

Either way, it seems clear that there is a major distinction between children of compulsory school age leaving home (in areas where attending school is either the norm or a real option) and being taken elsewhere to earn money, and those of adolescents who have left school and need to find a way of earning a regular income. In the first case, a programme to prevent trafficking which encourages families to keep their children at home may be appropriate: in the second, it almost certainly is not.

Criteria for assessing counter-trafficking initiatives

The habitual yardstick applied to evaluate any measures involving children is to ask whether their 'best interests' are being upheld or not and whether the views of children on the appropriateness of the measures have been collected and taken into account. In the case of counter-trafficking programmes, we can probably

already draw quite a number of additional conclusions about what constitutes 'good' practice.

The first of these is rather negative. Good practice means avoiding bad practice and adopting the positive principle that both the medical profession and others have committed themselves to upholding: 'Do no harm' to the young people you are concerned about.

As harm is often inflicted unintentionally, this principle means investigating all the possible unintended consequences of efforts to stop child trafficking and to protect trafficked children - and doing so on a more regular and ongoing basis than is currently usual. This is my second conclusion: that good practice requires far more independent evaluation and sharing of lessons learnt between different agencies than at present. Simply asking children whether they think a particular programme to prevent child trafficking sounds like a good idea is unlikely to generate much valuable comment: however, questioning children who have been affected by efforts to prevent trafficking, as in the Mali case mentioned above, or who are involved in programmes to provide protection, reveals much more meaningful feedback.

My third conclusion is based on the huge diversity involved in trafficking and the need to base initiatives on what is happening in practice, not what we think is happening according to either

theoretical models or imperfect legal definitions. This means taking account of the fact that 'trafficking' and the exploitation associated with it are part of the wider phenomenon of migration, that many young people migrate to work before they reach 18, and that some end up being exploited in similar ways to trafficked children because of the immigration and employment policies of the countries they migrate to. The implication here is that researchers should be encouraged to seek information about the circumstances in which young people migrate and their experiences in general - including the various forms of harm and abuse which they suffer, but without focusing exclusively on the downside. In this way, they should identify positive migration experiences which young people have, as well as problems which young migrants experience (and which human rights activists should help them deal with), which might not conventionally be classified as 'trafficking'.

My fourth conclusion is that good counter-trafficking initiatives should aim to defend and enhance the human rights of the young people involved and give explicit attention to ways of upholding their best interests. When I started out my search for good practice more than a year ago, I thought the UN High Commissioner for Human Rights' *Recommended Principles and Guidelines on Human Rights and Human Trafficking*⁷

⁷ <http://www.unhchr.ch> for the UN High Commissioner for Human Rights' Recommended Principles and Guidelines.



Mike Dottridge currently works as an independent consultant based in the UK, focusing in particular on issues related to the trafficking of children and adolescents. Mike is the former director of a London-based human rights NGO, Anti-Slavery International. He has also worked at the international secretariat of Amnesty International in several different capacities linked to sub-Saharan Africa. Mike is the author of a report published by the International Federation Terre des Hommes in May 2004: "Kids as Commodities? Child trafficking and what to do about it." Author's contact details: mikedottridge@btopenworld.com

issued in 2002 were the closest thing to an international minimum standard for what ought to be happening. Most of the 17 Principles recommended by the UN High Commissioner apply as much to people under 18 as to those who are older. They start off by stressing that "the human rights of trafficked persons" should be "at the centre of all efforts to prevent and combat trafficking, and to protect, assist and provide redress to victims."

However, in 2003 UNICEF issued the *Guidelines for Protection of the Rights of Children Victims of Trafficking in Southeastern Europe*.⁸ These set out a gold standard as far as measures to protect children suspected of having been trafficked are concerned. They cover 11 separate issues, from the initial identification of children who may have been trafficked and the appointment of a guardian for every child whose case comes to the attention of the authorities (the guardian is subsequently responsible for ensuring that all decisions take that child's best interests into account), to implementation of a durable solution, including possible return to the child's country of origin. These Guidelines focus on the way young people should be protected if there is any suspicion that they have been trafficked: consequently they offer less useful guidance as far as efforts to prevent child trafficking are

concerned. For the moment, therefore, the only international guideline on prevention is the general one contained in the UN High Commissioner for Human Rights' *Recommended Principles and Guidelines*, which emphasise the need to "take into account demand as a root cause" (Guideline 7 on 'Preventing trafficking'). This article has not addressed all the various ways in which counter-trafficking programmes can go about this, as it focused on initiatives in the areas where young people are recruited. However, there are clearly many different ways in which the demand for children involved both in commercial sexual exploitation and in various forms of servitude and forced labour can be tackled, which can be consistent with efforts to enhance the human rights of the young people concerned. Stopping child trafficking is not just about urging young people to stay at home and twiddle their thumbs: it is about finding the best way to provide support to young migrants and to ensure that the labour market is not riddled with unacceptable forms of exploitation of either young children or of adolescents or, for that matter, of adults.



⁸ <http://www.seerights.org> for UNICEF's Guidelines for Protection of the Rights of Children Victims of Trafficking in Southeastern Europe.

Europeans Confused About Sex and Rights, Say Migrant Workers

by Laura María Agustín



From the point of view of many migrant sex workers, Europeans are confused about both sex and rights. At tourism sites away from home, Europeans seem sophisticated about the possibilities of holiday sex and affection. Many invite new friends or facilitate trips to Europe for work. European embassies grant hundreds of visas every day for ‘artists’ and ‘dancers’, knowing that the work will be in the sex industry. Yet once in Europe, migrants find that, despite abundant opportunities to work-meaning that their services are desired-they themselves are despised, pitied and harassed, often more so than they would be at home. What is the problem? Why do Europeans in so many cases help them travel to Europe only to demonise, chase and deport them shortly afterwards? Why do police harry and blackmail sex workers, as though they had no basic human rights? Why do so many people give out condoms, as if sex workers didn’t know about them

already? Why can’t anyone help with what’s really important-becoming ‘legal’ migrants with the freedom to live and to work? Isn’t Europe supposed to be more advanced than ‘third-world’ countries?

More working people are making the trip to Europe all the time. For poorer women, the jobs available at home are often domestic and sexual. Since the same jobs are available in Europe and are much better paid, travelling makes sense. Better wages mean the possibility of helping parents, sending a child to school, building a house or starting a business. But economic factors are only part of the story; others include the desire to see famous places, to be a dancer, to be admired, to meet new people, to marry. These are the dreams of poorer girls from cultures around the world, including European girls. Valerie Walkerdine¹ has criticised British middle-class horror at juvenile talent contests, noting that

¹ Walkerdine, Valerie. 1997. *Daddy’s Girl: Young Girls and Popular Culture*. Cambridge MA: Harvard University Press.

singing and dancing talents are among the few from which working-class girls have not automatically been excluded. This is precisely the situation facing women from poorer countries who travel to Europe. While understanding that there will be a sexual aspect to their work, they also understand they are being granted visas and work contracts as dancers and artists, and they often feel themselves to be dancers and artists. Yet once they arrive, they are usually overwhelmed with problems stemming from the precious documents that got them there. Illegal or quasi-legal, based on spurious or false information, these 'papers' put migrant workers in the power of entrepreneurs and police.

Migrant sex workers talk constantly about how to become 'legal', but they also talk about all day- to- day topics, such as where to live, what to eat, how to use the metro, where to shop, which hair salon to use, the oddities of other languages, how to get health care for children and the news from home. For most, the way they are making money, whether it is enjoyed, despised or merely preferred to other options, is not the central issue. Once in Europe, even if they are unlucky and their situation turns out to be bad, they still want to stay, earn money, pay off debts and make the trip worthwhile. In order to avoid the police and look for better jobs, they often move from city to city and country to country. Families, friends, entrepreneurs and criminals offer the services that they need: documents, rides, introductions and hiding places. Neither 'prostitution' nor 'sex work', therefore, are necessarily

interesting nor relevant subjects to people who sell sex; what is interesting and important is that millions of people are disposed to pay for sexual services every day.

Europeans, on the other hand, have focused for more than a century on 'prostitution' as an isolated, two-party, sex-for-money transaction situated in the social margins. Medical, socio/criminological and psychological discourses have fixated on prostitutes rather than clients, on women rather than men, on individuals rather than families or communities and on particular body parts rather than on whole persons. For migrant sex workers, the result is that NGOs, feminists and governments relentlessly construct them as objects to be talked about, moved about, pitied and seen as needing 'help'. Clients continue to abound, and businesspeople to facilitate jobs, yet a competing discourse-that of the social control and exclusion of 'illegals' and other 'undesirables'-continues to chase them around and deport them out of Europe. No wonder many migrants say Europeans are confused-they certainly are confusing.

Many feminists compete and argue amongst themselves about how best to help sex workers. The problem with this impulse to help can be seen as far back as Josephine Butler's famous comment that if she were a prostitute she would be crying all day. Present-day abolitionists continue this projection of their own ideology of sex onto all other women, assuming that they know where lies some true, essential, correct pleasure and correct type of work. Sex-worker rights

◆ESSAYS◆

feminists often focus on issues of identity, converting prostitutes into sex workers in order to empower them. All of these 'helping' strategies involve much talking, writing and trying to influence government policy. But migrants themselves rarely even hear about them.

'Helpers' who visit European sex work sites sometimes talk as though migrant sex workers had been carrying water on their heads only yesterday, while in fact most have lived in large cities in their own countries. 'Pimps' and 'traffickers' are seen as controlling them completely and clients as exploiters. Postcolonial feminists have criticised this tendency to infantilise non-Western women, to construct them as 'traditional', domestic, backward, victimised and generally in need of help. Consistently agency and power are taken from these subjects, making them passive victims of imperialism, development and violent men.

But migrant sex workers may not see themselves as permanent victims until they are taught to by outsiders. Many feel they are passing through a bad moment, which they are trying to improve and not necessarily by getting out of the sex industry. Instead, their priorities are escaping from people who want to control them and becoming less vulnerable to abuses of their basic rights. Feminists who insist on telling them that they are victims of life's worst experience are assumed to be unfamiliar with other jobs available to poor women, like domestic service, cleaning toilets and caring for other people's babies and elderly

relatives. The essentialising of prostitution as a sex act completely overlooks its many other aspects, such as flexible schedules, instant cash, and the possibility of supporting one's own elderly relatives and babies, not to mention pleasures like travel and being admired and desired.

Self-determination is a basic principle of human rights. The treatment of migrants who sell sex in Europe, not only by local, national and trans-national governments but also by many who want to help women, violates this principle. Respect for human rights supposes that the subject herself is given the opportunity to participate in matters concerning her life, a tenet often violated when women are described as 'trafficked victims' who need to be sent home. What migrants in general lack in Europe is citizenship, an acceptance that they are full participants in society that would grant them the same rights as others who live and work there.

And for those who study these migrants: Why aren't they seen as working class? Why aren't they included in studies of trans-national diaspora? The disempowering excuse usually given says that it is 'stigmatising' to talk about people as prostitutes at all. This notion disappears them from discourses where their experiences should be central and facilitates the continuing construction of migrant sex work where it's been for more than a century: in the European margins.



Laura Agustín has a doctorate from the Open University (UK). Her research concerns the connections between migrations of non European women to Europe and the large social sector which proposes to help them. She has worked in educacion popular both in Latin America and with migrants in the west, most recently receiving funding for an anti-trafficking project with sex workers in Ecuador. She has been an evaluator of social programming for the ILO and the European Commission. She moderates an e-mail list on the sex industry and is setting up a website for migrant women. Contact: laura@nodo50.org



'Traffic Controls': Legal Responses to Transnational Migrations

by Ratna Kapur



Introduction

The issue of cross border movements remains at the centre of the international agenda in the contemporary period. The issue of female migration invariably continues to be addressed within the framework of trafficking discourse and its focus on morality, victimization and law enforcement. The issue of trafficking has become a centrepiece in the struggle for women's rights, though there remains a highly fractured and contentious debate between women's groups, human rights organisations and social justice movements as to the best way of addressing this issue in law. In this article I have set out the different legal frameworks for addressing the issue of trafficking and the strengths and limitations of each. These include the criminal justice approach, labour rights approach and human rights approach. I argue that the issue of trafficking cannot be addressed in isolation to the global flows of people

and that neither the existing nor proposed frameworks address this broader canvass. Human trafficking will continue until the issue of trans-national migration, within the current context of globalization, is recognized and addressed. (Kapur, 2005, forthcoming)

What is evident from the legal responses to trafficking is that they have been informed by a number of agendas that do not necessarily foreground the issue of women's rights or the broader processes that are triggering the global flows of people. The prevailing discourse marginalizes the issues of migrants, labourers, and sex workers, who move or maybe moved for a plethora of reasons and may suffer abuse or harm either in the course of movement or in their place of work. More recently fears about immigrants who may threaten a nation's security have also tended to produce an emphasis on stopping clandestine movement rather than addressing the

causes of such movement (that move beyond the intent to threaten to destroy or attack certain countries in the West). The issue of global flows of movements through clandestine and irregular means remains almost entirely un-addressed in contemporary legal responses. The dominant focus on criminal justice, border security, and conservative sexual morality serves multiple agendas that have little to do with the rights and concerns of the victim and deflect attention from the push and pull factors that produce clandestine movements. Such a focus also tends to deflect attention from the fact that despite years of anti-trafficking rhetoric, policies and laws, the numbers of those who are being trafficked are, according to the anti-trafficking players themselves, increasing.

More recently there has been increased attention paid to the rights of those who are trafficked, the causes of trafficking and the need to address the issue in ways that move beyond a criminal law and border control approach. In the rest of this essay, I set out the different framework responses to human trafficking. I elaborate on the criminal justice approach, which is the dominant response to trafficking; and set out the features of two other responses, that is, a labour rights approach and a human rights approach. I address the strengths and limitations of each approach and the

consequences each has for the trafficked person. I argue in favour of an approach that addresses the issue of trafficking within the broader framework of migration and the demands of economic globalization and the market.

Criminal Justice

The dominant narrative regarding human trafficking is one that tells a tale of young women (more often than not from the global south) being lured by false promises or duped into accepting offers of jobs in foreign lands, only to end up in situations of abuse and exploitation, and invariably in the sex trade. It is a story that has sparked emotional public reactions in different parts of the world. It has also triggered a flurry of activity on the part of states to adopt laws, draft statements and produce declarations that address the issue. These initiatives are invariably phrased in the language of protecting innocent women and punishing evil traffickers and the breaking up of the criminal networks that facilitate trafficking. The concern over human trafficking is not a new one¹ and the debates are frequently reminiscent of those that took place during the concern

¹ The international legal responses to the issue of trafficking have a long history. See for example, the International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921, 53 U.N.T.S. 39, 42; International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 53 U.N.T.S. 49; Convention for the Suppression of the Trafficking of Persons and the Exploitation and Prostitution of Others, Dec. 29, 1949, 96 U.N.T.S. 272.

over the issue of 'white slave traffic'.²

The prevailing approach to trafficking is informed by anti-prostitution campaigns. This approach is concerned primarily with the issue of sexual exploitation and the commodification of women's bodies. It is an approach that is supported by women's groups as well as conservative and orthodox religious groups. (Shapiro, 2004)³ It is focused primarily on the purpose of the movement, rather than on the process (for invariably it makes no distinction between forced and voluntary movement). The focus of the legal initiatives is to discourage movement, introduce heavy penalties against traffickers and emphasize the strategy of 'rescue, rehabilitation, and return' of the victim.⁴ Even right wing organisations such as the Christian Evangelicals in the United States are equally concerned with focusing on the

issue of sex trafficking. (Bumiller, 2003; Shapiro, 2004) As a result, a considerable sum of money is also been pumped into anti-trafficking agendas that take a stand against prostitution.⁵ These initiatives rarely focus on the rights, needs or demands of the persons who ostensibly have been trafficked. Even under the recently adopted United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (hereinafter "UN Protocol"), there are no mandatory obligations on the part of states to provide assistance to persons who have been trafficked.⁶

The criminal justice approach has been the prevailing response to trafficking. The UN Protocol, the primary response to human trafficking at the international level, emphasises law enforcement. It has been drafted under the auspices of the

² See for example the See International Agreement for the Suppression of the White Slave Traffic, U.N. Sales No. 1950.IV.1 (1904); International Convention for the Suppression of the White Slave Traffic at Final Protocol, United Nations Sales No. 1450.IV.2 (1910); also International Convention to Suppress the Slave Trade and Slavery, Sept. 25, 1926, 46 Stat. 2183, 60 L.N.T.S. 253; International Labour Organisation Convention Concerning Forced or Compulsory Labour (No. 29), June 28, 1930, 39 U.N.T.S. 55. See also See Jo Doezema, *Loose Women or Lost Women: The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women* (paper presented at the 40th Annual Convention of the International Studies Association, Feb. 16-20, 1999), available at <http://www.ciaonet.org/isa/doj01/doj01.html> (who argues the terms "white slave" and "evil trafficker" images are used by abolitionists to arouse sympathy for victims of trafficking)

³ See for example the approach of the Coalition Against the Trafficking in Women, at <http://www.catwinternational.org/>.

⁴ See for example the work of Sanlaap in India available at <http://www.sanlaap-sa.org/> and Maitinepal in Kathmandu, Nepal, available at <http://www.maitinepal.org/>

⁵ See the USAID website at http://www.usaid.gov/our_work/cross-cutting_programs/trafficking/ which states that "An effective antitrafficking strategy depends upon partnerships. Organisations advocating prostitution as an employment choice or which advocate or support the legalization of prostitution are not appropriate partners for USAID antitrafficking grants or contracts."

⁶ See also the South Asian Association for Regional Co-operation Convention on the Trafficking in Women and Girls for the Purpose of Prostitution, 2000 (hereinafter "SAARC Convention")

Convention on Transnational Organized Crime, and requires that a state party to the UN Protocol must first also be a party to the Convention.⁷ Human trafficking is one of several concerns under the Convention, which also addresses drugs and organized crime. Parties to the UN Protocol are required to criminalize trafficking under their domestic laws, and to adopt policies that will prevent trafficking. There are several provisions relating to services and assistance to victims, but these are not mandatory.⁸

The emphasis on criminal justice and law enforcement measures is informed by the assumption that trafficking invariably involves acts of coercion, deception, fraud and/or kidnapping. There is also a prevailing assumption that trafficking is linked to prostitution and as prostitution is either regulated or considered a crime in most domestic jurisdictions, there is an overwhelming association of trafficking with criminal activity. Finally, there is a sense that borders of the home state are being transgressed and in the context of the heightened anxiety around foreigners (and foreignness) there is a desire to emphasise border controls and tighten border security.

There are however several limits to a criminal justice approach to trafficking. After ten years or more of developing

anti-trafficking strategies that are based on a criminal justice and law enforcement perspective, the issue of trafficking has not been resolved. The question also arises as to what is the impact of criminal law intervention strategies on the trafficked persons. In the name of protecting these people are intervention strategies merely serving to further criminalize and stigmatize the victim? Are women empowered by criminal law interventions? For example, in 1999, several hundred women working as prostitutes in the Tanbazaar, a brothel area in Dhaka that has been in existence for 200 years, were evicted from the area. The eviction was part of the Bangladesh government's anti-trafficking initiative that was supported by several local women's rights groups and non-governmental organisations. The raids were conducted on the assumption that the women were all trafficked. The result was that this community was dispersed, and began to work on the streets. They became what are known as 'floating prostitutes.' The number of floating prostitutes increased dramatically as they had been provided no alternative means of livelihood. During the three-month monsoon period in Dhaka, their situations worsened, as they remained vulnerable to the elements, and in many instances were rendered destitute. A criminal justice approach in this instance clearly

⁷ Article 37 of the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Supp. No. 49, at 44, U.N. Doc. A/45/49 (2001). Article 37 states that Parties to the Convention are not bound by the Protocols unless they also become Party to them. It also provides that the Protocols shall be interpreted together with the Convention.

⁸ Article 6(3) Trafficking Protocol.

undermined the rights of the women, and did nothing to address the problem of trafficking. In fact, one consequence was to leave the women worse off than before the raids were conducted and the evictions ordered.

Another example comes from the former National Rapporteur on Trafficking in Nepal who participated in a seminar organized by the Centre for Feminist Legal Research, New Delhi, in co-ordination with the OHCHR in January 2004. (CFLR Report, 2004) Nepal is a country whose economic and political situation has been badly disrupted by the Maoist insurgency. Many young men and women are unemployed. As a result of the collapse of the tourist industry and fearful of being recruited by the Maoist insurgency, many of these young persons are seeking to leave the country to find jobs abroad. In 2003, a busload of 23 Nepali women recruited for jobs in the UAE by registered labour recruitment organisations in Nepal, crossing the border into India where many of the women were to catch their flights to the UAE from New Delhi. However, anti-trafficking interventions, in the form of border interception posts, developed by some local ngos and the state and supported by considerable donor funding, had been set up at the Nepal and India border. The bus was intercepted, and the women were sent to the shelter home of the ngo who led this initiative. The interception was conducted on the assumption that that all the women were minors, which turned out to be untrue. Two of the women were young

adolescents below the age of 18. A second assumption was that all the women had been trafficked, which again proved to be false. As a result of the border interception and subsequent 'incarceration' in the ngo shelter, these women had lost the money that they had saved to pay for their journeys, lost the jobs that were awaiting them in the UAE and were forced to return to their already decimated communities. As there was no accountability on the part of the donors or ngos for the loss, harm and damage that they cause, the women were left without any means of redress, either in terms of compensation or jobs.

Criminal justice interventions thus need to be evaluated to assess the possible impact that such interventions may have on the lives of those that they are ostensibly intended to protect. There is also a serious concern over the role of ngos, involved in anti-trafficking strategies, who fail to attend to the needs of the victim or to develop criteria for distinguishing between victims and those who are moving consensually or clandestinely. A central concern with the criminal justice approach is that it fails to distinguish between consensual and forced movement. (Gallagher, 2001: 984-988) There has been a constant link between issues of trafficking and prostitution. As some advocates, including feminists and human rights groups, are of the view that it is impossible to consent to prostitution this argument is invariably conflated with trafficking, and the issue of consent deemed irrelevant. The failure to de-link prostitution from trafficking has

produced interminable problems. Once again this concern is not new. In the first anti-trafficking Convention of 1910, the issue of consent was irrelevant.⁹ The 1933 and 1949 Conventions also treated consent as irrelevant.¹⁰ The problem with removing consent from the definition is that it reinforces an antiquated position on women as incapable of consenting, denying them agency and the ability to choose. The fact that women do choose to move and resort to traffickers and smugglers to facilitate such movement has been more recently documented. (Andrijasevic, 2003) The focus of the anti-trafficking laws on prostitution has also deflected concern away from the other purposes for which people are trafficked. Although the UN Protocol has shifted away from the ‘immoral purposes’ that were a focus in earlier conventions, the link between trafficking and prostitution in the public arena remains.

Indeed the UN Protocol has expanded the definition to include forced labour, servitude, and other slavery like practices. It also excludes the issue of consent (if trafficking is proved) and includes prostitution as well as sexual exploitation. The UN Protocol provides that “Exploitation shall include, at a minimum, the exploitation of the

prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” (Article 3) The expanded definition is intended to cover those persons who may be forced to work in sweatshop conditions, or exploitative domestic work. However, the UN Protocol has been given a very narrow interpretation at the domestic level, for fear that a broader interpretation would embrace a broad category of economic migrants and increase demands on states to provide for such persons.¹¹

An unfortunate consequence of the UN Protocol is that States have enacted laws, ostensibly for the benefit of women, that severely restrict women’s rights to movement and mobility. (Coomaraswamy, 2000:paras 89-97) Some examples include the 1998 law in Bangladesh that 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. (Fernandez, 2003) The reasons given by the Indonesian

⁹ Article 1 International Convention for the Suppression of the White Slave Traffic at Final Protocol, United Nations Sales No. 1450.IV.2 (1910)

¹⁰ Article 1 of the International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 53 U.N.T.S. 49 and Article 1(1) of the Convention for the Suppression of the Trafficking of Persons and the Exploitation and Prostitution of Others, Dec. 29, 1949, 96 U.N.T.S. 272

¹¹ The SAARC Convention has ignored the definition provided in the Protocol and confines the definition of trafficking to prostitution and sexual exploitation.

government were for the government to facilitate a review and enhance the skills of the potential women workers before departure. In the same vein, although not entirely prohibiting migration by women, an amendment to the Nepal Foreign Employment Act, 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 from the eastern Shan State, imposed rules prohibiting all women in this area between the ages of 16 and 25 from travelling without a legal guardian. (Belak, 2003)

The UN Protocol and other criminal justice measures intended to combat trafficking are thus intended to benefit the woman who is able to represent herself exclusively as a victim (for example, she did not pay for any services in the course of her movement), is not a sex worker, nor a voluntary migrant. She should be able to demonstrate that she was forced into a country and did not have any intention of remaining in the country of destination on a permanent basis. If she was an innocent victim who was subsequently sexually exploited by her traffickers her moral claims to protection will be strengthened.

(Demleitner, 2001) If she is willing to assist in the investigation and prosecution of the case, she will receive certain benefits such as the right to temporary stay.¹² But ultimately her desire should be to go back home. There is little this framework offers to the victim by way of support, understanding and recognition of her rights.

Labour Rights Framework:

Those who advocate the labour rights framework argue that that the transnational female migrant is vulnerable to trafficking partly because of the lack of protection afforded to her at the site of labour. In this respect trafficked migrants and other migrant workers, especially those who are undocumented, share the same concerns, which could be addressed through the globalisation of labour standards or other measures that focus on the labour rights of migrants. A labour rights framework de-links the process of migration from the site of labour and focuses on addressing demands for forced or exploitable labour as well as on conditions at the site of labour. The advocates of the labour framework argue that the purpose of trafficking is to render the trafficked

¹² See for example the US Victims of Trafficking and Violence Protection Act, 2002 (which allows women the right to a temporary protection visa on the condition that they co-operate with the criminal investigation and prosecution of the case against her traffickers)

person more exploitable in order to make the activity more profitable. Consequently, recruitment, transportation, use of force or deception are subordinate to the ultimate function of trafficking - harbouring the trafficked person in situations of forced labour or slave-like conditions for the ultimate purpose of maximizing profit. Legal interventions to counter trafficking should therefore be focused on combating the demand for forced labour and advocating for the enforcement of labour standards and improvement in the conditions of work.

Some of the work of the International Labour Organisation on legal migration for employment and elimination of discrimination may be applicable to some forms of trafficking. The ILO initiatives would not apply to migration for sex work unless sex work was permitted in the country of destination. (Kempadoo, 1998) The 1930 Forced Labour Convention provides that state parties agree to “suppress the use of forced or compulsory labour in all its forms within the shortest possible period.”¹³ The definition of forced or compulsory labour includes, “all work or service that is exacted from any person under the menace of any penalty and for which the said person

has not offered himself voluntarily.”¹⁴ In 1975, the ILO adopted the Migrant Workers (Supplementary Provisions) Convention (“Migrant Workers Convention”).¹⁵ The primary focus of the Convention was to suppress the clandestine movement of migrants and their illegal employment and to stop persons organising such movement as well as those who employed illegal migrants. It was only in the 1970’s that these initiatives began to be used to address the issue of human trafficking, primarily focusing on trafficking in children. More recently the ILO has begun expanding its conception of forced labour and examining the relationship between forced labour and human trafficking for both children and adults. The ILO has also acknowledged that the sex trade industry has become an important commercial sector in some parts of Southeast Asia and contributes considerably to the national income.¹⁶

Some commentators have pointed out that the policies of destination countries often make migrant women even more vulnerable to trafficking, abuse and exploitation. For example, in Lebanon, passports of migrant workers are regularly confiscated, and even though

¹³ Article 1, International Labour Organisation Convention Concerning Forced or Compulsory Labour (No. 29), June 28, 1930, 39 U.N.T.S. 55

¹⁴ Article 2(1)

¹⁵ Migrant Workers (Supplementary Provisions) Convention, June 24, 1975, 1120 U.N.T.S. 323, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C143> (which addresses the issue of legal migration for employment purposes).

¹⁶ Press Release, International Labour Organisation, Sex Industry Assuming Massive Proportions in Southeast Asia (Aug. 19, 1988), available at <http://www.ilo.org/public/english/bureau/inf/pr/1998/31.htm>