

migrant domestic workers are subject to Lebanese criminal law, they are not subject to the country's labour law. Proponents of the labour framework argue that unilateral efforts by sending countries will not prevent trafficking. Instead, similar measures need to be instituted by the host and transit countries. The labour framework has some limitations. Problems with its effective implementation must be addressed through labour campaigns throughout the world, not just in the countries of origin. A major shift towards a labour framework would include a more widespread ratification of the Migrant Worker's Convention (MWC) by both the countries of origin and destination; this would go a long way in preparing the ground for promoting the rights of migrants.

Among the limitations of a labour rights framework is the fact that it does not encompass the multiplicity of the female migrant's experiences. (Sasikumar, CFLR report, 2004:37-38) For example, under the current labour regimes in most countries migrant sex workers would not benefit from labour protections as there is no formal recognition of sex work as a form of labour. In addition, the labour framework focuses on the market forces and employer practices as the source of exploitation whereas sex worker organisations often identify the state, particularly the police harassment and oppression, as one of the prime causes

of the violation of their rights. (Doezema, CFLR Report, 2004:37)¹⁷ Shifting the locus of concern from the violence and abuse perpetrated by state agencies against women in the sex industry to individual acts of oppressive traffickers can result in a weakening of anti-trafficking or labour campaigns since the state is no longer implicated or held accountable.

Other gaps in the labour rights framework lie in the propensity for an absolutist rejection of labour sites with substandard conditions. (Sasikumar, CFLR Report, 2004:37-38) There is an increased demand for cheap exploitable labour in the shadow sectors of the informal economy. These are also the sectors that provide employment to the expanding pool of the transnational migrant labour force. As a result of this demand there is a growing debate over the issue of working conditions in precisely those industries in which poorer countries have gained a comparative advantage. (Kabeer, 2004) The demand for globalisation of labour standards and the new discourse of labour ethics advocating the boycotts of industries in the countries that do not enforce international labour standards have turned the comparative advantage of poorer countries into an unfair advantage. This development has also had negative implications for migrant women workers for whom informal and unprotected sites of work are often the only open avenues of work. Therefore, an unequivocal and absolutist call for

¹⁷ See also U.N. International Labour Office, *The Sex sector: The Economic and Social Bases of Prostitution in Southeast Asia* 8, 12 (Lin Lim ed., 1998)

closure of sweatshops and other sites of exploitation may further disadvantage the transnational migrant worker. The argument is not that poor or substandard working conditions ought to be acceptable. The argument is that the critique of labour conditions must be understood against the fact that a demand for more regularised and regulated sites of work could result in pushing the female migrant further underground in the same way that blocking avenues of legal migration might end up pushing her into the arms of traffickers.

The final limitation of a labour framework is that it does not address the full range of human rights issues that are implicated in trafficking, such as the freedom of movement, degrading treatment, and human security. The specific advantage to the migrant is that she is addressed as a worker rather than exclusively as a victim, provided she is not a sex worker. If she is moving primarily for economic reasons, she will still enjoy some protection. However, she cannot bring any individual claim under the existing labour mechanisms that have been established by the ILO. She may also not be able to pursue her traffickers though she can draw attention to employers who may be responsible for her exploitative working conditions as well as government officials who may

be implicated. Finally, the labour rights framework does not address the broader issue of demand for cheap exploitable labour. This demand is the most significant question confronting the issue of cross-border movements and how nation-states ought to respond to such movements.

Human Rights Framework

Trafficking has not emerged within the discourse of human rights in the international legal arena. However, there has been increased attention accorded to this aspect of the issue by the Office of the High Commission of Human Rights as well as different ngos, women's groups and human rights organisations.¹⁸ The problem however is that trafficking remains linked to prostitution and is invariably considered as an issue of violence against women. CEDAW is the only key human rights instrument that has addressed this issue by imposing an obligation on parties to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."¹⁹ It also however, links the issue of trafficking with prostitution.

¹⁸ See Recommended Principles and Guidelines on Human Rights and Human Trafficking, developed by The Office of the High Commissioner for Human Rights (OHCHR); See U.N. Report on the Fourth World Conference on Women, Beijing Declaration and Platform for Action, U.N. Doc. A/CONF 177/Rev.1, U.N. Sales No. 96.IV.13 (1995)

¹⁹ Article 6 of the CEDAW.

One advantage to a human rights framework is that it provides a way in which to hold states accountable for how they treat their nationals as well as other individuals under their control. There is a great deal of evidence regarding government complicity in the area of trafficking and hence the need to ensure state responsibility is critical. A human rights framework also tends to move away from a victim centered approach. It envisages that the subject is endowed with agency capable of exercising rights, rather than as a victim in need of state protection.

The problem with a human rights framework is that the issue of trafficking remains to some extent cast as a 'women's rights' issue and hence framed within the context of violence, especially sexual violence, against women and victimization. To some extent this framework suffers from some of the same limitations as the criminal justice framework discussed above. In order to address the issue of trafficking it must be pulled away from its exclusive link with violence against women and the denial of women's subjectivity or agency. A human rights framework seeks to centre the migrant subject or trafficked person. Most proposals focus on expanding the services available to trafficked persons, including victim assistance in the form of shelter, reflection and the right to stay that is not conditional on her co-operation with investigation and prosecution of her trafficker. (Anti-Slavery, 2002)

Secondly, it is difficult to recognize what constitutes a sincere human rights framework. Almost all of the players in the anti-trafficking arena claim to function within a rights framework. And yet, in light of my discussion of some of these approaches, it is not at all clear that they all have an emancipatory agenda or that they are focused on women's rights at the end of the day. It is important to keep in mind when trying to identify an appropriate human rights framework, that we cannot assume that human rights per se are inherently an emancipatory tool. Human rights are a contested terrain and can be used by less progressive groups or movements to pursue agendas that are consistent with their more conservative ideological ends. Such contests do not necessarily place the rights of the transnational migrant at the centre of the migration or trafficking debate nor adopt strategies that liberate the female migrant. Indeed, even more progressive groups and ngo's have pursued rights strategies in ways that are highly protectionist and serve to reinforce gender stereotypes and women's subordinate positions. Considerable caution and conceptual clarity is needed in formulating rights based strategies and in operationalising those strategies.

Thirdly, there is a need to think about human rights in ways that are not confined to the boxes of sovereignty and the nation state. A human rights approach is focused on rendering states accountable, while there is a gradual erosion of the power and influence of the state especially in the area of migration and the demand for cheap labour. However,

in the process of problematising the nation state, practitioners must be mindful that the nation state has varying significance and capacities in different parts of the world; for example, the notion of the decline of the nation state does not apply as much in the South where it is emerging as a vehicle through which citizens' concerns are voiced or an entity that represents the outcome of resistance to a colonial past.

Nonetheless, there is a need to recognise the increasing role of non-state actors in creating the demand for migration and the role that non-state actors play in facilitating clandestine movement. The problem is that the human rights framework has been state centred - it does not apply to non-state entities. A related critique is that a human rights framework continues to respond to the issue of cross-border movements in terms of individual rights violations. In other words the rights that are implicated flow from the criminal nature of the undertaking. The framework does not address the conditions, factors and processes that lead to human trafficking and clandestine movement in the first place. The issue of trafficking cannot be confined to an issue that concerns only individual rights violations. It requires a much broader lens. Transnational movements require transnational responses. In the same way as capital, goods and services are not being articulated and regulated through a transnational legal regulatory regime, it is critical to address the issue of cross-border movements within a broader transnational framework.

Transnational Frameworks for Transnational Migrations

The human rights framework offers some possibility of centring women's agency and their choice to move. What is required is an expansion of this framework. The human rights approach currently remains confined to a limited set of violations, focusing quite specifically on the violence suffered by women in trafficking situations. The push and pull factors of migration remain un-addressed. The focus remains confined to a framework that is not necessarily addressing the broader picture and issues involved.

It is unlikely that a human rights framework that is confined to a narrow understanding of trafficking as violence, especially sexual violence, against women can address the many layers and complexities that characterise women's cross-border movements. What can a human rights framework do for a woman who may be a sex worker, whose work is illegal in her country of origin, crosses borders clandestinely, experiences some abuse and harm in the course of her movement, but ends up in regular employment in the country of destination? What if the woman is in legal employment in her country of origin, but seeks to cross-borders for better economic opportunities? Suppose she uses clandestine means to cross borders, paying for others to facilitate her movement, and finds that sex work is the only job avail-

able to her in her country of destination? And what if that sex work is illegal in the country of destination? What if a woman is a domestic worker in her country of origin, crosses borders legally, and ends up in an exploitative form of labour, such as in a sweatshop? Or as a domestic worker in a country that does not have laws protecting the rights of such workers?

The question here then is how does the human rights framework serve the women in the above examples? If the movements are clandestine, she will be treated as a smuggled person or trafficked person. In the first example, she is likely to be sent right back. In the second, the best scenario is that she will be given three months temporary residency in the country of destination, and then sent back after that period has expired. In the third instance, she may be referred to a labour court if there is some mechanism for addressing her rights, or she will merely be regarded as trafficked and sent back. If a human rights framework in all of these situations merely results in her being returned to her country of origin, it utterly fails to address the causes and demands for movement in the first place. It may redress some of the individual rights violations that have taken place, but does not really serve to push the issue out of the framework of victimization and violence, or labour exploitation, into a framework that deals with the broader structural causes for movement and demand. It seems that this is the challenge for the coming decade for advocates in the field of anti-trafficking, migration and human rights.

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◆ GAATW 10th YEAR ANNIVERSARY ◆



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Freedom to Roam: Promoting Safe Migration: Interview with Kim Warren, ICMC, and "Fifi" Rahayaan, Solidaritas Perempuan, Indonesia

by Helen Dobby and Amy Penfold



Indonesia acts as a source country for trafficking in persons. There is also a high incidence of internal trafficking from rural to urbanised areas. The Indonesian government has promoted migration for work overseas. Many women are migrating for work as domestic workers. Once they have chosen to migrate they must endure a lengthy and, at times, abusive recruitment process. Many of these migrant workers face exploitative conditions in their destination countries. International Catholic Migration Commission (ICMC) in Indonesia is currently running a number of anti-trafficking programmes.

Solidaritas Perempuan has collaborated with ICMC. Solidaritas Perempuan campaigns for the recognition of and the

respect for migrant workers rights. They provide direct services to trafficked persons and distressed migrants.

We talked to Kim Warren, Counter Trafficking Project Programme Manager with ICMC, Indonesia and 'Fifi' Salma Safitri Rahayaan, Programme Coordinator, Solidaritas Perempuan.

As an awareness raising tool ICMC and its partner group The Solidarity Centre have developed a comic book and comic strip about migration and trafficking in persons. How was this intervention devised and what are its advantages and disadvantages?

Kim: The concept behind it is to promote safe migration. To develop the concept we worked with focus groups and held

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discussions within the target communities. Comic books are very popular in Indonesia therefore it is a good vehicle through which to deliver our message. Indonesians are generally not big readers but they do like comics. We regularly received feedback from an oversight committee, which was made up of government agencies, NGOs and our potential target audience. We pilot tested the comic before the final printed version was made available. It was a very long process and we actually made many changes. The target age for the book was quite broad ranging from 13 to 25 year olds. However, depending on educational levels we found that when we pilot tested the book 13 year olds were able to understand the message. We have faced some difficulties when working with illiterate groups. We changed the comic a lot as initially it used a lot more text. The feedback we received from the oversight committees was that some found it difficult to follow as the stories also use flashbacks. This is something that we would adjust in the future but it helps to have the community facilitators. It is difficult to get the gist of the book without being literate. For example, the key messages giving advice for safe migration are written in text. The food packaging campaign was conducted by our partner organisation The Solidarity Centre. A food packaging company that makes noodles for schools agreed to use our pullout comic strip on their packaging. The Solidarity Centre went into schools and worked with teachers so that they could provide education about the message given by the cartoon.

They didn't let the children just eat the noodles and throw away the packaging they also held an educational activity around it.

How have you evaluated this project?

Kim: We're in the process of doing post-test evaluations. We conducted many pre-tests and now we have gone out to areas and are conducting post-tests. Each community facilitator held an event at a community level. 50 community facilitators were identified and we spoke to them to get their feedback on how the comic book had been received. It is extremely difficult to monitor how many people have read the book but we've had positive feedback. We did hear from one of the community facilitators that two 14 year olds have apparently changed their minds about migrating after reading the book. We want to know if the community facilitators have held an event around the book. We want to know how many people were targeted, who is the audience and has the message been successfully delivered? We gave training to the community facilitators first on what is trafficking in persons. We also gave them training on how to use the book and what the key messages are. We then evaluated how well they have managed to pass on this information to the target audience. We did this through questionnaires and surveys of community facilitators and through field visits.

What methods do you employ to monitor and evaluate (M & E) your projects? Do

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you think the Human Rights Based Approach (HRBA) should be used as an M & E tool?

Fifi: We have standard methods for monitoring and Evaluation (M & E) that we have developed through our work. Many methods are used depending on the level that we are working at. We evaluate within our Secretariat and we also conduct M & E of our community work. We conduct interviews with the communities who benefit from the work of Solidaritas Perempuan. We use many methods we hold discussions, interviews and people can write about their situation. We let them use pictures to do this because many women are illiterate or have difficulty writing so using pictures is easier and allows everyone to participate

Kim: It is useful to have a HRBA M & E. At ICMC we have to monitor our partners because a substantial amount of our work involves funding organizations throughout Indonesia. So, we have to monitor those NGOs but also monitor ourselves to evaluate our efforts and what we have achieved. I think that a HRBA evaluation could be developed.

Fifi: The important thing in M &E is that the method, process and the indicators must be developed together not only by the Secretariat but also with the people they work with. We have to agree on a standard method and this should involve both beneficiaries. Our indicators are set up at the start of the project. The M &E should be done from beginning of the project. If we want to start a project we must first develop these indicators.

How do you raise awareness about trafficking without creating a fear of migration?

Kim: We don't want to make people fearful of migrating. The comic book has 4 characters; one is trafficked into Sex Work in Malaysia and returns to Indonesia and gets a passport and migrates again through legal channels and that is a success story. So we also talk about the successful side of migration. There are success stories and we don't want to stop that from happening.

How does the patriarchal social structure in Indonesia impact upon your work and how do you work to address this?

Kim: There is a tradition of gender bias in Indonesia. There is still a gender bias in schools as the female drop out rate is higher than that of males. Historically girls have been sent to the homes of wealthy urban families to work for them. In some cases nowadays the family is given a prepayment on the child's future earnings, which the child must then work off. Because of their traditional character such practices are accepted as normal in Indonesia and often not viewed as exploitative in nature. The patriarchal social structure has a great impact because then the girls are more vulnerable to being trafficked.

Fifi: Why do women want to migrate? It is because they say that they need to help their families. They do not migrate because of the needs of themselves. If you ask migrant women how they use their money they say "it's for my

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children” or “it’s for my husband”. It’s not for them; they don’t think that they have a right to decide what the money will be used for. If they return and find that their husband has remarried they think that it’s their fault because they left him to go to work and so he has a right. They think that he can’t live without a wife, as he needs the services that she can provide. The woman also needs sex and companionship but she has no right to marry again or to have an affair or even just have a friend for companionship. The patriarchal society system is crucial and can also be seen in the mindset of the government. We can see this from the government’s policy not to protect the migrant women but to promote migration and to protect the recruitment agencies. If migrant workers have a case of exploitation the government still thinks that it’s the woman’s fault. The government knows that the employers beat or harass the migrant workers but they blame the women for that.

Kim: In Indonesia it is possible to get married with permission before you are 15 years old. Once you are married you are automatically considered an adult in Indonesian law. Those marrying and then divorcing early are more vulnerable to trafficking. Is it commercial sexual exploitation of a child because she’s 14? Because she’s been married she is legally considered an adult in Indonesia.

Fifi: We have many activities to address the issue in the community. When we are handling cases we interview the women to find out not just the case details but about her family situation also.

Through the process of handling the case the woman is empowered, she will know the obstacles and how to address her rights. We do not decide what channels she should go through to resolve the case but instead give her all the options and then she will decide for herself. We will support her whatever her choice is. In 1999 we handled a case where the woman had been raped by her employer and deported from Saudi Arabia when she was 6 months pregnant. We talked about her situation and discussed what were her needs were in that situation. She had not been paid and her employer had beaten her. She had difficulties when she returned home because she had a baby and her family blamed her for what had happened. What she needed was acceptance from her family and community. So, to address her needs we visited her family to discuss the situation and to help them to understand her viewpoint. If the community can change their attitude towards migrant workers then they can work to help each other.

ICMC has funded research into the demand side of trafficking. How do you view the role of the demand side of trafficking in persons?

Kim: It is very important. We are currently looking at a new project in Bali working with hotel operators, tour operators and trade unions to ensure that there are protective provisions in the contracts. Before working at ICMC I worked in Hong Kong with migrant workers many of whom were trafficked. I think it would be incredibly interesting to do awareness-raising work with em-

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employers in Hong Kong. Many employers follow agents blindly without thinking of the consequences. So awareness raising training amongst employers in destination countries would be very beneficial. Human Rights training in Indonesia on the demand side would also be useful. It's so normalized to have domestic workers in Indonesia and yet is not viewed as formal work. Employers think that they are doing the young girls a favour by providing them with work and accommodation. Yet many are working in extremely exploitative conditions. Employers in Hong Kong don't realize the process that the migrant workers have been through before arriving in Hong Kong. They are unaware of the recruitment process, the holding centres and the debts that they incur. Many people want domestic help if they are working and I am not against it. The problem is what happens when women pay huge recruitment fees. Their wages are then taken to pay this fee back putting the women into debt bondage. The agents are considered to be totally reputable by employers. In Indonesia the government registered PJTKI¹ will arrange employment in domestic work overseas. Agencies have to pay millions of Rupiah in order to get a license and they are supposed to be monitored but I don't think they are actually being monitored. The fees that the government allows them to charge are so exorbitant that they are putting women into

situations where when they finally leave and are placed overseas they are spending the first seven months of their contract repaying this debt. During this period they are not receiving wages and are not allowed to go out and their agents confiscate their passports.

What are your long-term strategies for preventing trafficking without restricting women's freedom of movement?

FiFi: Our long-term objective is to make migration safe. We conduct awareness-raising campaigns in migrants' home communities. We also lobby the government for a policy change. The government must make migration safe. However, migrants have to be able to protect themselves as well. The government and NGOs cannot protect everyone. Currently there are an estimated 4 million Indonesians working abroad. Only 1.5 million of these migrant workers are documented. Many more are undocumented. How can we protect 4 million people abroad? They must be able to protect themselves. We must give them information about migration. They can discuss this amongst themselves. With this knowledge they can then migrate safely. Even women who have previously experienced problems with migration still want to migrate again because they believe that they will find a better situation.

¹ Perusahaan Jasa Tenaga Kerja Indonesia (Labour Recruitment Company)

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ICMC conducts capacity building training in Indonesia. Can you tell us about this, are they receptive to the training and what difficulties did you face?

Kim: Within Indonesia we do a lot of training especially with government officials and I'd say that the training has been very effective in building capacity. We are also planning to conduct training with embassy and consulate staff in Malaysia. We conducted a pilot project in January and in one diplomatic mission the staff were very receptive to the training. The training is on what is trafficking in persons, identification of a trafficked person, sensitisation training for handling victims and general awareness -raising etc. We also developed training modules and a method for data collection. We have designed a database, which is now being used by the officials in the consulate in Kuching. However, we have had difficulties in other areas and it has been very sensitive. Currently the embassy in Kuala Lumpur (KL) does not have the capacity to identify trafficked persons. They can't make the distinction between a voluntary migrant worker and a trafficked person. They just seem to view all the migrants as being the same. The shelter is part of a car park with only 3 toilets for over 200 women at a time. There are no counselling or other services made available. Many women have complaints of exploitation and unpaid wages but

currently there is no capacity to deal with it. The Embassy staff are not making use of NGOs. ICMC has offered training conducted in collaboration with the International Organisation for Migration (IOM) because IOM will facilitate the repatriation of trafficking victims from KL directly to Jakarta where there is proper protection and services are available. However, for IOM to be able to do this the embassy staff must, as a minimum, be able to identify those persons who have been trafficked. Indonesia has signed the Palermo Protocol² and so they are obligated to protect their citizens and yet, in KL at least, they are not taking concrete steps to do this.



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² Protocol to Prevent and Suppress Trafficking in Persons, Especially Women and Children (2000)

On the 'Watch List': Japan's response to the trafficking in persons situation:

Interview with Yuriko Saito Japan Network Against Trafficking in Persons (JNATIP)

by Helen Dobby and Amy Penfold



Japan acts as a country of destination for trafficking in persons. There is a high incidence of trafficking in persons from South East Asia, East Asia, Latin America and the former Soviet Union. The Japanese government has been criticised for its inactivity towards combating trafficking in persons. Japan was recently placed on the 'Tier 2 watch -list' of the US Trafficking in Persons Report, 2004.

We spoke to Yuriko Saito about the trafficking situation in Japan.

What are the objectives of JNATIP and what are the advantages of operating as a network?

The aim of JNATIP is to provide input to anti-trafficking legislation which the

Japanese government is now working on. So we will work on these 3 objectives:

- raising public awareness of trafficking in persons
- data-book project
- advocacy for an anti-trafficking law

There are ongoing discussions on how to form this legislation. I think that historically the Japanese government has never paid attention to NGOs not like the Thai government has. Once JNATIP was established the government tried to pay attention to, and talk with, NGOs. However, the government pays attention to NGOs only when they exist as JNATIP. Without the network we can miss information, we don't know the actions of the Japanese government so we cannot monitor them. Before JNATIP was established many NGOs in Japan worked separately. Sometimes they contacted

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each other but they have never worked together on a collaborative activity before. Japan is an economically developed country already; therefore it is difficult to get donor money. NGOs face staff shortages and budget problems. They have experienced staff but they are limited by budget constraints. JNATIP launched a data-book project and it needs financial support, as publishing is very costly in Japan, so if the small groups had worked separately we would have missed the chance to complete the project.

How do you lobby the government to persuade them to accept the Human Rights Based Approach (HRBA) as opposed to the criminal law approach?

Presently JNATIP is in the process of lobbying the government. Trafficking in Persons legislation is a very new issue in Japan. The Minister for Justice just announced publicly that they would like to amend the criminal law in September 2004. JNATIP is currently discussing how we should respond to this announcement especially to push for the respect for, and protection of, the human rights of trafficked persons. Even amongst NGOs the definition of trafficking in persons and how to identify a victim is not clear. Now JNATIP is lobbying the political parties, ministries and governmental officials related to human trafficking to hold a meeting with regards to the definition of trafficking in persons, as currently the government has no idea about these issues. However, it is disappointing that many Members of Parliament (MPs) don't understand the

human trafficking issue. In September a group of Japanese MPs came to Thailand and the Philippines to study the trafficking situation but in the media coverage, the Japanese MPs only explained about immigration policies. Now JNATIP has requested that the MPs share with us the results and ideas gained from this study trip. So, presently JNATIP is trying to focus and push for the adoption of a HRBA. However, it seems that the government's attitude to this is still far away in our considerations as we are still pushing the government to understand the trafficking in persons situation.

How do you view the influence of the US Trafficking In Persons (US TIP) Report on the Japanese government's recent anti-trafficking measures?

It has had a very strong influence on the Japanese government. The US TIP report has been issued since 2000 and every year they warned the Japanese government but the government still didn't do anything to combat trafficking. This year the government has become very concerned about Japan's 'Tier 2 watch-list' status. So they are therefore strongly influenced by the US TIP report more so than they were by the UN Protocol. It is positive action though because before that no one was interested in the trafficking issue. Now the police and the government are willing to talk about it and are trying to understand the situation. Previously, in the late 1980's, some officers of the Ministry of Justice had said that trafficking in persons didn't exist in Japan. Because they could not

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count undocumented migrants there was no data available and therefore they reasoned that there could be no victims of trafficking.

How do you view Japan's role as a destination country in preventing trafficking in persons?

A major cause of trafficking in persons is poverty; therefore Japan should try to reduce poverty especially within the South East Asia region. The Japanese government has the Overseas Development Aid (ODA) and the budget for this is very large. The Japanese government states that the ODA is now being used for social development to reduce poverty and to improve health and education standards. However, what is being done is not enough and the ODA funds are not reaching the target groups of those who are most vulnerable to being trafficked. Who is the leading stakeholder in the ODA projects? Perhaps they are not really acting in the best interests of women and children. Many people from the region want to migrate to Japan for economic reasons and it is during this migration process that trafficking sometimes occurs. Japan's current immigration policy is strict and stops migrant workers from coming to Japan for employment. The Japanese labour market needs migrant workers, so therefore the government must alter its immigration policy to accommodate them. Pre-departure training for migrant workers should be provided also.

Which lessons, in terms of combating trafficking in persons, learned in other countries can be applied to Japan?

I can speak at a governmental level and at the NGO level. The Japanese government seems to dislike taking lessons for combating trafficking in persons from other countries. Presently the government is trying to understand the trafficking in persons situation but, at the moment, it is not doing much positive work in this field. A weak point for Japanese local NGOs is the lack of staff and budget resources so they have less power for advocacy work at an international level. In the past three years the anti-trafficking movement has become very active on the international stage with developments such as the UN Palermo Protocol and the UN Human Rights and Human Trafficking Principles and Guidelines. But it seems that international development on human trafficking issues has left some gaps to be worked on by local NGOs at a grassroots level. In September 2003 the International Labour Organisation (ILO) organised a seminar in Tokyo on Trafficking in persons: Lessons from Southern Europe. Some NGOs and I were highly influenced by this lesson and admired their work. As regards to anti-trafficking activities Japan is an undeveloped country. We should learn more about anti-trafficking work conducted in other countries especially in those countries that are facing serious trafficking issues as a destination country. Japan seems to be closed to what's happening in the world so we have to become more open and learn more from other countries' experiences.

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What legal measures in terms of the process of recovery of trafficked persons for the trafficked persons do you feel should be enacted?

Trafficked persons need help and support and they need protection. The legislation should ensure provision of a shelter for them to stay in safety. The shelter should be a place where they can relax, think about the future and reflect on what's happened to them in Japan. Medical assistance and counselling must be provided. The trafficked person should have regular contact with their embassy and should be allowed to stay in Japan if they are at risk from the traffickers in their country of origin. They should also receive vocational training. The legal system should support them in taking legal actions against their traffickers. For example, in the civil courts to claim unpaid wages. JNATIP members are currently discussing the role of the shelters. Immigration and the police are very worried about victims staying in shelters because they think that they will escape and look for work. I don't think that women need a long-term stay in shelters. If they want to return to their home countries, then they should be returned voluntarily not through deportation. However, I think that they should say to the victim: if you want to take legal action you will be funded by the Japanese government to return to Japan to give your testimony in court. Usually

if women choose to return to their country of origin then they cannot afford to subsequently return to Japan with proper legal representation to make their testimonies. This is a practical way in which we can assist the victim. Persons who have experienced trafficking need long term care such as economic and social welfare support. This will help to prevent them from being re-trafficked or becoming a trafficker themselves.

What difficulties do you face when lobbying the government to accept these measures?

JNATIP is at the very beginning of this lobbying process and we face difficulties with the definition of trafficking and identification of the victim. For example, if people return to Japan for a second time after facing exploitation the first time then the police won't believe that they are trafficking victims because they say that they already know the system. The definition of trafficking in persons is not clear amongst the government and NGOs. JNATIP is still discussing the definition that they should adopt as a network.

How can Self Empowerment on Migrant Women (SEPOM)¹ facilitate the process of recovery for trafficked persons and exploited migrants?

¹ SEPOM is a self-organised group of Thai women who have returned to Thailand after facing exploitation as migrant workers in Japan. They are based in the North of Thailand.

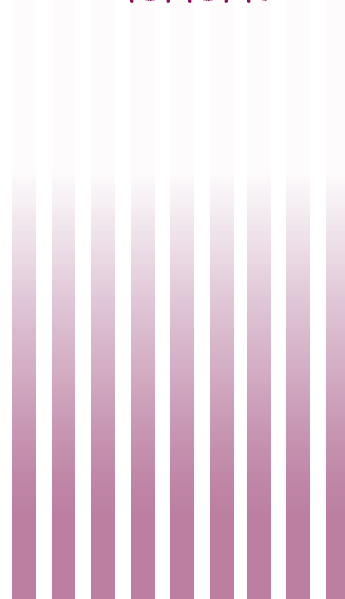
◆INTERVIEWS◆



Yuriko Saito is a professor at Keisen University. She is a trafficking expert member of the Japan Network Against Trafficking in Persons (JNATIP) and also acts as an advisor to Self Empowerment on Migrant Women (SEPOM) a self-organized group of Thai migrant and trafficked women who have returned from Japan. Yuriko acted as a researcher for the Human Rights Watch publication: *Owed justice: Thai women trafficked into debt bondage in Japan.*

In terms of protection of the victim the lack of reintegration strategies is a serious issue. In Thailand they often divide trafficking and migration and treat them as separate issues. SEPOM (Self Empowerment On Migrant Women) are involved in a process, they work to empower themselves and others. SEPOM members have personal experiences of being trafficked to Japan. The problems of trafficking, migration, poverty and community acceptance continue to exist. SEPOM tries to take action to solve these problems. I think that it is a very good reintegration programme. I am worried about the definition used in some anti-trafficking laws and the separation of trafficking from the migration issue. Some people fall outside of the definition and the law and therefore don't get any protection. Women who work in SEPOM have connections with Japan. For example, some have Thai-Japanese children but the Japanese father never takes responsibility for the child. Japanese men and the trafficking market see Thai women as sexual objects or commodities. If a man goes to a 'snack'² for sexual services from Thai women they often want to get married because then they don't have to pay every time. They can pay once, get married and have free sexual services. However, the men get bored with having just one sexual partner so, if the woman becomes pregnant the man often leaves her. The wife performs many reproductive services and can look

after aged parents. Last month I met a Thai woman from a Northern province who was married to a Japanese man for ten years. For six years she cared for his mother but when his mother died the husband paid for a one-way ticket to Thailand for his wife and he never contacted her again. So I introduced her to SEPOM so if she needs consultations or just wants to talk with the staff then she can go to visit them.



² Japanese sex worker venue

Many voices raised together: migrants' rights and anti-trafficking: interview with Aegile Fernandez Tenaganita Malaysia

by Helen Dobby



Trafficking occurs within the context of migration. Within a human rights based approach the work of migrant rights groups and anti-trafficking groups are integrally linked.

Tenaganita have been striving for the recognition of, and respect for, migrant rights in Malaysia for many years. They have become involved with combating trafficking in persons and have proved invaluable in providing assistance and support to both trafficked persons and migrants in Malaysia.

I spoke to Programme Coordinator Aegile Fernandez about their work.

Given the Malaysian government's repressive stance towards migrant workers have you found that that they are more or less sensitive when discussing the issue of trafficking in persons?

I would say that the two issues are treated equally. The state sees them both as illegal immigrants in the country. Therefore trafficked persons face the same punishment as would be accorded to illegal immigrants. The authorities tend to place the issue of trafficking in women under vice. When you put it under vice it becomes a moral issue and moral issues take on a religious slant. That is why in the minds of the authorities it is implanted that they have to get rid of trafficked persons because they are bringing something bad into the country. I am not saying that they don't know about the trafficking issue but I think that there's a lack of sensitivity towards the issue.

Do you think that protecting Migrants Rights can effectively prevent trafficking or do you feel that the two issues should be handled separately?

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Personally, I think that the issues of migration and trafficking are linked and linked closely. If you look at the trafficked women that we have been handling in the majority of cases the women had been promised jobs as domestic workers in the country of destination. They migrate and then they fall into the trap. If you had proper recruitment policies between the receiving and the sending countries that makes it easy for people to migrate safely then you would cut out a lot of illegal recruitment. We need to get rid of recruitment agencies. Recruitment has to be the responsibility of the state. Why should middle people come into the scene? One country wants to receive workers and the other country wants to send workers. However, states are not taking responsibility for the process.

What impact do you feel Malaysia's strict Immigration laws have on the trafficking situation?

First of all the government doesn't recognise trafficked persons as victims. They see them only as illegal immigrants. Therefore, trafficked persons fall under the provisions of the Immigration Act. The victims of trafficking are taken to court and charged under the Act then the victims will have to face a sentence from anywhere between 3 to 6 months. Following this they are repatriated to their country of origin. If trafficked

persons act as witnesses to prosecute their traffickers the Police will still sometimes charge them for immigration violations. Trafficked persons are kept in a prison or in a detention centre while they wait for the court trial. The problem is that the court trials are lengthy and the women have to remain in custody for the entire duration of the process. The detention centres do not have proper facilities. The conditions are unhygienic, the food is low in nutritional value, there is a lack of milk and no form of counselling is offered. Rather than addressing the trauma that the trafficked woman has been through they put her through another form of trauma. I think this is what the state has to be held responsible and accountable for.

How do you advocate for legal reform?

We have taken test cases in court. We cannot get direct access to the government so we work through the bar council to bring the issues to their attention. We examine the present legal system to see what is there and what is not there. We are now in the process of examining whether we need separate and specific anti-trafficking laws. Is that the answer? Alternatively, in the short term, should we look at the existing laws and either amend them or add provisions to them. The third method we use is to look at existing legal measures for example CEDAW¹, CRC² and the Palermo Protocol³. We look at where Malaysia

¹ Convention on the Elimination of All Forms of Discrimination Against Women

² Convention on the Rights of the Child

³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the Convention Against Transnational Organised Crime. (2000)

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has signed or ratified Conventions and we use these to address the serious issue of trafficking.

What are the difficulties faced when lobbying the government to adopt a Human Rights Based Approach (HRBA) to the issue of trafficking in persons?

If you come out right away and say we are talking about a HRBA then I feel that sometimes you are in trouble. It's the way in which you approach it. Sometimes I think there is no need to say HRBA because rights are universal. I think that what we are doing is already towards a HRBA. It's already there it's not something that we have separated in our work. The first thing is for us to say 'that's a human being, a person, and that person has these rights'. We are born with rights and we will die with rights. I think that we all work on rights based issues. Any work Tenaganita does, all of our interventions and approaches, are automatically rights based and all the more so because we work with marginalized communities. We must first sensitise the government before we can lobby them. We must help them to understand the difference between prostitution and trafficking. I think that in the minds of the authorities the moment that you say trafficking they think that it's prostitution. While we are sensitising them we bring to their attention the fact that there are laws and Conventions in place. We question why the state is not using them? It is always the victims and not the traffickers that face legal action. The long-term approach

shouldn't be just to lobby the state. I think that we have to bring the issue of trafficking to the attention of civil society. They also play a very important role in the issue. NGOs are very active but they are often so concentrated on the singular issue that they are working on. So, we need to sensitise these NGOs to view the issue on a broader level. There are women's groups who work on the issue of violence against women but they don't see that violence against women is committed in the trafficking process. When we are lobbying there should not be just one or two voices delivering the message there must be many voices raised together.

Has the participatory approach that you employed in your migrant peer leader intervention been successful and do you feel that it could be replicated in your anti-trafficking efforts?

First of all we have to take note of the fact that we, as NGOs, are just instruments of the people. We facilitate the empowerment process; the decisions come from the migrants or the trafficked persons themselves. Peer leaders work to bring people together and give education, help and support to their own communities. Who understands best the problems that migrants and trafficked persons face? It is the migrants or the trafficked persons themselves. When the leaders are from within their own community then people are more easily able to talk and to decide for themselves what changes they want the state to make. I think that's important because it's for

the people to decide what they want and not for the NGO to decide. NGOs are merely the facilitators. I also think that through the peer leaders process migrants can create a strong support system within their own community.

How do you work to enhance Malaysia's capacity to better accept migrant workers and to respect their rights?

Tenaganita always brings the issue of migration or trafficking to the fore. We always push for legal and policy reform so that they are protected. Malaysia needs migrant workers and when you need them you have to protect them. We need to go beyond just Malaysia itself and look at the different levels: national, regional and international. The sending country states have to be held accountable for not protecting their nationals in the destination country. We also push Malaysia to sign and ratify the UN Convention on Migrant Workers' Rights. No receiving country in Asia has signed the Convention. We are also pushing for the adoption of more bi or multi lateral agreements rather than Memorandums Of Understandings (MoU), which are much looser agreements. States keep using this concept of 'threat to national security' in the context of migrants. But what is this threat? Who is in fear of migrants? The authorities blame it on the local people but I don't think that they are the ones who are in fear. It is the government that is in fear and not anybody else.



Aegile Fernandez,
Programme Co-
ordinator, Tenaganita

What access have you had to trafficked persons in order to give them assistance?

Tenaganita is not allowed to visit the prisons or the detention camps. The only form of help we can offer so far is in getting air tickets and helping them to be repatriated. We have also been working with diplomatic missions of the sending countries and pressing them to repatriate the trafficked person as soon as possible.

How do you coordinate with relevant agencies in source countries?

We coordinate with NGOs in the countries of origin but not directly with the governments. Whenever we have had any dialogue or discussion with governments on migration we have taken the opportunity to highlight the issues affecting trafficked women. So we have been able to push the governments to address the trafficking situation. Some governments are responsive, such as, the Thai government and the government of The Philippines. However, others are just indifferent. Their attitude is that the women chose to move therefore they have to solve their own problems. We have working partners in 11 countries under a regional organisation called CARAM Asia. Here we work closely in the areas of migration and trafficking, which are part and parcel of the same issue.



Activity Update



One of the main activities of 2004 for the GAATW International Secretariat was to initiate discussions on anti-trafficking work with her members and colleagues in various parts of the world. In preparation for the International Congress, these formal and informal consultations, aimed to start a process of collective reflection on the current scenario and our activism. Priorities identified in those consultations will inform the future strategy of the Alliance.

2004 also saw the completion of some of our projects. For example, the research project to find out more about the reproductive health situation of women migrant workers in Thailand was completed in mid-2004. (Report forthcoming in 2005)

The following is an update on some of the main activities carried out by the Secretariat between July-November 2004.

An Integrated Approach to the Process of Recovery: Self-Help Health Training for Women Migrant Workers

Mae Sot, Thailand, 22th June - 2nd September 2004

Our research study which started in 2003 had a qualitative and quantitative

component. We carried out in-depth interviews with women migrant workers from Cambodia, Laos and Burma. The focus of the study was the impact of geographical and sectoral mobility on the reproductive health of women workers in sex work, factory work and domestic work. The findings revealed that among the study participants knowledge pertaining to reproductive health and access to health care services were limited and that barriers to information and services were associated with their migrant status. Migrant populations often do not seek health care services in clinics/hospitals because of high treatment costs, language barriers and, for undocumented migrants, fear of deportation. There were strong elements of trafficking in the life stories of many migrant women. Many had experienced deception and coercion in the process of recruitment and work place exploitation was part of their everyday reality. The official solution to such cases, if they were considered trafficking, would be to deport the person. That was not a desirable solution for the migrants.

We noted that on many occasions emergency support had come from a fellow migrant woman or sometimes even from unlikely sources like a client, an employer or a neighbour. Over time, a slow but steady process of recovery had taken place. We felt that migrants who have some freedom to interact with others

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Self-Help Health Training

are able to deal with the situation better. Problems like sexual harassment at work, exploitative employers and heavy debts to the agent were not easily solved. But talking about them with others who had similar experiences helped.

During the interviews women had expressed a need to receive some basic information on health care. To meet that need we implemented a self-help health training for our Mae Sot study participants. The 30 days training was conducted in three phases During June-September 2004. We felt that in-depth interaction with each other will create a supportive atmosphere for the women and in addition to understanding about how their bodies work, the women will also be able to discuss many things with each other.

Our health trainers had previously conducted their self-help health programme in several South and Southeast

Asian countries. The training combined skills and perspective training within a holistic framework. The process was participatory incorporating group exercises linked to the daily topics with games and discussions throughout each session. The trainees discussed their perspectives on a variety of issues including gender roles in society, socioeconomic status (including their migrant status), politics of health and population, perceptions of the body, reproductive health and mental health. They gained skills such as understanding the components and functions of the human body, conducting body exams, identifying common disorders particularly with respect to reproductive health, providing alternative therapies to common disorders, conducting small surveys and providing counselling.

Every evening, the trainers received feedback from each of the trainees through the group's steering committee. A number of women expressed that the passing of each day strengthened their convictions that they had made the right decision to participate in the self-help health training. Their dedication was a reflection of not only the desire to attain self-help health skills but also the desire to share their newfound knowledge and skills with others.

Following the completion of the training two Women's Health Centre were established, one in Mae Sot and another in Po Pah District. The women who completed the self-help health training run both of the centres. The trainees hold health discussion groups with migrant

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workers in factories and brothels in their respective communities. The discussion groups allow them to share their knowledge and also serve as an introduction to the services offered by the centres. Through this community outreach work they have been able to gain access and provide assistance to trafficked women. At the health centres the trainees provide health examinations and consultations, particularly with regards to reproductive health matters, they give advice on alternative treatments and provide counselling services. The centres provide a valuable space for migrant women on the Thai-Burma border to address their health care needs.

Asia Regional Consultation

Bangkok, 22 - 24 September 2004

This September, GAATW hosted a consultation with member representatives from the Asia region. The participants represented anti-trafficking organizations from Afghanistan, Burma, Cambodia, Indonesia, Israel, Japan, Malaysia, Nepal, the Philippines, Thailand and Vietnam. The purpose of the consultation was to critically reflect upon anti-trafficking practices and the human rights framework. Representatives shared their ideas, stories, and criticisms of interventions allowing for a valuable exchange of information on legal processes, prevention interventions, and the process of recovery.

The first day began with a presentation by GAATW Program Assistant, Helen Dobby, who discussed her literature review of trafficking in Asia. Helen noted some areas of weakness in the work done to combat trafficking in persons in the Asia region, such as demand-side research, and areas of strength, such as the innovative approaches taken by some NGOs. This presentation was followed by each of the participants providing a country specific report regarding the trafficking situation since the Palermo Protocol in 2000. The participants voiced their concerns over the trafficking situation at an international, regional and national level. In the afternoon, two investigators from the Vice Unit of the London Metropolitan Police discussed aspects of anti-trafficking work from the perspective of law enforcement agents. This information was particularly relevant for the discussion on victim protection and the prosecution of traffickers.

On the second day, GAATW Program Coordinator Lin Chew began with a presentation on the human rights-based approach, which clarified how human rights violations are both the consequences and causes of trafficking in persons. She cautioned that, if carried out without an understanding of human rights, anti-trafficking work can cause harm. Representatives then discussed the challenges of a rights-based approach, as well as country-specific cases of rights violations. Afterwards participants broke into small groups with each group focusing on one of the three main intervention areas: legal processes, prevention and the process of recovery.

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Asia Consultation Participants

Each group discussed case studies and analyzed them according to human rights principles, and determined which strategies and initiatives were the most appropriate.

The final day of the consultation, GAATW program officers Janice Fong, Oretha Gilbert and Barbara Heinzelmann synthesized information and discussion from the small working groups for presentation. Discussion followed about appropriate GAATW strategies to address issues of concern. Some areas of concern were: appropriate identification of trafficked persons, addressing the demand-side of trafficking, the need for monitoring and evaluation, lack of adequate funding for NGOs, and de-linking trafficking and prostitution. In the afternoon participants reflected upon the history of GAATW and future roles and strategies for both secretariat and member organizations. The participants expressed that in the changing global order it

was necessary for GAATW to exist to represent its political ideology. Some participants felt that it was necessary to be more restrictive in membership criteria in the future. They expressed the need for the GAATW Secretariat to be more consultative with its members for future strategies. The participants reiterated their support for future collaboration.

European Consultation

Amsterdam, 27 - 28 October 2004

A second consultation was held with colleagues from across Europe. Representatives from Belarus, the Czech Republic, Germany, Italy, Moldova, The Netherlands, Poland, Russia, Spain, Switzerland and the UK gathered together in Amsterdam to discuss issues pertinent to GAATW's future role and structure.

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They examined the new anti-trafficking paradigm with forced labour and considered what approaches should be taken in the future to combat trafficking in persons. The three areas of intervention: legal initiatives, prevention and the process of recovery were discussed and possible future GAATW strategies were proposed.

The current GAATW mandate, mission and structure formed a focal point for the consultation. The participants expressed their opinions regarding the appropriate structure, agenda and membership requirements for GAATW. The participants questioned whether or not GAATW's mandate was clear. They felt that clarity of the mandate is imperative. The difference between trafficking and voluntary sex work was held by many to be a pivotal issue. It was proposed that an explicit statement with regards to this ideological difference should be part of the membership criteria. It was agreed that a shared ideology on this issue was desirable for network members but some participants questioned whether or not explicitly stating this principle in the mandate would serve to hamper cooperation with state agencies in some countries.

There was a lack of consensus amongst the participants over the question of GAATW membership. Some participants preferred a loose membership structure whilst others advanced that the criteria for membership should be made more stringent. As regards to the question of what GAATW could require of its members; the resounding conclusion was;

the sharing of data and project results. Concern over the transparency of the GAATW Board and Secretariat, and their decision-making processes, was also expressed.

The participants also discussed the possible expansion of the GAATW mandate to include work with target groups, such as men, children and transgendered, rather than limiting the focus to trafficking in women. It was felt that currently some labour sectors and target groups are being neglected in anti-trafficking work. The participants believed that it would be beneficial for GAATW and its members to engage in more shared projects.

The participants summarised their proposals for future GAATW strategies. They proffered that GAATW develop a service and expertise center that would make anti-trafficking information available to all network members. They also felt that GAATW should initiate more research projects. The participants suggested that GAATW should collate an inventory of trafficking advocacy issues and needs and subsequently create working groups to work on these issues at all levels; nationally, regionally and internationally.



A Selected and Annotated List of Publications on a Human Rights Based Approach to Trafficking

What is a rights-based approach to development?

Office of the High Commissioner for Human Rights (OHCHR)

<http://www.unhchr.ch/development/approaches-04.html>

The OHCHR defines the rights based approach:

“A rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.

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

The norms and standards are those contained in the wealth of international treaties and declarations. The principles include equality and equity, accountabi-

lity, empowerment and participation. A rights-based approach to development includes the following elements:

- * express linkage to rights
- * accountability
- * empowerment
- * participation
- * non-discrimination and attention to vulnerable groups.”¹

Human rights or wrongs? The struggle for a rights-based response to trafficking in human beings

Ann D. Jordan (2002)

Gender and Development Vol. 10, No. 1, March 2002

“A unique opportunity for non-governmental organisations (NGOs) and advocates to contribute to the development of a human rights-based response to the trafficking of human beings now exists. Many governments have signed a new international treaty on trafficking and are in the process of adopting domestic

¹ <http://www.unhchr.ch/development/approaches-04.html>

anti-trafficking laws. However, as explained in this article, most government officials are uninformed about the causes and consequences of trafficking, and the appropriate rights based legal responses. NGOs can bring their expertise and a human rights framework to the debate by working with government officials to draft and implement new trafficking laws and policies. This article offers a brief introduction and guidance to some of the challenges that NGOs will face in their advocacy work.”²

In this article, Jordan (2002) explores the challenges facing NGOs in advocacy work on trafficking and the reasons for promoting a rights-based approach. She describes the entrenched biases of authorities and policy-makers, who struggle with acknowledging the rights of women who choose to enter prostitution willingly or migrate with an awareness of their potential employment. According to Jordan, previous policies often denied the rights of women in an effort to ‘protect’ them from prostitution and trafficking, including the prosecution of sex workers for immigration and labor violations, denying assistance to non-citizens who have been trafficked across borders, limited freedom of travel for women, and deporting individuals before they can prosecute traffickers. She cites the harmful repercussions of criminalizing prostitution, which forces the trade underground and empowers traffickers, who then provide the means of migration and ‘protection’ to individuals. She also

recognizes a major limitation of the UN (2000) Protocol in only urging states to “consider” providing shelter and assistance to trafficked individuals.

A tale of two cities: shifting the paradigm of anti-trafficking programmes

By Smarajit Jana, Nandinee
Bandyopadhyay, Mrinal Kanti
Dutta, and Amitrajit Saha
Gender and Development, Vol. 10,
No.1, March 2002

“This article examines the issue of trafficking from the perspective of some sex worker organisations in India and Bangladesh. It argues that inequality between classes, genders, and nations is the root cause of trafficking, and that the solution to the problem lies in a political struggle for the rights of marginalised people. To substantiate these arguments, this article draws on the life stories of trafficked people, and on the preventative anti-trafficking initiatives of sex workers’ organisations. In order to understand the ways in which trafficking violates people’s rights and restricts their control over their lives we need to focus on the outcomes of trafficking rather than debating the processes through which trafficking takes place. Those who have been trafficked should not be perceived as passive victims of their circumstances,

² Citation from Academic Search Premier

manipulated by others, but as human agents, who can - and often do - fight to gain control over their lives. The article offers a brief introduction and some guidance to some of the challenges that NGOs will face in their advocacy work on trafficking issues.”³

Trafficking in human beings from a human rights perspective - recent legislative developments at the international and European levels

Presentation by Angelika Kartusch, Ludwig Boltzmann Institute of Human Rights, Vienna Congress “The Future of Europe: Enlargement”, organised by the European Women Lawyers’ Association in cooperation with Women Lawyers in Finland, Helsinki, 6-8 June 2003

Kartusch provides an introductory explanation of the human rights based approach to combating trafficking in persons. She explains how human rights

violations are both consequences and causes of trafficking in persons. Kartusch outlines some of the advantages of adopting a rights based approach namely that it allows us to tackle the root causes of trafficking and to provide assistance and protection to trafficked persons. She also argues that the human rights based approach “is not merely a question of effectiveness or usefulness, but it is simply a state obligation under international human rights law.”⁴ Kartusch considers in greater detail the obligations of the state to protect and assist trafficked persons in the country of destination. She then goes on to consider recent developments in the anti-trafficking movement. At an International level Kartusch discusses the strengths and weaknesses of the Palermo Protocol⁵ and examines the extent of the obligations that it imposes upon the state. At the European Union level, Kartusch explains that in May 2001, the European Council adopted the Framework Decision on combating trafficking in human beings.⁶ Furthermore, a EU Directive on the residence status of victims of trafficking and smuggled persons is currently being drafted.⁷ Kartusch concludes that the Framework Decision does not adopt a rights based approach and that victim

³ Citation from Academic Search Premier

⁴ Congress “The Future of Europe: Enlargement”, organised by the European Women Lawyers’ Association in cooperation with Women Lawyers in Finland, Helsinki, 6-8 June 2003 p2

⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the Convention Against Transnational Organised Crime. (2000)

⁶ Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA), OJ L 203, p 1.

⁷ Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities (presented by the Commission), 11.2.2002, COM(2002) 71 final.

assistance was not its primary underlying concern. Kartusch outlines the provisions of the EU Directive and while she acknowledges that it does go some way to fill gaps left by the Framework Decision she feels that it is not truly motivated by the desire to protect the rights of trafficked persons. Kartusch states that the primary concern of the Directive is to combat illegal migration. She feels that the major disadvantages of the Directive are: the conflation of

trafficking and smuggling; the linkage between cooperation with law enforcement agents and benefits for the trafficked person. Kartusch recommends the development of a Council of Europe Convention on Trafficking which would have concern for the protection of the rights of the trafficked persons as its main motivational factor.

Critiques of the Human Rights Based Approach

Human Rights

Andrew Fagan (2004)

<http://www.iep.edu/h/hum-rts.htm>

Fagan begins by exploring the contemporary significance of the human rights discourse on the global geo-political order. Human rights are asserted to be the current dominant moral doctrine. He then takes a step back to explain the historical progression of the concept of human rights and the surrounding philosophical debate. The concept of 'a right' is further explored and the different characterizations of rights are explained very clearly. The author considers who is to be held

accountable for upholding human rights and to what lengths they must go to in order to secure these rights. Fagan then goes on to argue that a philosophical justification of human rights is required in order to assert the validity of such rights irrespective of their legal recognition. Two approaches to this question of validity are considered: the 'interests theory approach' and the 'will theory approach'. There are philosophical criticisms of the doctrine of human rights and Fagan highlights the challenge to the universality claims of human rights and to the presumed objective nature of human rights as being prevalent criticisms. Fagan defines human rights as being "potential moral guarantees for each human being to lead a minimally

good life". Fagan expresses regret that these modest aspirations have not yet been met. Fagan concludes that the case for human rights is a morally compelling one.

Human Rights: Chimeras in Sheep's Clothing?

Andrew Heard (1997)

<http://www.sfu.ca/~aheard/intro.html>

Heard explores in depth the historical development of the human rights discourse. He then examines the motivations for human rights. He considers the challenges to the universality and inalienability principles of human rights. The theoretical foundations of human rights that provide justifications for the doctrine are further explored. Heard examines the controversy over how, and when, a human acquires and then loses human rights. Characterisations of rights are deemed to be of importance to the question of enforcement of human rights. Heard concludes that human rights are "at once so important and yet so vulnerable to probing questions about their origin, foundation, substance and operation."



Taking Rights Less Seriously: Postmodernism and Human Rights

Zhutu Arslan (1999)

Res Publica 5: 195 - 215, Kluwer Academic Publishers

Arslan reflects upon the historical development of the human rights discourse and considers the various arguments that have been proposed for a philosophical foundation of human rights. The postmodernist's analysis of the human rights doctrine is explored in depth. Whilst Arslan acknowledges the postmodernist's arguments against the current justifications for human rights he concludes that they fail to offer any new way of validating the human rights doctrine.

Universal Human Rights in Theory and Practice

Jack Donnelly (2003)

Cornell University Press, Second Edition

In this book Donnelly examines the universality principle of human rights. He explores the foundations of the human rights discourse and highlights authority for the universal claims of human rights. He then considers the prevalent arguments surrounding the cultural relativism of human rights. Donnelly discusses the impact of human rights on international action. He looks at the international

human rights regimes and the impact the rights based approach has had upon foreign policy and the priority of national action. Donnelly concludes with a series of short essays on contemporary theory and practice. He discusses democracy, the development agenda and how they connect with human rights. He then looks at group rights such as the rights of minorities and women and analyses the incorporation of these group rights into the human rights framework. In another essay he applies the principle of non-discrimination to the case of sexual minorities and considers whether their rights have protection and how this protection could be developed. The final essay considers the interplay between the human rights framework and genocide and humanitarian interventions.

The Challenges to International Human Rights

Joanne Bauer (2003)

<http://www.carnegiecouncil.org/>

Bauer examines some of the current challenges to the human rights doctrine. Cultural relativists challenge the universality principle of human rights. The human rights discourse was largely developed by Western scholars leading some to question its applicability. Bauer considers the regional perspectives of human rights. She examines the tensions that exist with the universality principle and the arguments for cultural relativity.

Bauer also outlines other contemporary ideological challenges to human rights and notes that these views are proposed within both the global South and North. She outlines the 'radical capitalism' challenge to human rights largely proposed by Western scholars. This theory dismisses the relevance of economic and social rights preferring social minimalism. The 'traditionalism' approach argues that international human rights conflict with traditional rules for social behaviour. It is this approach that is usually advanced by cultural relativists in Asia and Africa. 'Reactionary conservatism', a reaction to contemporary freedoms such as women's liberation and homosexual rights which are viewed as being detrimental to social order, can be seen to exist in all global regions. Bauer explains that 'left collectivism' can be defined as a reaction to Western imperialism and multinational corporations. Proponents of this view feel that protection from these elements represent the most important human rights. 'Status radicalism' proposes that certain groups are systematically denied their rights, therefore, the protection of the rights of these groups must supersede the protection of individual rights.

Bauer argues that the 'cultural legitimisation' approach is preferable to cultural relativism. This approach seeks to apply traditional cultural practices to legitimise human rights and also to expand the human rights discourse to include rights of cultural significance that have not yet been afforded protection.

On High Moral Ground: The Incorporation of Human Rights by the Development Enterprise

Peter Uvin (2002)

Praxis: The Fletcher Journal of
Development Studies: Volume XVII

Uvin examines the incorporation of the human rights discourse into the development agenda. He considers that there are three levels of incorporation. Uvin terms the lowest level of incorporation the 'rhetorical formulaic incorporation'. He claims that this level of incorporation does not challenge the traditional development discourse. He relays that this level of incorporation can be beneficial if it brings in a gradual change towards a rights based development agenda. However, he warns that this rhetorical incorporation ignores the inherent tensions that exist between economic development and human rights. He argues that incorporating the human rights discourse in this manner can bestow legitimacy on development agendas without forcing any actual changes to their approach.

The second level of incorporation he terms the 'good governance' approach. Uvin argues that the good governance euphemisms used by development agencies, such as the World Bank, are more acceptable to governments in developing countries than to speak of human rights and corruption. He states that it can be argued that this incorporation allows human rights to be extended beyond the reaches of inter-

national legal standards. However, he also warns that it neglects to draw attention to the culpability of the West for human rights violations in the past. This can serve to increase resentment of the human rights agenda.

The third level of incorporation would involve the redefining of development to include human rights as a constitutive part. He explains that this would mean that all processes of social change could simultaneously be rights based and economically grounded. Uvin states that this is problematic in that it has not yet been enacted and there are no new proposals for how this may be achieved.

He concludes that the move to incorporate the human rights discourse into the development agenda is a positive one, however, he warns that it may be used to legitimise old development agendas without forcing any substantive change.

Where's the Humanity in Human Rights?

Jon Holbrook (2002)

<http://www.spiked-online.com/>

Holbrook reviews Chandler's book: From Kosovo to Kabul: Human Rights and International Intervention. Chandler considers whether the ethical; agenda of human rights is desirable? He begins by examining the use of the human rights discourse to justify international military interventions. Chandler then argues that the human rights discourse has impacted

upon the humanitarianism pursued by NGOs and International Organisations. He advances that these organisations “no longer seek to save lives in the short term, but to pursue a long term ‘greater-good’”. Chandler argues that many human rights advocates see national sovereignty as a barrier to securing peace. However, he continues to argue that it is certain powers that are allowed to dominate and impose their will over others. He advances that the human rights approach to international relations legitimises a form of imperialism.

Human Rights Trump Democracy

David Chandler (2002)

<http://www.spiked-online.com/>

Chandler highlights the fact that the US criticised the Chinese and Russian government’s handling of the ‘war on terror’ despite their actions mirroring those conducted by the US. The US simultaneously heralded their own campaign in Afghanistan as being a ‘triumph for human rights’. Chandler argues that the human rights discourse is enabling the US to legitimise its own abuses of power. He considers that the human rights discourse has enabled the US to push its own unilateral foreign policy agenda. He concludes that democracy and the ability to make political choices without outside interference must now be promoted in order to counteract US dominance.

What are the implications of a rights based approach for the struggle against violence against women?

An Interview with Charlotte Bunch (February 2004)

<http://whrnet.org/docs/interview-bunch-0402.html>

Charlotte Bunch is the founder of the Center for Women’s Global Leadership. Bunch considers that the rights based approach can have an empowering effect for women and that it helps to make violence against women more visible. The human rights discourse brings the issues to the fore and to an international level. Bunch feels that reciprocally the inclusion of violence against women into the human rights discourse has added dynamism to the movement. She also feels that women have previously been excluded from the rights movement so their incorporation strengthens the universality claims of human rights. Bunch warns that while the shift is positive it will not signal a swift end to violence against women. She also expresses concern that over reliance on legal standards can build unrealistic expectations of what governments can and will do about violence against women. However, Bunch concludes that taking the rights based approach is a positive step.



HUMAN RIGHTS IN PRACTICE: A GUIDE TO ASSIST TRAFFICKED WOMEN AND CHILDREN

This manual is the result of a collaborative effort involving a number of activists from South East Asia. It is a useful and practical resource for human rights organisations that are already involved in assisting trafficked women and children or are planning to do so. It aims to strengthen the political and lobbying efforts of NGOs to influence national and international policies to promote human rights of trafficked persons and those vulnerable to trafficking. In order to ensure its accessibility among a wide group of community workers this manual has been translated into Bahasa Indonesian, Burmese, Chinese, Khmer, Lao, Thai and Vietnamese.

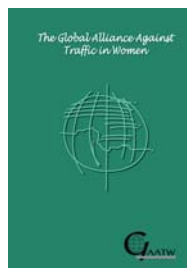


Contents:

1. Concept of trafficking
2. Human rights violation in trafficking
3. Reaching out
4. Investigation and rescue work
5. Laws and legal processes
6. Running a shelter
7. Health issues
8. Repatriation
9. Rebuilding lives
10. Research and documentation
11. Prevention and information campaign
12. Advocacy
13. Working with children
14. Working with sex workers

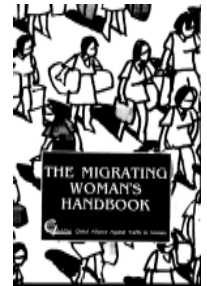
Fact Sheets

GAATW has put together a set of fact sheets on trafficking, which provide basic information about trafficking and address common queries. These sheets cover topics such as: information about GAATW, What is Trafficking?, Protecting the Human Rights of Trafficked Persons, The UN Trafficking Protocol and its Limitations, Trafficking in the Global Context, and Useful Resources.



THE MIGRATING WOMAN'S HANDBOOK

GAATW developed this manual to help people plan a safe journey and ensure that they will not face problems aboard. This manual is aimed at women who have decided to go abroad for jobs or to get married to foreign nationals. The manual provides information on practical tips about arranging your travel documents, immigration and visa requirements, residency and work permits, your rights and wages, as well as how to protect your rights. There are specific chapters for people wanting to work as factory workers, domestic workers, sex workers or people wanting to get married to a foreigner.



It also includes a list of organisations that provide assistance to migrants in various countries of the world. This manual will be available in Thai, in July 2002

Contents:

1. You are going abroad!
2. Travel documents
3. Work permits and residence permits
4. Detention and deportation
5. Checklist before deportation
6. After arriving in the destination country
7. Contracts
8. Know your rights!
9. Are you going abroad to work in a factory or on a construction site?
10. Are you going abroad to work as a domestic worker or housekeeper?
11. Are you going abroad to work in the entertainment industry?
12. Are you going abroad to work as a sex worker?
13. Are you getting married to a foreigner?
14. Methods of redress

MOVING THE WHORE STIGMA

This book is an outcome of the Asia and Pacific Regional Consultation on Prostitution held in Thailand in 1997. The consultation organised by GAATW and the Foundation for Women was to discuss the debate



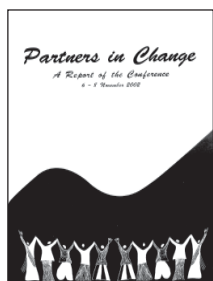
around the issue of prostitution and search for a common position on prostitution among women in Asia and the Pacific. This book includes the 'Statement on Prostitution', the presentation made at the consultation and articles by authors such as Jyoti Sanghera, Gail Pheterson, Masumi Yoneda, Marjan Wijers and Lin Lap Chew

Contents:

1. Statement on prostitution
2. The consultation
3. The forum
4. In the belly of the beast: sex trade, prostitution and globalization
5. The whore stigma
6. The impact of the international laws on national policies (case of Japan)
7. National laws on trafficking and their impact on women

PARTNERS IN CHANGE - A REPORT OF THE CONFERENCE 6-8 NOVEMBER, 2002

A companion volume to 'Partners in Change - stories of women's collectives', this booklet covers the issues addressed at the Partners in Change conference held in Bangkok. The three-day event organized by GAATW brought together migrant women employed in the informal sector, women who have been trafficked, human rights activists, activists in rural communities, academics, policy-makers and many others in an attempt to reconceptualise and re-strategise some of the issues related to women's mobility. This report provides a summation of the panel presentations and the following discussions while trying to retain the voices of women as they narrate their experience of migration, trafficking and rebuilding their lives.



Contents:

Panel Discussions

- Migrant for Work - Risks and Rights
- Rebuilding Lives
- Knowing Our Power and Sharing Our Power
- Reclaiming Citizenship Rights - Uniting Against

State Oppression

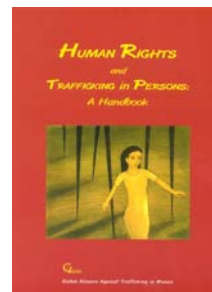
- Community Action for Security and Livelihood
- Movements for Social Justice and Gender Equality

Annexes

- Documenting out Lives
- Participating Organisations
- Statement from the Conference

HUMAN RIGHTS AND TRAFFICKING IN PERSONS: A HANDBOOK

This Handbook is for NGOs, activists and persons who come into contact with trafficked persons or who are interested in the issue of trafficking. It is a broad-based manual, containing general strategies that can be easily adapted to local contexts. It clarifies the concepts of human rights and trafficking in persons and provides concrete rights-based strategies that can be carried out at all levels, from local to international, in the context of trafficking. This Handbook was developed out of regional human rights trainings held for Asia, Eastern Europe, Africa and Latin America. It is also available in Spanish. For information regarding copies of the Spanish version of the Handbook, please contact Fanny Polania Molina at fannypm@terra.com.co



Contents:

1. Human rights principles, government obligations and trafficking in persons
2. Contributing factors, consequences and recommended government responses
3. Approaches and strategies: principles and guidelines
4. NGO strategies

Publication Exchange Scheme

Would you like to exchange your newsletters with GAATW newsletters?

GAATW would like to thank many of the readers who continue to subscribe to our newsletters. It is our aim to disseminate and circulate the newsletters to as many audiences in the world as possible. We would like many people to know about GAATW activities, we are also eager to learn and find out about the work of other organisations.

If your organisation brings out regular publications such as newsletters or bulletins, we would love to receive them. As much as we would like to give out our newsletters at a minimum charge, high postage costs prohibits us from doing so. We have thus come up with the idea of publication exchange. We would like to exchange our newsletters with yours. If you are interested in taking part, please contact us at bookorder@gatw.org for details.

We look forward to getting to know more groups and organisations!



The Global Alliance Against Traffic in Women

History & Structure

The Global Alliance Against Traffic in Women (GAATW) is an alliance of non-governmental organisations and individuals worldwide. Since its formation in 1994 in Chiang Mai, Thailand, GAATW has grown into a movement of over 200 members.

Alliance members are autonomous and collaborate with each other on specific projects and campaigns. They include national, regional and community level non-governmental organisations, self-organised groups of women working in the informal sector, academics and activists working in all regions of the world, who are committed to:

- Promote the application of human rights principles and the use of appropriate instruments and mechanisms to address specific issues in the context of migration, labour and trafficking in persons;

- Advocate for the inclusion of legal protection of the human rights of trafficked persons in domestic laws and policies and to provide direct support to those in need.

What is “trafficking in persons”?

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. 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, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children which supplements the United Nations Convention against Transnational Organized Crime

Mission & Objectives

GAATW’s mission is to ensure that the human rights of migrant women are respected and protected by authorities and agencies.

We advocates for the incorporation of human rights standards in all anti-trafficking initiatives, including in the implementation of the Trafficking Protocol, Supplementary to the UN Convention on Transnational Organised Crime (2000). GAATW strives to promote and share good practices of anti-trafficking initiatives but also to critique and stop bad practices and harm caused by existing practices.

◆ABOUT US◆

GAATW promotes women migrant workers' rights and believes that ensuring safe migration and protecting rights of migrant workers should be at the core of all anti-trafficking efforts. We advocate for living and working conditions that provide women with more alternatives in their countries of origin, and to develop and disseminate information to women about migration, working conditions and their rights.

We supports the self-organization of women migrant workers, ensuring their presence and self-representation in international fora. GAATW aims to build new alliances among various sectors of migrants.

The International Secretariat

GAATW's International Secretariat is based in Bangkok, Thailand. Its core functions are to service and support the members of the alliance by:

- Making local issues internationally visible, and supporting members in their advocacy efforts;
- Helping to apply international policies and standards locally;

- Facilitating local, regional and international representation of members at relevant fora;
- Building, facilitating and maintaining mutual exchanges, communications and learning with and between alliance members;
- Collecting, processing, disseminating and making easily accessible to members, essential documents on trafficking, as well as generally relevant information, in support of their activities;
- Developing and making available training modules on trafficking, gender, globalization and informal economies, rights based advocacy as well as on relevant research methodologies to address these issues;
- Organizing and facilitating trainings, capacity building and conceptual clarity sessions for alliance members as well as non-members upon request.







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