

# Trafficking in Women: causes, consequences and implications

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## Introduction

Historically, trafficking in humans has taken many forms including slavery and slavery-like practices. However the current use of the term and its reference to the illicit movement of humans came about in the late twentieth century (ILO, 2003). Human trafficking has come under increased scrutiny since the early 1990s and perspectives from non-government organisations (NGOs) and activists have gained currency with interventionists and donors. While there are differing perspectives and positions on the issue, it is generally acknowledged that the complex series of situations and events involving the movement of people under coercion or deception constitute human trafficking. Trafficked persons often find themselves in vulnerable situations and without recourse to their human rights. This paper focuses on trafficked women's situations in certain Commonwealth regions and assesses the avenues open to them for redress.

According to Williams and Masika (2002) factors that define the coercive and exploitative practices characterising current trafficking trends include inequality and oppression based on gender, age, caste and poverty. Analysts have also pointed out that the globalisation of economies has facilitated human movement as national borders have opened. However, the continued prevalence of stringent immigration laws in developed countries has led to a climate conducive to the trafficking of women, men and children. It is generally agreed that complex and interacting socio-economic and political structures that marginalise people on the basis of class, caste, gender and ethnicity, create the climate for human trafficking.

Factors on the supply side such as natural disasters, vulnerabilities arising from difficult circumstances, discriminatory cultural practices and gender based discrimination may lead women to seek ways for physical and economic security and place them at risk of being trafficked. On the demand side restrictive immigration laws and policies, the need for cheap labour and the presence of trafficking rings with connection to corrupt public officials facilitate the entry of trafficked women into work sectors that may endanger their health<sup>2</sup> and also leave them socially stigmatised. The UN Office on Drugs and Crime examined global trafficking and found that push, pull and interactive factors<sup>3</sup> that roughly

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<sup>2</sup> Sexually transmitted infections (STIs), HIV/AIDS, other health risks.

<sup>3</sup> Push factors include uneven economic growth and the breakdown of economic systems, prevalence and increase in war, armed conflicts, environmental degradation and increased levels of violence against women and children. Pull factors are based on growth in industrialised economies with corresponding growth in low cost transport and expanding communication

correspond to the 'demand and supply' based analysis of human trafficking fuel the growth of the trafficking industry.

A Commonwealth Secretariat report (2003) has elaborated on new dimensions of trafficking given the forces of globalisation at play including liberalisation of services and the spread of information and communications technologies (ICTs). We know that increasingly, economic migrants are educated and highly skilled and seek economic opportunities outside their countries. At the same time we also know that developed countries source for cheaper labour force to cut costs and still meet demands for products and services. The ILO (2003) asserts that if sensible migration policies are in place in both origin and destination countries then there is a chance of orderly labour migration. However, with the closure or even severe restrictions on migration channels, the climate for trafficking is created. Women are particularly vulnerable to being trafficked for different types of work other than in the agriculture and construction sectors as legal migration channels may tend to exclude them in these sectors. Analysts and activists also point out that women tend to be excluded from the migration policies of their countries on the basis of gender and this type of discrimination may also extend in destination countries.

In examining international and regional instruments, the paper asks if trafficked women's access to justice enables them to claim their rights. The first section of the paper provides a brief background on trafficking including definitions used in the international arena, the conceptual distinctions made between trafficking, migration and people smuggling, the causes and actors involved and the various outcomes of being trafficked. Information on the trafficking situation is provided for Asia and the Caribbean. The second section reviews the policy framework provided by international and regional instruments. The third section points to policy gaps and before charting certain innovative practices that have worked. The next section raises certain key questions and pertinent points about the extent of trafficking and the conceptual categories used in definitions to draw attention to the way debates and discourses are able to construct trafficking and recommend certain interventions that may or may not benefit trafficked women. The final section of the paper elaborates on a human rights approach to combat trafficking.

## **Situating definitions and concepts, identifying actors, causes and outcomes**

### Understanding definitions/concepts

Most trafficking discourses tend to frame the trafficking of women and children from the standpoint of sexual exploitation and coercion, however trafficking can be seen as an outcome of a process through which:

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technology accompanied by the systematic organisation of transnational crime. Interactive factors are a combination of push and pull factors.

- Individuals are recruited and moved within and across national borders without informed consent and eventually forced to 'work' against their will;
- The trafficked individual then loses control over her/his life.

Jana et. al., (2002).

From the above definition it is clear that trafficking leads to a denial of human rights of individuals and that the outcomes of being trafficked encapsulates more than just forced sex work. Trafficking is also observed to increase during situations of armed and other conflicts.

Although the process of trafficking and its various outcomes have been identified as complex and difficult to delineate, certain salient features can be made out:

a) At the point of origin, these include:

- 1) Coercive or persuasive processes that lead to the movement of people with promises of 'work' that they are often misinformed about;
- 2) The participation of certain actors who could be agents, recruiters, acquaintances, friends and family members;
- 3) The exchange of money at the initial stage of the journey, which place people under debt, threat and insecurity.

b) At the point of destination, these include:

- 1) Being met by people who may confiscate travel documents and/or forcefully transport trafficked persons to the workplace or place of residence;
- 2) The trafficked person may realise that the picture is not what it was made out to be and that more debts have been incurred;
- 3) The work engaged in could involve long hours in the construction, agriculture, garment/sweatshop, food processing, domestic work, manufacture, and sex sectors among others;
- 4) There may be no formal work contract and no regulation over wages, holidays, benefits and access to health and other services;
- e) There could be undue control exercised over trafficked persons through threats, violence, and reprisals back homes. The fear of being reported to authorities and face deportation may often silence trafficked persons.

Shivdas (2004)

Trafficking can therefore be defined as the illegal movement of people made under coercion and/or deception which places trafficked person(s) in a vulnerable, indebted and insecure position(s) in work sectors that do not guarantee them safety of personhood and access to rights and benefits. It would be useful to set down the definitions of migration and people smuggling to help make conceptual distinctions. Migration is the voluntary movement of both skilled and unskilled persons in search of economic and social improvement to situations that are generally not exploitative or oppressive. Migrants can be both documented and

undocumented. People smuggling has elements of both migration and trafficking and is sometimes referred to as irregular migration. While people are smuggled across illegal channels akin to trafficking, those smuggled may have volunteered/agreed to being smuggled much like the choice made by migrants.

Although in theory we can make such analytical distinctions, in real-life situations these distinctions can become blurred. For example, according to Doezema (2000) the differences in the way women's groups perceive sex trafficking makes current anti-trafficking campaigns become split along ideological lines defining sex work which make distinctions between voluntary and forced sex work problematic. The first position or the abolitionist perspective (Barry, 1995) views trafficking and sex work as a violation of human rights. The second position or the sex workers' rights movement's perspective (Skrobanek et. al. 1997) makes a distinction between voluntary and forced sex work i.e., trafficking of women for sex work is deemed unacceptable but there is recognition of choice in sex work.

The above different positions owing to their rigid classification do not consider the range of positions between victims and agents where trafficked women's lives can be situated and which would have implications for the way interventions are planned. While it is important to acknowledge the exploitative and oppressive situations of trafficked women, it is also important not to conflate trafficking with various manifestations of migration and mobility on the one hand, and with prostitution and sex work on the other. This is because women who migrate and/or engage in sex work out of choice often find that they are also treated as trafficked women and their agency/capacity to live by their choices are not respected.

Given the complexities of trafficking in women and the fact that female migration also takes place, competing discourses on trafficking emerge to inform various interventions. It is within this framework of differing approaches that Jordan (2002), has identified the various reasons for inappropriate or inadequate responses. These include denial of the problem, the objectification of victims and consequent failure to consider their human rights, conflation of trafficking with undocumented migration and an ambiguous 'criminal' definition of trafficking. Therefore, Limanowska's (2003) assertion that policy responses must include comprehensive institutional arrangements that encompass collaboration between law enforcement agencies, the judiciary and support mechanisms, becomes important.

#### Tracking the processes, outcomes, causes and actors

While considerable attention is paid to the situation in sending countries, it is at destination countries that most of the human rights violations of trafficked persons take place. Most destinations are in developed countries and because trafficked persons end up in the unorganised and invisible sectors like domestic services or the sex sector, attempts to facilitate the realisation of trafficked persons' labour and human rights are fraught with problems given that often

crime syndicates are involved in trafficking. The UN Special Rapporteur on Trafficking in Persons has also pointed out that, without legal status, trafficked persons tend to be invisible to the welfare, law enforcement and judicial agencies and health services in destinations (Huda, 2005).

Bruggeman (2002) from EUROPOL argues that that organised criminal networks are increasingly becoming involved in the trafficking of people as huge profits are at stake and there is evidence to show that criminal networks are closely linked to sex trafficking (ICMDP, 1999). Current estimates peg profits from trafficking at US\$ 12 billion a year as criminal networks are able to hire out their systems and structures which they use for the movement of other contraband such as drugs and vehicles for the movement of humans as well (ILO, 2003).

According to the Commonwealth Secretariat (2003), traffickers manipulate legal migration channels in many ways including,

- Using legal entry mechanisms such as work visas, student permits, business and transit visas to facilitate unlawful and extended stay of trafficked persons; and
- Using stolen or counterfeit travel documents and avoiding border control in the course of transporting people.

The report further states that trafficking networks often enjoy political patronage and often rely on corrupt public officials to facilitate their work. Research in the South Asian context bears this out (D'Cunha, 1991, Shivdas, 2003).

Trafficking networks are widespread with links between points of origin and points of destination. Traffickers form a wide slew of actors, from women and men at village and town levels and petty officials to those who operate in border areas including police and border guards and ultimately, agents or recruiters at different areas in destinations including workplaces and safe houses. Family collusion in trafficking, though prevalent, is often not acknowledged by State and non-State actors. Traffickers work the system well: their contacts extend to the sex industry, informal sector establishments, sweatshops, and business in other sectors including agribusiness and construction. Trafficked women are also increasingly being found in domestic and other services in the care economy where regulations on wages and work conditions are often non-existent.

What are some of the outcomes of trafficking? In addition to women and girls being trafficked into the sex industry, some specific examples often cited include cases of young boys from Bangladesh being trafficked to the Gulf States to become camel jockeys and young girls in India being trafficked for domestic work overseas. It is known that men and boys are also trafficked and could engage in sex work, the work of Ebron (1997) and Brown (1992) highlight the case of Gambian men. In addition, the phenomenon of 'rent-a-dread'<sup>4</sup> in the Jamaican context has been identified. Nepali girls are trafficked into the Indian circus industry. Cases of women being trafficked for marriage have been recorded by

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<sup>4</sup> The renting of men with dreadlocks by women tourists has been noted on Jamaican beaches.

human rights groups; in Sri Lanka, a human rights group highlighted the plight of 238 women who ended up in a factory in the Middle East and worked for a pittance till the factory closed before their contracts expired. Despite being promised full wages and benefits, they received token wages and were deported after being given USD 100.00 each (GAATW, 1999). The International Organisation for Migration (IOM) has also recorded cases of old women, handicapped persons and children being trafficked for begging.

An ILO report (2003) also asserts that people of all ages are trafficked across South Asia into carpet workshops, garment factories, street hawking, begging, brick kilns, construction projects and tea plantations. The report further suggests that children are trafficked within and across the borders of Central and South America and West and Central Africa for domestic service. In the Middle East and North Africa, Asian men get trafficked to manual and construction work and women find themselves exploited and oppressed in domestic services.

In Asia, sub-regional hubs for trafficking have been identified and include Thailand, India, Japan and Korea. These hubs serve as a source, transit and destination country for trafficking (Senta, 2003). In Southeast Asia, IOM (2001) traces the trafficking of Vietnamese women and children to China, Taiwan, Cambodia, Thailand and Singapore. In 2000, IOM noted that women from Eastern Europe and Latin America were being trafficked into Asia. In South Asia, the Middle East and Gulf countries are destinations to which women are trafficked for both sex work and domestic work. India is a major hub with trafficked Nepali and Bangladeshi women. Bangladeshi women are trafficked through India to Pakistan while women from Sri Lanka are trafficked to the Gulf States and Singapore.

In the Caribbean, an IOM study (2005), indicates that there are links between irregular migration and trafficking in humans in the Bahamas, while in Jamaica, it is reported that workers in restaurants who are either part of irregular migration or have been trafficked, endure long hours of forced labour. St Lucia has been identified as a hub for trafficked women from Cuba, Dominican Republic, Santo Domingo and Trinidad; these women end up in the entertainment industry and arrangements are made for work permits as owners of entertainment outlets are able to get protection from police officers and often seek the advice of lawyers. The 2004 Trafficking in Persons report brought out by the US government asserts that women from Amerindian communities in Guyana's interior are trafficked into the sex industry.

Generally, in most countries, legal frameworks that address human trafficking are either criminal laws against trafficking, or those that relate to criminal activities such as kidnapping, wrongful confinement, slavery, servitude, forced labour, and rape or sexual assault (Huda, 2005). At the ASEAN<sup>5</sup> level, Australia, New Zealand, Indonesia, Malaysia, Thailand and the Indochinese countries have

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<sup>5</sup> ASEAN or Association of Southeast Asian Nations.

initiated a regional level research and training programme. Nepal and India have anti-trafficking legislation. The 2002 SAARC<sup>6</sup> Convention on trafficking provides a framework for sub-regional cooperation and action. In the Caribbean, IOM together with the Inter-American Commission of Women has launched a regional programme to address trafficking in women through awareness raising, training and research with a view to formulating a regional action plan to combat trafficking.

As many countries do not have specific legislation on trafficking offences, official statistics are rare. Wijers and Lap-Chew (1997) have noted, after their one and a half years of investigations into the extent of international trafficking for the UN Special Rapporteur on Violence Against Women, that it was impossible to get reliable statistics. They contend that when statistics on trafficked women are available, they usually refer to the number of migrant or domestic sex workers rather than cases of trafficking. Makkai (2003) has suggested that statistics on trafficking often tend to be imprecise with significant disparities between estimates and actual cases. However, in 2001, the IOM attempted to put together some figures on a global scale by gathering statistics from 120 of its field offices.

The UN and its agencies including UNIFEM, ILO and ESCAP are coordinating an anti-trafficking initiative in the Mekong region and statistics will become available. The International Organisation for Migration (IOM) has conducted global and regional studies on the trafficking of women; their latest study assesses the situation in Caribbean countries.

Governments and NGOs in Asia and the Caribbean are attempting to address the issue of trafficking in women at policy, programmatic and advocacy levels. However, gaps in policy exist and there have been increased calls to consider the rights of trafficked women during policy planning and implementation. The next section reviews the scope of international instruments as most countries in the Commonwealth Asia and the Caribbean are parties to various conventions.

### **Reviewing international instruments**

The concept of trafficked person's rights is expounded in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Beijing Platform for Action and the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons<sup>7</sup>. This section examines international instruments to assess the scope of how trafficked women's rights could be protected in the international arena.

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<sup>6</sup> SAARC or South Asian Association for Regional Cooperation.

<sup>7</sup> Protocol to the UN Convention against Transnational organised Crime that came into force in 2000.

### The question of international instruments and commitments

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children that supplements the UN Convention against Transnational Organised Crime (2000) defines the trafficking in persons as,

'... 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 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, servitude or the removal of organs.'

Two international instruments, particularly Article 6 of the CEDAW Convention and the 1949 UN Convention on Traffic in Persons and Exploitation of the Prostitution of Others, address trafficking mainly in the context of forced sex work. It is only the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, that provides the first internationally accepted definition of trafficking that broadens the scope of human trafficking to include exploitative sex work, forced labour or services and the removal of organs.

Article 6 of CEDAW reads, "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women". The general recommendations to article 6 state clearly that certain practices are incompatible with the equal enjoyment of rights by women and do not respect their rights and dignity. Identified practices that put women at special risk of violence and abuse include sex tourism, the recruitment of female domestic labour from developing countries to work in developed countries, and organised marriages between women from developing countries and foreign nationals. Poverty and unemployment are noted as factors that increase opportunities for trafficking in women. In addition, specific protective and punitive measures are recommended for wars, armed conflicts and the occupation of territories as they are seen to increase prostitution, trafficking in women and sexual assault of women.

At the level of getting states to comply with CEDAW recommendations on trafficking, the main mechanism is through the CEDAW Committee's assessments of national reports. While the Committee can urge governments to enact appropriate legislation, there is no mechanism to hold governments to legislative change. However, the concluding comments released by the committee for each reporting country often serves to bring to the public domain certain key concerns that may not have been addressed by governments. For example, in the case of Singapore's initial and second periodic report presented in 2001, the committee noted with some concern that trafficking of women had

not been addressed and therefore urged the government to include trafficking in its next report. Women's groups in Singapore could use the concluding comments of the CEDAW committee as the basis for their advocacy work. Trafficked women who have been unsuccessful in claiming justice could use the Optional Protocol to CEDAW if their countries have signed, however, given the cross-border nature of trafficking the use of the Optional Protocol may become complicated.

Tying to the 1949 UN Convention on Traffic in Persons and Exploitation of the Prostitution of Others, Dottridge (1999) points out that the Convention classifies all cases of recruitment into prostitution as 'traffic in persons' and thereby ignores other kinds of trafficking in related areas such as entertainment. Wijers and Lap-Chew (1997) highlight the fact that the Convention criminalises even cases where consent for sex work exists. However, the definition of trafficking has expanded since the 1949 Convention. The Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children (2000) attempts to go beyond the 1949 Convention to outline the definition of trafficking. But Doezema (2002) has shown that the differences about the notion of 'consent' to define trafficking in women at the Vienna deliberation which finalised the Protocol, posed problems for activists as they also lobbied for the inclusion of protective human rights mechanisms for migrant sex workers.

Jordan (2002) asserts that an opportunity for bringing in a human rights approach in an international instrument was lost as governments that finalised the Protocol perceived the Protocol as only a law enforcement instrument and not an outline of protective human rights measures. They held that national legislation served that purpose. Jordan however maintains that activists and international institutions still have an opportunity to influence national efforts to create anti-trafficking laws as many governments have signed the new Protocol and are obliged to adopt domestic laws in keeping with the Protocol.

The 1995 Beijing Platform for Action, Strategic Objective D.3 calls on governments to protect the rights of trafficked women and girls through strengthening existing legislation. Further the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementary to the UN Convention against Transnational Organised Crime entered into force on 28 January 2004 and offers the scope to lobby for changes in laws. Under the Protocol governments have agreed to make migrant smuggling a criminal offence under national laws, adopt special measures to crack down on migrant smuggling by sea, boost international cooperation to prevent migrant smuggling, and prosecute offenders. States parties to the Protocol have also agreed to adopt domestic laws to prevent and suppress activities related to the smuggling of migrants. Commonwealth governments who have signed the Protocol include Canada, Jamaica, Botswana, Namibia, New Zealand, Gambia and Nigeria.

Despite assurances and commitments by governments, it is acknowledged that trafficked women often lose their rights to justice given entrenched gender and moral biases in laws and policies and the biased perceptions and attitudes of state agents in institutions such as the judiciary and the police force. There is also a tendency towards criminalisation of all categories of trafficked workers that often occurs. Sometimes rehabilitation and reintegration mechanisms seeking to improve trafficked women's situations are often inadequate and seem to draw attention to women's social stigma as a result of their engagement with sex work.

The critical element about trafficked women's rights is not about the processes through which they were trafficked or the work sector they ended up in but that they are in positions of 'no-return' or without recourse to securing their rights. Policy approaches should therefore focus on this area of 'protection'. The two other levels of intervention are 'prevention' and 'reintegration'. Jana et. al., (2002) assert that not many attempts have been made by governments and NGOs engaged in addressing trafficking to either plan and implement standard human rights codes of practices or involve trafficked women in devising strategies for 'protection' and 'reintegration'. The following sections identify certain policy gaps and highlight certain practices that seem successful. The final section suggests a human rights approach to trafficking and offers some broad recommendations.

### **Discussing policy gaps**

Given the global and transborder nature of trafficking, international instruments and bilateral and regional agreements represent policy responses at the different levels. Therefore CEDAW, the Beijing Platform for Action, the various Conventions on trafficking and regional agreements such as the SAARC Convention on trafficking and bilateral arrangements like the 1994 accord between Belgium and the Philippines convey governments' recognition of the problem and their intentions to protect trafficked women's rights. However, Toepfer and Wells (1997) assert that much of international instruments on trafficking in women lack legal force as they are qualified by reservations that eliminate the binding effects of treaties and conventions.

At the regional level, limitations to an agreement can be demonstrated through examining the SAARC Convention on trafficking. It has been criticised for limiting the scope of trafficking to sex work only when women in the region are trafficked for domestic work and the circus industry and boys and men are trafficked for other types of work (ILO, 2003). Sanghera and Kapur (2000) argue that the notion of 'consent' is not acknowledged and 'consent' is considered irrelevant to the issue of sex trafficking; more importantly, State parties are directed to use criminal law, which may not heed women's rights. For example, the Convention requires 'victims' to be repatriated to their country of origin irrespective of individual choices made to remain in sex work in a foreign country (ADB, 2002). IOM (2002) points out that the Convention does not have provisions to secure the rights of trafficked women when they are detained or imprisoned at remand homes and police stations respectively.

In addition, activists working on trafficking in countries of origin (Nepal, Bangladesh and Sri Lanka) have pointed out that the Convention does not address the accountability and responsibilities of destination countries (India and Pakistan). Trafficked women's testimonies are also not considered in the investigation procedures set out in the Convention. Given that state agents in the different countries would be mainly interested in the mechanisms of working out procedures for repatriation, they are not likely to consider individual trafficked women's needs to stay on in a foreign country due to social stigma and fears about reintegration. Activists assert that because of such flaws in addressing accountability, the legal framework of the Convention is also flawed and therefore would not provide trafficked persons with sufficient social and legal redress (Mo, 2001).

Other examples of gaps in policy arise when the fines or penalties for trafficking are not deterrent enough to override the substantial profits that can be made through trafficking (Bertone, 2000). However, Canada has increased penalties for trafficking; the 1993 amendment to laws increased fines for convicted traffickers from Can\$ 10,000.00 to Can\$ 100,000.00. In 1997 Canada also passed a law which stipulated that women who seek entry into the country as 'entertainers' have to show proof of their profession in order to prevent them from being trafficked. But, as pointed out by Bertone (2000), businesses in Canada have criticised the law as it restricts their procedures and business plans.

In Nigeria the July 2003 law that imposes a life sentence on anyone caught trafficking in humans and which also prescribes a fine of 100,000 Naira (about US\$1,000 U.S.) for any Nigerian convicted of human trafficking has been welcomed by activists. Previously, laws on human trafficking and sex work in Nigeria were present in various criminal codes and punishments for offenders were largely not enforced.

However, an example of a well-intentioned policy to address prevention of trafficking that has had negative consequences for women's rights to movement and livelihoods is found in Bangladesh where single women are prevented from travelling across borders (Jana et., al. 2002). CARE<sup>8</sup> (2001) has noted that the State, in collaboration with certain NGOs, has set up booths in border areas where women are questioned about their identity and intentions before being (dis)allowed to proceed.

Current mechanisms/strategies for the protection of trafficked women in sex work establishment are mainly about rescues and not focussed on protecting the women from pimps, traffickers or brothel owners who violate the women's rights. In other words, trafficked women are taken out of exploitative environments but the dominant and oppressive structures and persons remain largely un-addressed. There is also a tendency to conflate the situation of girls and women

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<sup>8</sup> An international NGO engaged in anti-trafficking initiatives.

that may lead to some confusion about rights. In some cases the rights of children could be subsumed under the rights of adults with the result that particular rights of trafficked children are not given special attention and treatment. For example, during the 1996 brothel raids by police in Mumbai, India, trafficked children who engaged in sex work were not treated any differently from adults (Fernandes et. al., 2002). At another level, the agency of adults tends to get ignored resulting in the infantilisation of women in both policy approaches and treatment of trafficked women. A case in point is the construction and policy treatment of trafficked women outlined in Nepal's anti-trafficking laws (Sanghera and Kapur, 2000, Shivdas, 2003).

A Kvinnoforum study (2003) of European good practice on trafficking approaches found that there were no good practices for witness protection in destination countries and no protection whatsoever in countries of origin. Truong (2003) has shown that as trafficked women often rely on information put out by networks of their ethnic affiliations, they are often subject to informal control by traffickers. For example, it has been reported that trafficked Nigerian women are often subjected to voodoo to silence them into oaths of secrecy (EUROPOL, 2000). Through instilling fear in them about destruction of their families they are effectively prevented from informing authorities. Further the lack of legislative mechanisms to ensure the safety of victims also deters these women from coming forward with complaints. In addition to these factors and trends that have implications for policy approaches to trafficking, there is, as Truong (2003) asserts, in the European context, the crucial fact that programmes tend to strengthen institutional capacities to deal with monitoring and control of trafficking rather than empower trafficked women.

At the level of reintegration, usually rescued trafficked women are kept under police custody and/or under the supervision of social services or welfare departments in remand homes or safe shelters. D'Cunha (1991) and Shivdas (2003) have suggested that government remand homes in Mumbai, India, are not without problems and that police officials particularly beat constables in red light areas have informal financial arrangements with brothel keepers about ignoring the presence of trafficked women in brothels. Repatriation measures are complex and often take time to be worked out as investigations and lengthy court procedures get underway in destination countries and NGOs and governments in countries of origin grapple with preparing families and communities to accept trafficked women returnees. A crucial aspect of repatriation is the shame and stigma that surround returnee women's lives when they attempt to reintegrate. If returnee women are HIV positive, they may not find appropriate health services in the country of origin.

Given all of the above and other gaps in policy highlighted by analysts and academics (Sanghera and Kapur, 2000, Makkai, 2003, Skrobanek et. al. 1997), the following section outlines some innovative practices that consider trafficked women's rights and needs during interventions.

### **Practices that work**

The transborder nature of trafficking necessitates cooperation between governments of countries of origin and countries of destination so that laws in different countries work in tandem to not only prosecute traffickers but also protect trafficked women victims. An example of such cooperation can be found in the collaboration between US, European Union and Eastern European officials and represents a policy approach that brings together countries of origin and countries of destination to determine appropriate common and compatible measures that are in keeping with national laws.

In keeping with according trafficked women their rights to protection at the time of prosecution of their traffickers, the governments of the Netherlands, Belgium and Italy issue temporary resident permits to trafficked women victims to enable them to give evidence against traffickers. The US government is to issue T visas for victims of trafficking who assist authorities with the investigation of trafficking cases and the European Union is considering the introduction of short-term residence permits for trafficked victims (ILO, 2002). While the policy of granting temporary resident permits to trafficked victims is gaining ground, the crucial area of witness protection still remains unexplored.

At the level of international organisations, agencies and NGOs, there are a number of examples of appropriate interventions. The ILO initiative on trafficking called the Special Action Programme to combat Forced Labour (SAP-FL) works in different regions and collaborates with other UN agencies and NGOs to conduct research, devise programmes and work with governments to address the causes and consequences of trafficked labour. Because trafficking often involves the movement of women from different cultures and ethnicity to richer countries, an NGO like TAMPEP (Transnational AIDS/STD prevention among Migrant Prostitutes in Europe) works towards empowering migrant and trafficked sex workers in Europe by using information that is culturally appropriate (Brussa, 1999).

The Durbar Mahila Samanwaya Committee in Sonagachi, Kolkata, India works with clients to raise awareness about HIV/AIDS issues and violations of trafficked women's rights. An example of involving trafficked women sex workers in interventions can be found in the self-regulatory boards instituted by the Durbar Mahila Samanwaya Committee which address trafficked women sex workers' rights within the exploitation and oppression prevalent in brothels. Jana et. al. (2002) argue that collectivisation of sex workers and the establishment of self-regulatory boards may be a way forward. The board comprises sex workers, locally elected officials, legal experts, state representatives and medical doctors and considers the problems of those trafficked and coerced into sex work. Board members counsel the women and devise supportive and informal repatriation for the women in collaboration with sex workers' groups and NGOs in their countries of origin. Given that these boards comprise mainly 'insiders' who have gone

through similar trafficking experiences, the boards are well placed to monitor not only the exploitation and oppression in the trade but also address the issues of trafficked minors in brothels. Therefore regulatory boards build on trafficked women's agency, both individual and collective, and attest to their capacity to know about their rights and act on it.

Given the current situation in Commonwealth Asia and the Caribbean, the gaps in statistics and information, the problems raised by conceptual differences, the highlighting of cases of successful practise and the review of international instruments, this paper now outlines a human rights approach to policy on trafficking. The human rights approach elaborated by Jordan (2002) and GAATW (1999) is also explored to draw on their work to make recommendations.

### **The human rights framework and what it means for policy intervention**

Human rights standards for the treatment of trafficked persons has been outlined by GAATW (1999). Eight obligations of the State are set out and include:

1. Principle of non-discrimination evident in procedural law, policy and practice;
2. Protection of trafficked persons and their rights, any irregular immigration status notwithstanding;
3. Access to justice assured to trafficked persons;
4. Enable trafficked persons to seek reparations from traffickers;
5. Provision of temporary residence visas including the right to work during the time of legal actions.
6. Health and social services for trafficked persons during temporary residence;
7. Appropriate repatriation and reintegration of trafficked persons;
8. Co-operation to ensure full implementation of the above standards.

GAATW (1999) also asserts that empowering strategies adopted by governments and NGOs should necessarily be gender sensitive and recognise and protect trafficked women's rights to control their bodies and lives, to be free from violence and abuse, to migrate and to engage in work including sex work.

Jordan (2002) argues that adopting a human rights framework would shift the focus from seeing trafficked persons as objects to understanding their situations and according them human rights. She further maintains that a human rights approach overcomes anti-immigrant bias, misogyny and moral condemnation of trafficked women who choose and also happen to be sex workers. The human right approach may mitigate the current trafficking scenario, wherein, according to Morrison (2000), xenophobic, tightly controlled immigration laws in destination countries facilitate trafficking. More importantly, a human rights policy approach to trafficking could ensure that women are perceived as adult, and therefore, treated appropriately. In calling for a gender-responsive, rights based approach to trafficking, the Human Rights Unit of the Commonwealth Secretariat (2003), has emphasised strategies for combating trafficking that are necessarily gender-sensitive and rights-enhancing particularly as current protective measures tend to

impinge on women's human rights given the restrictive and controlling tenor of interventions.

### **Conclusion**

In the light of the points raised in this paper, it is useful to conclude with thoughts for policy consideration. Makkai's (2003) summation of key areas that require immediate policy attention include:

- The need for women focused interventions as the lack of victim protection from deportation and witness protection in their country of origin, make it difficult for both trafficked women and governments to prosecute traffickers.
- The need for increased international cooperation to address a global problem particularly to track the profits of trafficking.
- The need to address factors on the demand side of trafficking as well as the supply side.

To these I would add one more specific area for policy consideration, the need to have an integrated approach to trafficking as outlined by the Commonwealth Secretariat's approach to combat gender-based violence. An integrated policy approach to the trafficking of women and girls would consider a systematic evaluation of the policy environment including assess capacities and capabilities of organisations and institutions before working with stakeholders to come up with solutions. Another important point is to ensure that there is policy coherence in that policies for migration and/or health do not run counter to measures adopted for anti-trafficking campaigns. In conclusion, this paper calls for a gender-responsive human rights approach that also involves trafficked women in the planning and implementation of anti-trafficking strategies because, more than anyone else, women who have been trafficked and survived would know what is best for them.

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