

FOR PARTICIPANTS ONLY

1 September 2004

ENGLISH ONLY

ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC

High-level Intergovernmental Meeting to Review Regional Implementation
of the Beijing Platform for Action and its Regional and Global Outcomes

7-10 September 2004

Bangkok

MOVING BEIJING FORWARD: GAPS AND CHALLENGES

(Panel I of the tentative programme)

VIOLENCE AGAINST WOMEN AND TRAFFICKING*

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FISHING IN THE STREAM OF MIGRATION: COMBATING MODERN FORMS OF TRAFFICKING WHILE RESPECTING WOMEN'S FREEDOM OF MOVEMENT

The different forms of trafficking

A few decades ago the term trafficking had a very different connotation. As reflected in the reference "White Slavery", trafficking was closely linked to the kidnapping and abduction of women and their sale to men for sexual slavery. The image conjured was one of women in shackles being herded together against their will to provide sexual services for men in countries other than their own. Let us not make any mistake. This type of trafficking still continues and is still a major problem in many parts of the world.

The case of Chamoli presents the nightmare of classical trafficking, the horrible reality that requires immediate attention and vigorous enforcement. Chamoli¹ fell in love with a young man when she was sixteen. He promised to marry her so she ran away with him to India. After they crossed the border, he took her to Poona where there was an older Nepali lady who ran a home with many young girls. She watched the old lady pay her boyfriend and then he disappeared. She was told that she had been sold into prostitution. She refused to accept her new trade. She was beaten into submission and subject to torture. Knives were held to her neck and her genitalia. She was not given any food for days. Finally, hungry and exhausted she agreed to provide sexual services. After a few weeks she was sold again to a woman from Bombay, she was given a cubicle that was the size of a narrow bed surrounded by a curtain. She served ten to twenty clients a night even when she was menstruating and there was no day of rest. She was not allowed to leave the brothel without the male bouncer and was given some pocket money for clothes and other expenses. Finally with the aid of a Nepali NGO Maiti Nepal, her brothel was raided and Chamoli was rescued. She was kept in an Indian Government home for seven months before being deported. She said the home was really a jail and the conditions were sometimes worse than the brothel. She had nothing to do from morning till evening. After seven months she was flown to Nepal and reunited with her family. By this time she began to have dizzy spells, diarrhea and vomiting. The Maiti Nepal doctors diagnosed her as having HIV AIDS. She was in an advanced condition and had only a few more months to live. The United Nations estimates that four million people were trafficked in the year 1998 it also estimated that seven billion dollars worth of profit off trafficking went to criminal groups.² The numbers continue to increase with each year.

And yet, Chamoli's case only heightens the modern dilemma. Modern day trafficking is more nuanced and complicated than earlier classical form, it is complicated by the fact today trafficking is closely linked to the question of migration. Saskia Sassen in a recent paper points to the growing presence of women in the fringes of the international global market. She argues, "the employment and/or use of foreign born women covers an increasingly broad range of economic sectors, some illegal and illicit and some in highly regulated industries. The key actors giving shape to these

¹ Based on an interview, November 2000. The name has been changed to protect the victim

² <http://www.hrlawgroup.org/site/programs/traffic.html>

processes are the women themselves in search of work, but also, and increasing so, illegal traffickers and contractors as well as governments of home countries.”³

Traditionally women have provided certain types of services in the family and in the community. In the home, the ties of intimacy makes them provide these services for free whether they be sexual service for their spouses, or domestic service for the household or unskilled labour in family farms or family owned enterprises. At the same time they have also provided these same services to the greater community as low paid, low skilled workers. They provide sexual services in the form of prostitution which is probably the most marginalized profession in the world. They provide domestic labour as badly paid domestic workers or housemaids. They also work in agricultural communities as low paid unskilled workers in fields owned by richer landlords or in urban areas or free trade zones where foreign investment is welcome.

This provision of these traditionally female services is not a new phenomenon. What is new, as described by many women scholars, is that in the modern world there is an international market for what used to be provided for the family, the local community or the nation-state. There is now an international market for prostitution where the service providers are of all nationalities and communities. There is now an international market for housemaids and low paid unskilled workers. In this international demand for female services, supply follows closely behind and women often migrate to provide their services to an international clientele. They cross borders in the transnational flow of labour. Many in the third world have argued that the push for transnational flow of capital from richer to poorer countries should also be accompanied by a more lenient attitude to the transnational flow of labour from the poorer to the richer countries. Women are caught up in these currents of migration and the problem of trafficking is complicated by the process of globalization and the transnational movement of capital, labour and goods.

The essentially novel feature of modern forms of trafficking is that women desire to migrate for many reasons and for this reason they become increasingly vulnerable to traffickers. This desire to migrate is often ignored in the traditional analysis of trafficking. Professor Saskia Sassen in her article sees the phenomenon of trafficking through the prism of our political economy. She argues that the Macro development policies followed by governments in pursuit of globalization may have led to unemployment and debt on the part of third world women. This in turn has led to women migrating in large numbers in search of survival. This search for survival is sometimes a nightmare as their vulnerability is exploited and abused by those who wish to profit off their bodies or their labour. Ironically this search for survival often empowers some women. Households and communities become dependent on their earnings and even governments come to rely on their foreign currency remittances.

Women’s desire to migrate, to make a better world for themselves and their families cannot be ignored in our struggle to fight trafficking and traffickers. If we ignore women’s survival strategies, we will force them into an even more exploitative reality. For this reason, conceptual clarity is absolutely essential before we discuss legislation and procedures for preventing trafficking. Trafficking must be seen in the context of migration and migration patterns. As one leader of an NGO said,

³ Saskia Sassen, “Counter geographies of Globalisation :- The Feminisation of survival” in paper presented at Columbia University, February 2001.

“traffickers fish in the sea of migration.”⁴ In this context any effort to combat trafficking must not violate women’s freedom of movement.

Women leave their countries for many reasons. I have interviewed many women and they leave because of a variety of concerns. They want to escape poverty or discrimination at home. Many of them leave because they are in a desperate situation. In countries where there is polygamy, women leave their countries when their husbands take another wife. Often women who migrate come from communities and castes that suffer disabilities in their home country. They migrate to escape discrimination and oppression at home. In addition women seek to migrate from countries where there is armed conflict, where their physical safety and the safety of their children are not ensured. For a wide variety of reasons, the modern woman is ready to migrate, ready to cross borders in an attempt to survive and better her life.⁵ The first step in an anti-trafficking policy must therefore be attempts in the home country to better conditions for poor and exploited women and to raise awareness among these women about the pitfalls in migration. This is the most important strategy. Sending countries are often self righteous about the damage done to their women in receiving countries but the sending countries must also take part of the blame.

While women muster up courage to adventure forth in the modern world, despite their cultural upbringing in very conservative societies, there is no doubt that they often end up in situations of violence and abuse. What is needed is a principled and pragmatic way in which we can separate legitimate forms of migration from those that are violent or abuse the vulnerability of the women concerned. Trafficking is the concept that has been entrusted with this formidable task. Though it is theoretically easy to construct, in practice and in the real world, it poses enormous problems.

For example, in some sending countries, desperate to stem the tide of women who are taken abroad into slavery-like conditions, immigration authorities are responding to the crisis of trafficking by insisting that women get the permission of their husbands or fathers before they get passports or leave the country. This is a very dangerous trend precisely because many women whom I interviewed left their countries because they wanted to escape from an abusive husband or father who seek refuge from family violence. By entrapping these women in situations of domestic violence and abuse, these well intentioned immigration policies are actually having a very negative impact on the lives of ordinary women. Any attempt to deal with trafficking must therefore not result in the denial of other basic rights. Prohibitions, preventing women from traveling or requiring that women get their husband’s or father’s permission to travel, fundamentally violate women’s rights under the pretext of protecting women from violence and abuse.⁶

Another conceptual issue that deserves clarification is that we must separate the regimes that protect children from those that vindicate women’s rights. Trafficking in children requires a more draconian approach that places the state in the role of

⁴ Told to the United Nations Special Rapporteur on Violence Against Women

⁵ These reasons for migration are based on interviews conducted with women victims of trafficking in Nepal, India & Bangladesh in November 2000

⁶ Bangladesh & Nepal prevent women from going to the Middle East for employment. Bangladesh requires a husband or a father to give permission before a woman receives her passport.

guardian and protector. Children who have been trafficked require the state to protect them and take care of them until they return home to their families.

However, the provision of such services should respect the rights of the child. They should not become shunted children kept for long years in government homes without any future. Reconciliation with the family should also be done with caution since many of these children fled from their homes because of domestic abuse. Unless such abuse is recognized as a factor and there is a guarantee that it will cease, children should not be unconditionally returned to their parents.

The situation of women is sometimes very different. Women as adults often make important decisions with regard to their lives. While reconciliation with the family must be the primary strategy of any trafficking involving children, the case of women has to be dealt with differently. Many of the women who have been trafficked do not want to be rescued, do not want to stay in state homes and do not want to return to their families.⁷ In my interviews with women I discovered that many of the women did not want to return home, some of them did not want to be named or rescued. In some countries they had formed independent trade unions to protect their rights. In this context, it may be necessary for the state to respect their wishes and protect their rights without imposing solutions that will only make life more miserable for them. For this reason, the regime that protects children with its emphasis on family reconciliation and rehabilitation should be different from a regime that emphasizes the human rights of women and their autonomy to make decisions about their own lives.

The third and perhaps most controversial conceptual issue is that legislation on trafficking should be delinked from regimes regulating prostitution. One reason for this delinking is that women, children and boys are being trafficked for a wide variety of purposes other than prostitution. They are being trafficked for forced labour, forced marriage, camel jockeying, begging etc... Nevertheless prostitution remains the primary purpose for trafficking and therefore poses important dilemmas. One is often asked whether prostitution is sex work or violence against women. In surveying different realities around the world, the answer appears to be, it depends; it depends on context and it depends on the person.

Implications of the lack of international consensus

One major reason why an international approach to trafficking should not make prostitution a central concern is the pragmatic realization that there is currently no international consensus on the correct approach to take with regard to the regulation of prostitution. There remain countries throughout the world that criminalize prostitutes and criminalize prostitution. This moralistic approach to prostitution exists in most Islamic and catholic states as well as in many states in the United States of America. There are other countries that take their lead from the 1949 Convention on the Suppression of Trafficking. Most countries in South Asia for example take this approach. The Convention, based on the perspective of the Abolitionist Movement, criminalizes those who exploit prostitution but treats the prostitute herself as a victim without any criminal liability. A recent addition to this framework, coming from Sweden, is the criminalising of the client along with others who profit from the

⁷ Based on interviews in Nepal and Bangladesh, November 2000

exploitation of prostitution. Other countries follow the regulationist model that legalizes prostitution through a system of licensing and allows prostitutes to see themselves as sex workers who should have labour rights as well as other economic and social rights protected by law. Netherlands and many countries in Europe follow this approach. Some women's groups and NGO's reject all these frameworks, arguing for laws and strategies that respect the rights of sex workers focusing on issues of violence and abuse and the prevention of AIDS. The United Nations itself is divided, depending on which agency is taking the lead. The *Convention on Elimination of Discrimination Against Women* and the CEDAW committee in recommendation 19 seem to take the abolitionist approach. However the UN Declaration on the Elimination of Violence Against Women with its language of "forced prostitution" and the ILO in some of its reports seem to take the view that there is the possibility of legitimate sex work.

These divisions among different schools and different approaches are deep and acrimonious. They depend on radically different attitudes toward the human personality and human sexuality. The abolitionist approach is premised on the deep ambivalence that early feminists had toward human sexuality. Seeing sexuality as a site of exploitation and abuse, feminists like Catherine McKinnon were always suspicious of sexual expression outside the realm of intimate partners. They fought campaigns against prostitution, against pornography and sexual harassment in the workplace. They demanded a legal, criminal approach that required accountability and punishment of all the individuals involved with the sex trade. They demanded an environment where women would be free from the fear and abuse. The feminist legacy of laws that today create an environment where women are accorded more respect and dignity are in great part due to the tireless efforts of these women.

Younger feminists, who have benefited from the environment created by the older women activists, see things a little differently. In the postcolonial era of "human agency", they are interested in taking a second look at the so-called female victim. They write about sexual agency, female desire and the female body. For many it is time to move beyond the moral Puritanism of the early feminism to a more nuanced understanding of human sexuality. This requires looking at sexuality as a site for women's empowerment and agency.⁸ In this discourse, the prostitute becomes the sex worker, an individual endowed with agency and rights. In this worldview, the prostitute does not exist to be rescued by the outside world but demands her rights as a worker and a human being. She defines the terms of her salvation, forming trade unions and agitating for human rights.

Trafficked women's own aspirations

In Bombay, I came across a group of older women prostitutes or sex workers who reflected this worldview. They were initially Devadasis, women from the South of India who were given to temples for prostitution. They had moved into the slums of Bombay where they earned a living as sex workers. They explained that they belonged to a caste that traditionally gave their younger daughters into temple

⁸ For a good analysis see Duncan Kennedy, "Sexual Abuse, Sexy Dressing and the eroticization of Domination" in D.K. Kennedy, *Sexy Dressing etc.. Essays on the Power and politics of Cultural Identity*, Harvard University Press, 1993, p. 126

prostitution.⁹ They had left the temple and migrated to Bombay in search of a better life. Here, they explained they earn enough to spend on their children and were in a position to save enough money to send some home to their parents who were taking care of their children. Their main concerns were health protection, HIV AIDS and schooling and amenities for their children. They said they were reasonably happy. They work at night, play cards during the day and had few complaints. They became extremely offended when it was suggested that a rehabilitation centre be set up and that they be trained in another occupation. They made it very clear that they did not want another occupation and they did not want the state or the police in their lives. They only wanted protection from HIV/AIDS and some provision for their children. They were considering forming a trade union like the Sex Workers Trade Union in Calcutta.

In this context, therefore, we are faced with a reality which earlier groups of feminists refused to confront because the numbers of women who were content with sex work were so small to warrant attention. However, with regard to international migration, it is true that many women do migrate, knowing they are going into sex work. I have interviewed women who were actually happy with their position as migrants and sex workers. Many of them did work in factories during the day and sex work at night to earn extra money.

Many women agree to cross borders for sex work but when they get to their destination they are deceived by the conditions and find themselves in slavery-like conditions. The case of the Polish doctor is a case in point.

She was a victim of trafficking. She qualified in Poland as a doctor but during the state socialist era, doctors earned a paltry sum of money. When Eastern Europe opened up, some of her clients had gone for sex work in Germany. They painted a rosy picture of the life of the sex worker and they claimed to have made an enormous amount of money as call girls. The doctor who had to take care of a large family, made inquiries and then agreed to go to Germany to do sex work. She was smuggled across the border by a group of Traffickers, many of them as the same community as the doctor. When she got to the brothel it turned out to be a nightmare. There were constant beatings, not enough food, her documents were taken, she was not allowed to leave the house and she had to service an inordinate number of clients. When she complained they assaulted her mercilessly. Since she did not have documentation and was smuggled into the country, she was terrified to go to the police. Finally, she escaped and went to the Polish consulate where she was initially refused any special treatment until she begged and pleaded and managed to get in touch with a friend who sent her money for her air travel back to Poland. She had not told her parents and family that she had gone for sex work and therefore her return was quite a traumatic one. Whatever questions we may have about the doctor's capacity for moral judgment, we cannot ignore the fact that many women go ready for sex work as respectable call girls and are terribly deceived about the conditions of work.

The largest category of women, however, are those that agree to migrate to do domestic service or entertainment and are then deceived into becoming sex workers. Though some women are drugged and abducted across borders, the vast majority of

⁹ Based on an interview, November 2000

women are deceived. Though they wish to migrate to better their lives and are promised lucrative jobs, when they accept and cross the border willingly, they find out too late that they have been sold into prostitution. Those who know they are going into sex work, find out that they must be in a brothel, living the life of a sexual slave, being subject to terrible violence and abuse. Perhaps the worst case of brothel conditions was the case in Thailand, where dozens of sex workers were killed when a building housing a brothel was burnt down. Chained to the bed they had no chance of escape.

Another large category of women are those that cross borders to pursue domestic service or to work in factories. They agree because they are promised lucrative jobs but when they cross the border they find themselves in slavery like conditions, with debt bondage, their passports confiscated and their movement restricted. These women are often without any recourse since they have little capacity to escape the slavery like conditions.

Ironically, however, despite all this abuse and violence, the situation is very complex when you actually interview the women. The majority of the women and girls interviewed by a government survey in India did not want to be rescued. Only 43% wanted to leave their brothels.¹⁰ The majority wanted to stay in the brothel but wanted the conditions to improve. This is an indication of the type of violence and oppression from which they were escaping when they decided to migrate or cross borders. In addition, they felt they had nowhere to go since most of them did not want to return home or face their families. For everyone concerned with immigration and refugee law, the truth is that many trafficked women are escaping conditions that are even worse than the reality they face as sex workers in a brothel. The nature of persecution and suffering they had to undergo before they voluntarily leave a country is often ignored in the literature on trafficking.

Responses of the international community

The importance of different instruments

States around the world have begun to respond to the crisis posed by increasing trafficking in women and children across their borders. However, their efforts raise disturbing dilemmas for law-making and law enforcement at the international level and within national borders.

During the last few months of 2001, the United Nations Convention against Transnational Organized Crime, added protocol to prevent Suppress and Trafficking in Persons, especially Women and Children. The document was a consensus document after many hours of deliberation. The Protocol defines trafficking 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 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

¹⁰ Central Social Welfare Board, op cit.,

labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

Though the definition is a mouthful, it is a major development in the law of trafficking. The earlier international document on trafficking, the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, defines trafficking very differently. The Convention states in Article 1,

“The parties to the present Convention agree to punish any person who to gratify the passions of another Procures, entices or leads away, for purposes of prostitution another person, even with the consent of that person Exploits the prostitution of another person, even with the consent of that person”

In contrast to the earlier approach to trafficking, the protocol of the year 2000 makes significant changes. Firstly, the Protocol distinguishes between women and children. For women there must be transfer or transportation across borders but it must involve some form of coercion or abuse of vulnerability. With regard to children, fraud, deception coercion or abuse is not necessary. Mere recruitment, transportation or transfer is enough¹¹ to incur criminal liability.

In another very important change, The Protocol appears to imply the transport and transfer with free and full consent of an adult victim for purposes such as prostitution is not Trafficking. Transportation and transfer without violence or abuse will not be interfered with. The burden of proving lack of consent will not be on the victim since the Convention states that if abusive means are used, the consent of the person shall be irrelevant.¹²

The Protocol has a complex approach to the definition of Trafficking being linked to prostitution. The interpretive notes make it clear that the term sexual exploitation may be interpreted by each country according to its own experiences thus allowing for the differences in approaches to prostitution and sexual services

In addition, the Convention links trafficking to a wide variety of purposes and the definition is not only connected to the exploitation of prostitution. It includes among other end purposes, such practices as forced labour, removal of organs or other slavery-like practices. The language of the protocol itself is a compromise, reflecting the various positions of diverse groups and interests. While the earlier approaches to trafficking linked in clearly and only to prostitution and sexual exploitation, the modern approach to trafficking is to recognize diverse ends with regard to the slavery like conditions that are manifest in the world.

The responses of individual states

Besides uniting on international definitions of trafficking, countries around the world are taking national measures to combat trafficking. Cynics argue that these radical measures may be prompted to recent U.S. legislation that requires countries to take

¹¹ Article (3) © of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

¹² Article (3) © of the Protocol

efforts against trafficking to qualify for certain aid requirements. However, all these laws have serious human rights applications. Though one lauds the effort and the intention behind these pieces of legislation, the consequences of such action may actually make life more unbearable for the women and girl victims. An example of the type of legislation was one that was proposed in one of the Asian countries.¹³ The draft prepared by the police department, criminalizes the prostitute for the first time. This will ensure that the woman victim will become the target of police action and not the trafficker since she is the visible product and the easier person to target. The draft also gives the police draconian powers to arrest, detain, search and seize material. Most of the provisions violate the International Covenant on Civil and Political Rights. It also shifts the burden of proof so that the accused has to prove that he is innocent. The vesting of enormous powers in a police force usually results in acts of impunity that target women victims. In India under The Prevention of Immoral Traffic Act, though the law is structured to deal with Traffickers, 80% of the cases filed are under soliciting, resulting in the reality that the woman victim is the person who is arrested most of the time. Being the most visible symbol of the sex industry, draconian powers to the police usually implies that the woman victim will be the one to be harassed, detained and questioned.

In many countries, the state has always taken on the historical role of being the protector of the female victim. The worst manifestation of this protection ideology is the protection homes set up in South Asia for women victims of Trafficking. Women and girls rescued from trafficking are kept in these homes “for their own protection”. The conditions are jail-like, and the women and girls cannot leave the premises. They have very little to do, the sanitary conditions are often appalling and they languish for years on end until the authorities decide what to do with them.¹⁴ They await case dates and repatriation dates but since they cannot leave the premises none of this is done with their consultation. They are the forgotten women and in interviews often plead with outsiders to let them out. Meanwhile, traffickers are usually given lesser sentences and are allowed out into the community at a much earlier date. As a result, very few of the women working in brothels and guest houses want to be rescued since they feel life in the government home is sometimes worse than in the brothel.

Though new strong laws are being adopted throughout the world, the criminal justice system in the different countries does not seem ready to deal with the problem of trafficking. Even though trafficking is an international phenomenon, except for the European Union, there is no joint co-operation among police in the different countries.

Each operates in its own sphere with a few isolated meetings throughout the year. The arrest and conviction rates also reveal a major problem with regard to criminal justice. The police in many parts of the world do not have any special training manuals or procedures with regard to trafficking. In some countries there are now special units to deal with trafficking within the police department. However, the major problem in this sphere remains allegations of police corruption.¹⁵ Women and girls interviewed in many parts of the world, especially in Asia and Africa spoke of police complicity in trafficking. They often spoke of money changing hands in front of them, of brothel owners being warned of raids. One girl spoke of how she ran

¹³ provided by the Ministry of Women and Social Welfare, November 2000

¹⁴ Based on a visit to The Loluah Home in Calcutta November 2000

¹⁵ Based on interviews, November 2000

away to the police station in Thailand but the brothel owner came to the station and paid the police and took her away. She was beaten senseless after the event.¹⁶ Corruption was seen as endemic in this trade and unless serious efforts are made from the top to punish this type of behavior sending a message that such behavior will not be tolerated, it is unlikely that much will change. However, pressure and vigilance by local level NGOs working trafficking has helped to curtail police corruption in many states.

The legacy of the judiciary in many societies is also mixed with regard to the prosecution of traffickers. The conviction rate throughout the world is abysmally low. The police argue that the reason for this is that the judiciary is patriarchal and insensitive to the issues. The members of the judiciary on the other hand, present the point of view that the evidence has not been gathered properly and since the punishments are now draconian demanding long sentences, it is unconscionable to convict someone without the proper evidence. The draconian laws may therefore have the opposite effect of not resulting in convictions.

Given the strong link between trafficking and migration in the modern world, trafficking as a crime poses major challenges for refugee and immigration agencies. Unless there is what I may call “trafficking awareness” on the part of the immigration officials around the world, the problems may be compounded. The reality is that much of the activism around the world in trafficking has been prompted by immigration officials and police taking the lead trying to prevent illegal immigration first, and the abuse and violation of women second. In fact nightmare realities may result from this quest to fight trafficking through the control of immigration. Let me give you a case. As UN Special Rapporteur on Violence Against Women, during the summer I have interns from all over the world working on my report in Sri Lanka. One such intern in the year 2001 was from the New York University Law School and was an American citizen of Pakistani descent. When she was leaving the country to fly to England, the British immigration official advising the Sri Lankan authorities looked at her passport. He stared at her and her passport and then became convinced that she was a trafficking victim. He claimed that the US passport was forged. She pulled out her Ohio’s drivers license, her NYU student card etc... but he was still convinced that she was a trafficking victim. She was pulled out of the queue and put into a detention cell at the airport. Since it was the middle of the night she had to wait six hours till the morning in the cell. Thereafter she was allowed to make phone calls and managed to contact friends and the US Embassy. About 12 hours later, a US embassy official came to the airport and she was cleared.

In fighting trafficking an enormous amount of discretion is vested in those who monitor cross border movements of people. In actual fact, the ordeal women suffer while pending immigration formalities merely compound their problems. International anti-trafficking norms establish mechanisms by which victims of trafficking can return to their countries of origin without punishment by either government.

But summary deportation is the rule, and the process in many parts of the world is corrupt, abusive and a terrible ordeal.

When one deals with issues of trafficking, it is important to realize that the women who are trafficked, according to the modern definition, is a victim survivor not a

¹⁶ Based on interviews, November 2000

perpetrator. In many systems of justice, she is treated as a perpetrator, subject to harshness, cruelty and insensitivity. If we are to truly fight trafficking in a meaningful way, we must learn to focus on the victim survivor, her needs and concerns as well as the concerns of the state in preventing the crime of trafficking. For example even though she is a victim survivor of trafficking, we cannot presume that she wants to go home. It is important that immigration and refugee judges have procedures that allow them to ascertain why the women left in the first place, what was the nature of the abuse, violence or oppression she faced at home that made her become a victim of trafficking. Summary deportation cannot be the answer given the complicated nature of the individual histories. There must be more meaningful and humane ways with which to deal with the trafficked victim.

In many European countries and the United States, the current policy is not summary deportation but the victim survivor is given a few months to decide whether she wants to prosecute her traffickers. She is then given a visa for the period of the trial and at the end of the period of the trial she is eligible for a visa on humanitarian grounds. The link to prosecution puts an extra burden on the woman and there is increasing pressure from women's groups that a victim survivor of trafficking is allowed to stay on humanitarian grounds regardless of whether she prosecutes her traffickers.

Currently proposed models

There are currently various models being proposed for the struggle against trafficking. A pure law and order approach is inadequate and may actually compound the problem for women. The hallmarks of a successful; approach are:-

Special government departments and units in the police and immigration authorities are set up to fight trafficking and they have international linkages. These units work together, coordinate information and activity in the country and in the region. These units are specially trained on the human rights of trafficked victims survivors.

Laws are being drafted in keeping with modern definitions of trafficking. This would include a respect for women's right of migration and a delinking of trafficking definitions from an emphasis solely on prostitution. In addition the legislation is framed respecting the woman's rights of migration and the human rights of women at every stage of the process. This would include listening to their voices and their concerns before repatriation, rehabilitation etc...

Training programmes for the police, immigration officials, prosecutors and the judiciary on trafficking and other related crimes especially in areas such as how to handle the female victim survivor of trafficking abuse.

Women victims of trafficking are not summarily deported. They are allowed to remain in the receiving country on humanitarian grounds.

The police and immigration authorities work closely with women's NGO's set up to work with women victims of trafficking. The moment a woman is identified at a brothel or an immigration counter, or at a brothel, she is handed over to these NGOs. These NGOs run shelters and have legal and psychological counseling for these women. They will also assist the woman in her dealings with the police, the prosecutors and the judiciary. The partnership between NGOs and the police is an

essential element in the success story with regard to successful convictions of traffickers and the humane treatment of victims.

Conclusion

Sending countries are also responsible for fighting trafficking with a humane face. Again, the partnership with NGOs is essential, and women should be handed to relevant NGOs when they are seen to be trafficking victims. In addition, when women are deported or when they return to the country, there must be special programmes for them, ascertaining their medical position and whether they wish to return to their families or live a life on their own. The foreign consulates should have officers who are skilled in dealing with issues of trafficking and abuse. Finally, measures should be taken to fight the long term problems that cause women to leave home countries in the first place. Abuse and violence in the home, unemployment, discrimination and oppression are matters that require effective action on the part of the sending countries if we are to deal with trafficking in terms of long term solutions. Special awareness programmes should be conducted to ensure that women are not abused or deceived.

In many of our attempts to fight trafficking, we must not forget our first concern – the woman victim. All these measures are made meaningful only because they allow women to live a life of respect and dignity. In promoting these measures we must keep this in mind. We must validate the lives of these women and give them the respect they deserve. The women involved may be victims but they are also human beings with aspirations and experiences. Any measure to be successful must learn to understand their needs and desires. In their suffering they have insights and ideas from which we can benefit. Too often they become pawns in some one else's game. Their voices and interests are compromised as States uphold sovereignty and stem the tide of migration. Whatever measures are taken should give centre place to the rights of the woman victim. Immigration laws, refugee procedures, and asylum practices must surely ensure and protect their right to live in dignity.