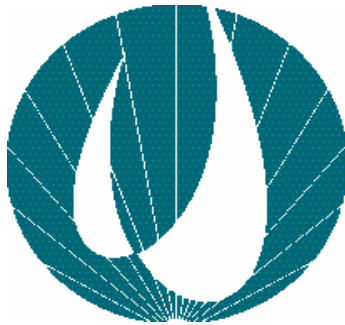


SIXTH ANNUAL MEETING



**Asia Pacific Forum of National Human Rights
Institutions**

"A Partnership For Human Rights In Our Region"

**GENDER ISSUES FOR NATIONAL
INSTITUTIONS**

TRAFFICKING

**24th – 27th September 2001
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Introduction¹

Each year, hundreds of thousands of individuals -the vast majority women and children from less developed and transitional countries of Asia and Eastern/Central Europe -are tricked, sold, coerced or otherwise procured into situations of exploitation from which they cannot escape. These women and children are the commodities of a transnational industry, which generates billions of dollars and, almost without exception, is conducted with a frightening level of impunity and official complicity. Recent research has confirmed a rapid increase in the incidence and severity of such practices as well as their highly systematic nature and exploitative effects.

The issue of trafficking in women and children is now high on the international agenda. One reason for this is the connection between trafficking and migration -particularly illegal labour migration. The link between trafficking and organized crime/criminal entrepreneurs has also provoked a number of States into taking action at the national level and lobbying for an international response. For some States and for large sectors of the relevant NGO community, the human rights and gender dimensions of the problem have provided the impetus for action.

Despite this increased attention (and perhaps because of different perceptions of the problem), attempts to deal with trafficking and related exploitation at the national, regional and international levels have been largely ineffective. Overall, current efforts reveal a marked tendency to marginalize or even to ignore the clear human rights and gender implications of the problem.

Description of the problem

In 1994, the General Assembly of the United Nations stipulated that trafficking is *the illicit and clandestine movement of persons across national and international borders... with the end goal of forcing women and girl-children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers, crime syndicates as well as other illegal activities related to trafficking such as forced domestic labour, false marriage, clandestine employment and forced adoption.*²

In plain language trafficking refers to the cross-border trade in human beings, However it means much more than organized illegal movement of persons for profit -a practice which is now commonly referred to as 'people smuggling', The critical element of trafficking is the presence of force or coercion throughout or at some stage during the process. In practice, trafficking takes place for a variety of end purposes including sweatshop labour, begging and domestic service. However, forced prostitution is the most visible end result of trafficking and many would claim that it is the most common. Unfortunately, it is not always easy to identify which cases of adult prostitution involve force and which ones do not. It is sometimes argued that *all* women and men who prostitute themselves do so as a result of some kind of force including force of circumstance through poverty or economic

¹ This information paper is based on a paper presented to the 4th Annual Meeting of the Forum by Ms Anne Gallagher of the Office of the High Commissioner for Human Rights.

² General Assembly resolution 49/166 of 23 December, 1994.

dependence. Others take the position that prostitution can be a valid work-choice for an adult individual and that coercion must be overt to amount to forced prostitution.

Beyond dispute are the facts. In many other parts of the world large numbers of migrant women and girl-children are trapped in situations of prostitution from which they cannot escape. Many are physically restrained. Others are intimidated in less direct ways. Perhaps the majority are tied to their situations through debt-servicing agreements which amount to little more than bondage. Root causes of trafficking are complex and will inevitably vary from situation to situation. However, the most commonly cited factors contributing to trafficking and forced prostitution include the following:

- Economic factors: such as poverty, food scarcity, unemployment and indebtedness;
- Social and cultural factors: such as violence against women and girls, gender discrimination in the family and the community and by the State;
- Political and legal factors: misguided policies - particularly relating to immigration and development, lack of appropriate legislation, lack of political will, public sector corruption; governmental hypocrisy over prostitution policies;
- Market factors: demand caused by the rapidly expanding global sex industry;
- International factors: the growing feminization of labour migration on the one hand and increasingly restrictive immigration policies of recipient countries on the other; increased power and involvement of transnational organized criminal networks.

Uniting all of these different "causes" is the discrimination and inequality, which serve to prevent women and girl-children from exercising power over their lives.

One of obstacles to the development of effective solutions is the lack of reliable data on the scope and extent of trafficking. Significant research has, however, been undertaken in this part of the world - particularly in South and South-East Asia. While numbers vary from study to study, the existence of a serious problem is beyond dispute.³ Increasingly stringent structural adjustment programs and the economic downturn of recent years have coincided with a reported rise in the number of cases of trafficking and forced labour as well as a spreading of the problem to areas which were previously less affected.⁴

It is important to acknowledge at the outset that trafficking is a problem, which affects and implicates all countries of this region in one way or another. It is neither fair nor appropriate to point to certain "culprits" without acknowledging the existence of a market in which there are both buyers and sellers. At the risk of oversimplification most countries in this part of the world - indeed most countries represented at this Meeting - can be classified as either countries of origin, countries of transit, or countries of destination. An example of a country of origin would be Nepal. International agencies estimate that 100,000 to 200,000 women from Nepal are trafficked into exploitative situations of prostitution in the Northern and Central cities of India. It is also estimated that an additional 5000 women and girl-children

³ The following figures are drawn from a range of sources including government, UN and NGO reports.

⁴ See Vitit Muntahbom, *THE TRAFFICKING IN WOMEN AND CHILDREN IN THE MEKONG SUB-REGION: LAW AND POLICY AS EFFECTIVE COUNTERMEASURES?* (Mekong Law Centre, 1997).

enter these trafficking networks annually. Patrilineality-caused landlessness amongst women, unemployment and under-employment, intense income poverty, widespread gender discrimination (both *de jure* and *de facto*) and the growing acceptance, of the inevitability of migration are factors serving to encourage this trend. Traffickers are increasingly recognizing Nepal as a profitable source for the domestic and tourist-based sex trade with India and other countries of South-East Asia.

Australia is an example of a country of destination for women trafficked from Asia. In the past few years, national and international non-governmental organizations have uncovered a complex web of trafficking networks operating from or through China, Jordan and Thailand. Hundreds of women have been discovered in situations amounting to forced prostitution, debt bondage or servitude. The trade is said to be well entrenched in all capital cities of Australia and the numbers of actual victims are presumed to be much higher than officially acknowledged. Recently similar reports have begun to emerge from New Zealand.

Classifications and definitions often fall short when they come up against reality and the same is true in this situation. In many parts of Asia trafficking is also an *internal* phenomenon involving movement between rural areas and cities. Some countries are simultaneously points of departure, transit and destination for trafficked persons. Thailand, Vietnam and Cambodia are cases in point. Government officials in Cambodia have estimated that there are over 14,000 women and children working as prostitutes in Phnom Penh alone. NGOs estimate that 35% of prostitutes are under 18 and 40% are Vietnamese. Up to 86% of this group were said to be forced into prostitution - sold or deceived by someone offering them a job as a factory worker or domestic helper or paying off a debt. Cambodian, Vietnamese and Burmese women and girls are regularly trafficked into Thailand to work in the sex industry and large numbers of Thai women and girls are in turn trafficked to Japan, Australia and Western Europe.

The Philippines is the second largest exporter of legal labour in the world. At the same time it has become a country of origin for persons trafficked into other countries of Asia, Europe and the Americas. The absolute numbers involved are sobering. For example, it has been estimated that several thousand Filipinos are trafficked to work as prostitutes in Japan each year. Thousands of Bangladeshi women are said to be trafficked into Pakistan each year and even more Pakistani boy-children end up as bonded labourers in the Middle East. The UN Special Rapporteur on Violence Against Women has reported on the increase in kidnapping and selling of women within China for the purposes of forced marriage. Cross-border trafficking also occurs from China to and through Vietnam, Burma, Macau and Thailand.

National Responses

National responses to trafficking, particularly on the part of governments, have been weak in the Asia Pacific region as in all others. This is a reflection of the invisibility of these practices as well as of a general reluctance on the part of governments to acknowledge that their women and child nationals may be victims of large-scale forced prostitution or that such abuses are in fact happening within their own territories. Laws that do attempt to prevent trafficking and forced prostitution often have a negative focus on the victim – by, for example, providing for immediate deportation of women discovered in such situations. Some of the other approaches, which have been taken by Governments of this region to resolving

the trafficking problem, have been similarly counterproductive. In several countries, migration legislation has changed to prevent women of "trafficable age" from leaving the country in search of work. This is a clear example of discrimination and a violation of the right of all persons to leave their country and to legally migrate to another. Many governments have sought to address trafficking by cracking down on migrant prostitution. In the absence of safeguards and support structures, these responses have invariably caused great distress and hardship to marginalized and vulnerable communities- further isolating and endangering victims of trafficking while doing nothing to apprehend or punish traffickers.

Increasingly however, governments of the region are displaying willingness, at least in principle, to taking this issue seriously. In a number of countries legislation has been strengthened with the aim of preventing exploitation of prostitution, punishing traffickers and dealing with the organized criminal aspects of trafficking. Governments have also begun to work more closely with national women's and human rights NGOs -most of whom demonstrate a practical understanding of the trafficking situation and of the kind of solutions which are needed. In the worst-affected countries national and international NGOs work together to support the reintegration of trafficked women and to prevent further trafficking through education and sensitization campaigns. Many national NGOs are also providing much-needed practical support to victims of trafficking in the form of repatriation assistance, emergency accommodation, health-care, job assistance, and protection for families.

A Role for National Human Rights Institutions

At the 1999 meeting of the International Coordinating Committee, the High Commissioner for Human Rights noted that National Human Rights Institutions are "an under-utilized resource in the fight against trafficking". The purpose of this section is to set out some preliminary ideas on how national institutions can work to prevent trafficking and to protect the rights of trafficked persons. .

The role which an individual National Commission of the Asia-Pacific region could play in this area will of course depend very much on the country situation. Strategies for a country of origin will necessarily be different to those for a destination country. National Institutions in countries of origin have a special responsibility in the area of *prevention*. The direction of their work must be towards ensuring that the root causes of trafficking on the supply side are addressed by the government and by the community. National Institutions in destination countries must focus their attention primarily on protection of the rights of trafficked persons. They will also need to address root causes which create the market for trafficked persons and which allow it to flourish.

In all cases National Institutions must base their work on a thorough understanding of the trafficking situation in their country of focus. This is the only way to ensure relevance and credibility. Non-governmental organizations working in this area can be an invaluable resource in this respect. When developing a particular approach or strategy on trafficking, National Institutions should endeavor to consult and coordinate with relevant NGOs, which are often the first point of contact and the source of most practical assistance for victims of trafficking.

The work of national institutions on combating trafficking generally focuses on the three 'core' functions of national institutions - their (i) educative, (ii) advisory and (iii) complaint resolution functions.

The Educative Function

All national commissions in the Asia-Pacific region are mandated to undertake human rights education and sensitization. Integration of trafficking issues into training and dissemination programs should be a priority in significant source and destination countries. A broad, contextual approach should be taken where possible in order to properly incorporate and reflect the human rights and gender aspects of trafficking. Key target groups include public officials (police, prosecutors, the judiciary, immigration officials, consulate staff) as well as civil society groups including the media, educators, NGOs and community leaders. Consideration could also be given to undertaking training-the-trainers programs in order to empower local community groups to conduct sensitization activities - as it is these groups who are often in closest contact with victims and potential victims of trafficking.

The Advisory Function

As noted above, Governments have a critical role to play in the fight against trafficking. National Institutions can use their position, resources and authority to provide governments with inputs which will enable them to make wise legislative and policy choices. Priority should be given to reviewing domestic laws with a view to identifying obvious gaps and weaknesses. In addition to specific anti-trafficking legislation, attention should be given to laws relating to immigration, emigration and prostitution. Other possible areas of attention for judicial review would include the issue of extraterritorial legislation (to facilitate the prosecution of traffickers); birth registration and citizenship requirements (immediate registration and citizenship at birth in order to ensure that victims, particularly children, may exercise their right to return to their home countries); and laws relating to marriage and labour conditions. It is of course important for national institutions to go beyond the law by also including consideration of related policies and practices.

General policy advice to government on the problem of trafficking can also be extremely useful. National Commissions could for example propose that governments include the issue of trafficking in national development and poverty alleviation programs as well as in National Plans of Action for Human Rights. In countries of origin they could promote specific preventive initiatives aimed at increased access of vulnerable women and girls to education and alternative job opportunities. In destination countries they could propose that sex-related industries such as leisure, tourism, media and computer communication industries be encouraged to develop "a code of conduct with clauses specifying monitoring and reporting mechanisms to prevent direct or indirect involvement with trafficking.

The Complaints and Enquiries Functions

All National Commissions of the Asia-Pacific region are mandated to receive and act upon complaints of human rights violations. Most National Commissions are also empowered to undertake enquiries, on their own initiative into particular human rights situations or issues.

Both of these powers can be extremely important in highlighting the problem of trafficking and in providing redress to victims.

In relation to individual complaints, National Commissions must remain aware of the fact that the type of complaint received will usually reflect public perception of the Institution's functions and principle areas of concern. A Commission which has never issued a public statement on trafficking never included trafficking related issues in its training or dissemination programs and never provided relevant policy advice to government should not be surprised if it never receives complaints on this issue. Nor should they assume that the problem does not exist on this basis alone. It is up to individual Commissions to use their other functions as a means of ensuring that the complaints procedure does in fact provide a reflection of human rights concerns within the community. Other considerations to be kept in mind include the fact that most trafficked persons are illegal or irregular immigrants. National Commissions should make special efforts to reach out to the immigrant community as normal communication channels are likely to be ineffective. The irregular status of trafficked persons will also mean that they are wary of "official channels. National Commissions should ensure confidentiality in the complaint procedure in order to encourage trafficked persons to come forward.

General Enquiries are a particularly useful way of gathering information on difficult or sensitive issues. National Commissions in major sending or receiving countries could consider undertaking such an enquiry into trafficking. The results from a study of this kind would provide valuable information on critical but often overlooked human rights issues.

Conclusion and Next Steps

At the Fourth Annual Meeting of the Asia Pacific Forum held in Manila in 1999, Forum members agreed to establish a focal point in each of their institutions on trafficking. Members also agreed to develop joint programs of action to combat the problem - in recognition of the trans-boarder nature of the problem.

To build on these initiatives, the Secretariat of the Forum has held discussions with the OHCHR about holding a regional workshop on trafficking in the fourth quarter of 2002. As a follow up to the Workshop the Forum and the OHCHR would also like to develop a practical pilot project on trafficking focusing on the work of two Forum members and their respective State's law enforcement and social welfare agencies. The results of this pilot project and the lessons learned from its implementation would then be disseminated to all Forum members.

This proposal will be discussed by the members of the Forum in the coming months. A detailed project proposal will be available from the Secretariat of the Forum in early 2002.