

Kalar program

**NETHERLAND WOMEN'S ANTI TRAFFIC COURT AT WOMEN AN VIOLENCE AT THREATENING THE HIV/AIDS  
19-20 July 2003 Bangalore India**

*Tentative Schedule*

**FRIDAY 18.07.2003**

Arrival of Outstation Participants

**SATURDAY 19.07.2003**

**8.30 AM**

Arrival of Participants from Bangalore

**8.30AM to 9.30AM**

Registration

**9.30 AM to 10.00 AM**

Welcome and Introductions

**10.00 AM to 11.30AM**

*Towards a New Political Imaginary*  
Presentation on the Courts of Women

**11.30 AM to 11.45 AM**

Tea

**11.45 AM to 12.45 PM**

Overview of *South Asia Court of Women on the Violence of Trafficking / HIV/AIDS*  
Issues, Concerns and Expectations

**12.45 PM to 1.00 PM**

Clarifications/ Discussions

**1.00PM to 2.00 PM**

Lunch

**2.00 PM to 4.00 PM**

**Panel Presentations**  
*Regulation of Trafficking and HIV/AIDS: A Critical Enquiry into legal and political implications*  
  
*Violence and Vulnerabilities: Trafficking, HIV/ AIDS, Prostitution and Migration*

**4.00 PM to 4.15 PM**

Tea

**4.15PM to 6.30 PM**

Small Group Discussion

**7.00 PM**

Departure for Bangalore Participants

**SUNDAY 20.07.2003**

**8.30 AM**

Arrival of Participants from Bangalore

**9.00AM to 11.30AM**

**Panel Presentations**  
*Globalisation, Militarisation and Conflict: A conceptual frame work for trafficking /HIV /AIDS*  
  
*HIV/ AIDS, Trafficking and Human Rights: Some debates and dilemmas*

**11.30AM to 1.30PM**

Small group discussions

**1.30PM to 2.30PM**

Lunch

**2.30PM to 5.30PM**

Presentation of Small Group Discussions  
  
Issues for follow up at the South Asia Court of Women on Trafficking and HIV/AIDS

**6.00PM**

All Participants depart to Bangalore

**MONDAY 21.07.2003**

**11.30AM**

Press Conference in Bangalore



# Appendix C

## Provisional World Health Organization Clinical Case Definition for AIDS (Bangui)

(The following information is quoted from Chirimuuta, Richard and Rosalind, pp. 171-172, who referenced WHO's *Weekly Epidemiological Record* No. 10, March 7, 1986, page 71.)

A clinical case definition is needed in countries where diagnostic resources are limited. A provisional clinical

case definition was developed at a WHO Workshop on AIDS held in Bangui, Central African Republic, 22-24 October, 1985. This definition was reviewed and slightly adapted at the Second Meeting of the WHO Collaborating Centres on AIDS as follows:

### Adults

AIDS in an adult is defined by the existence of at least 2 of the major signs associated with at least 1 minor sign, in the absence of known causes of immunosuppression such as cancer or severe malnutrition or other recognized etiologies.

1. *Major signs*
  - (a) weight loss > 10% of body weight;
  - (b) chronic diarrhoea > 1 month;
  - (c) prolonged fever > 1 month (intermittent or constant).
2. *Minor signs*
  - (a) persistent cough for > 1 month;
  - (b) generalized pruritic dermatitis;
  - (c) recurrent herpes zoster;
  - (d) oro-pharyngeal candidiasis;
  - (e) chronic progressive and disseminated herpes simplex infection;
  - (f) generalized lymphadenopathy.

The presence of generalized Kaposi's sarcoma or cryptococcal meningitis are sufficient for the diagnosis of AIDS.

### Children

Paediatric AIDS is suspected in an infant or child presenting with at least 2 of the following major signs associated with at least 2 of the following minor signs in the absence of known causes of immunosuppression such as cancer or severe malnutrition or other recognized etiologies.

1. *Major signs*
  - (a) weight loss or abnormal slow growth;
  - (b) chronic diarrhoea > 1 month;
  - (c) prolonged fever > 1 month.
2. *Minor signs*
  - (a) generalized lymphadenopathy;
  - (b) oro-pharyngeal candidiasis;
  - (c) repeated common infections (otitis, pharyngitis, etc.);
  - (d) persistent cough;
  - (e) generalized dermatitis;
  - (f) confirmed maternal LAV/HTLV-III infection.



# Appendix D

## Factors Known to Cause False-Positive HIV Antibody Tests Results

- Anti-carbohydrate antibodies<sup>52, 19, 13</sup>
- Naturally-occurring antibodies<sup>5, 19</sup>
- Passive immunization: receipt of gamma globulin or immune globulin (as prophylaxis against infection which contains antibodies)<sup>18, 26, 60, 4, 22, 42, 43, 13</sup>
- Leprosy<sup>2, 25</sup>
- Tuberculosis<sup>25</sup>
- Mycobacterium avium<sup>25</sup>
- Systemic lupus erythematosus<sup>15, 23</sup>
- Renal (kidney) failure<sup>48, 23, 13</sup>
- Hemodialysis/renal failure<sup>56, 16, 41, 10, 49</sup>
- Alpha interferon therapy in hemodialysis patients<sup>54</sup>
- Flu<sup>36</sup>
- Flu vaccination<sup>30, 11, 3, 20, 13, 43</sup>
- Herpes simplex I<sup>27</sup>
- Herpes simplex II<sup>11</sup>
- Upper respiratory tract infection (cold or flu)<sup>11</sup>
- Recent viral infection or exposure to viral vaccines<sup>11</sup>
- Pregnancy in multiparous women<sup>58, 53, 13, 43, 36</sup>
- Malaria<sup>6, 12</sup>
- High levels of circulating immune complexes<sup>6, 33</sup>
- Hypergammaglobulinemia (high levels of antibodies)<sup>40, 33</sup>
- False positives on other tests, including RPR (rapid plasma reagent) test for syphilis<sup>17, 48, 33, 10, 49</sup>
- Rheumatoid arthritis<sup>36</sup>
- Hepatitis B vaccination<sup>28, 21, 40, 43</sup>
- Tetanus vaccination<sup>40</sup>
- Organ transplantation<sup>1, 36</sup>
- Renal transplantation<sup>35, 9, 48, 13, 56</sup>
- Anti-lymphocyte antibodies<sup>56, 31</sup>
- Anti-collagen antibodies (found in gay men, haemophiliacs, Africans of both sexes and people with leprosy)<sup>31</sup>
- Serum-positive for rheumatoid factor, antinuclear antibody (both found in rheumatoid arthritis and other autoantibodies)<sup>14, 62, 53</sup>
- Autoimmune diseases:<sup>44, 29, 10, 40, 49, 43</sup>
  - Systemic lupus erythematosus, scleroderma, connective tissue disease, dermatomyositis
- Acute viral infections, DNA viral infections<sup>59, 48, 43, 53, 40, 13</sup>
- Malignant neoplasms (cancers)<sup>40</sup>
- Alcoholic hepatitis/alcoholic liver disease<sup>32, 48, 40, 10, 13, 49, 43, 53</sup>
- Primary sclerosing cholangitis<sup>48, 53</sup>
- Hepatitis<sup>54</sup>
- "Sticky" blood (in Africans)<sup>38, 34, 40</sup>
- Antibodies with a high affinity for polystyrene (used in the test kits)<sup>62, 40, 3</sup>
- Blood transfusions, multiple blood transfusions<sup>63, 36, 13, 49, 43, 41</sup>
- Multiple myeloma<sup>10, 43, 53</sup>
- HLA antibodies (to Class I and II leukocyte antigens)<sup>7, 46, 63, 48, 10, 13, 49, 43, 53</sup>
- Anti-smooth muscle antibody<sup>48</sup>
- Anti-parietal cell antibody<sup>48</sup>
- Anti-hepatitis A IgM (antibody)<sup>48</sup>
- Anti-Hbc IgM<sup>48</sup>
- Administration of human immunoglobulin preparations pooled before 1985<sup>10</sup>
- Haemophilia<sup>10, 49</sup>
- Haematologic malignant disorders/lymphoma<sup>43, 53, 9, 48, 13</sup>
- Primary biliary cirrhosis<sup>43, 53, 13, 48</sup>
- Stevens-Johnson syndrome<sup>9, 48, 13</sup>
- Q-fever with associated hepatitis<sup>61</sup>
- Heat-treated specimens<sup>51, 57, 24, 49, 48</sup>
- Lipemic serum (blood with high levels of fat or lipids)<sup>49</sup>
- Haemolyzed serum (blood where haemoglobin is separated from the red cells)<sup>49</sup>
- Hyperbilirubinemia<sup>10, 13</sup>
- Globulins produced during polyclonal gammopathies (which are seen in AIDS risk groups)<sup>10, 13, 48</sup>
- Healthy individuals as a result of poorly-understood cross-reactions<sup>10</sup>
- Normal human ribonucleoproteins<sup>48, 13</sup>
- Other retroviruses<sup>8, 55, 14, 48, 13</sup>
- Anti-mitochondrial antibodies<sup>48, 13</sup>
- Anti-nuclear antibodies<sup>48, 13, 53</sup>
- Anti-microsomal antibodies<sup>34</sup>
- T-cell leukocyte antigen antibodies<sup>48, 13</sup>
- Proteins on the filter paper<sup>13</sup>
- Epstein-Barr virus<sup>37</sup>
- Visceral leishmaniasis<sup>45</sup>
- Receptive anal sex<sup>39, 64</sup>

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## Appendix E

### AZT LABEL

<b>TOXIC</b> Toxic by inhalation, in contact with skin and if swallowed. Target organ(s): Blood Bone marrow. If you feel unwell, seek medical advice (show the label where possible). Wear suitable protective clothing.		<b>SIGMA</b> <b>3'-AZIDO-3'-DEOXY-THYMIDINE</b> (AZT; Azidothymidine) (30516-87-1) Desiccate Store at less than 0°C <chem>C10H11N5O4</chem> FW 267.2 Purity 99% (HPLC) For laboratory use only. Not for drug, household or other uses.
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### ACTUAL COPY OF AN AZT LABEL

This label has appeared on bottles containing as little as 25 milligrams, a small fraction (1/20-1/50) of a patient's daily prescribed dose\*

(\*Reference: Physicians Desk Reference 1994, pp. 324)

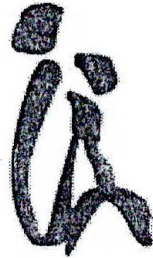


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(Johnson, 1996: 5)



HRM  
 The papers are for a new  
 Resource File on  
 "Violence of Trafficking and HIV/AIDS"  
 Background papers from National  
 Workshop on South Asia Court  
 of Women - Vimochana



National Workshop on South Asia Court of Women  
 on Violence of Trafficking and HIV/AIDS  
 19-20 July 2003 Bangalore India

PROGRAMME

19.07.2003

7.30 am

Departure of Bangalore participants

8.30 am - 9.30 am

Registration

9.30 am - 10.00 am

Welcome and Introductions  
 Shanthamma, Vimochana

10.00 am - 11.30 am

Overview of South Asia Court of Women  
 on the Violence of Trafficking and HIV AIDS  
 Issues, Concerns and Expectations  
 AWHRC, UNDP

11.30 am - 11.45 am

Tea

11.45 am - 1:15 am

Panel Presentation  
*Violence and Vulnerabilities: Trafficking,  
 HIV/AIDS, prostitution and migration*  
 Meena Seshu: Sangram, Sangli  
 Manjima Bhattacharjie: Jagori, New Delhi  
 Tapti Bhowmick: Sanlaap, Calcutta  
 S Lalitha: JWP, India

Moderator: Ms. Sarsu Esther Thomas,  
 Co-ordinator, Trafficking Programme,  
 CWL / NLSIU, Bangalore

1.15 am - 2.00 pm

Lunch

2.00 pm - 4.15 pm

**Panel Presentation**

*State Policies, Laws and Conventions:*

The Problems of defining and regulating trafficking and HIV/AIDS

**Rajalakshmi:** CWL, NLSIU, Bangalore

**Miriam Chinappa:** ALF, Bangalore

**Moderator:** Donna Fernandes, Vimochana

*The Human Rights approach to Trafficking and HIV/AIDS - Some debates and dilemmas*

**Anand Grover:** Lawyer's Collective, Bombay

**Dr. Manu Kothari:** KEM, Bombay

**Dr. Thelma Narayan:** CHC, Bangalore

**Moderator:** Shakun Mohini, Vimochana

4.15 pm - 4.30 pm

Tea

4.30 pm - 6.30 pm

Small Group Discussions

7.00 pm

Departure for Bangalore Participants

20.07.2003

7:30 am

Departure of participants from Bangalore

9.30 am - 11.00 am

**Panel Presentation**

*Globalisation, Militarisation and Conflict:*

A contextual frame work for trafficking/HIV /AIDS

**Rukmini Rao :** DDS, Hyderabad

**Jarjum Ete :** APWWS, Arunachal Pradesh

**Moderator :** Mercy Kappen, Visthar, Bangalore

11.00 am - 11.15 am

Tea

11.15 am - 1.30 pm

*Towards a New Political Imaginary*

Presentation of the Courts of Women

**Corinne Kumar :** AWHRC / Vimochana

1.30 pm - 2.30 pm

Lunch

2.30 pm - 5.30 pm

Presentation of Small Group Discussions

Issues for follow up at the South Asia Court of Women on Trafficking and HIV/AIDS

6.00 pm

All participants depart to Bangalore



# *Uncommon Questions:*

## A Feminist Exploration of AIDS

*Women's Health Interaction*  
*August 1999*

## ***Uncommon Questions: A Feminist Exploration of AIDS***

*Research and writing:* WHI Collective: Donna Chiarelli, Julie Delahanty, Carla Marcelis, Rose Mary Murphy, Bibiana Nalwiindi Seaborn, Karen Seabrooke

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While we gratefully acknowledge these contributions, Women's Health Interaction takes sole responsibility for the views expressed in this publication.

*WHI Website:* [www.web.net/~whi](http://www.web.net/~whi)

*ISBN:* 0-9695267-6-8

### **Women's Health Interaction (WHI): Who are we?**

Women's Health Interaction is a voluntary feminist health collective, started in 1983. We advocate for women's health in the context of social and economic justice. At WHI we develop and use feminist principles in working together, sharing responsibilities in the group and making decisions by building consensus.

WHI believes that the personal is political, and we link our own experiences to those of other women around the world. We analyze these experiences for common themes and build our education and advocacy work from this. We collaborate with women's and health organizations and networks in Canada and around the world.



# Uncommon Questions:

## A Feminist Exploration of AIDS

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# Uncommon Questions:

## A Feminist Exploration of AIDS

### Preamble: Setting the Context

Women's Health Interaction (WHI) has prepared this paper as a contribution to the ongoing discussion on AIDS. We are concerned about the suffering and death around the world that has been attributed to HIV/AIDS. At the same time, along with a growing number of people, we have come to question the links between HIV and AIDS, and the idea that HIV = AIDS = Death. Specifically because of the high human costs involved, it is important to understand the weaknesses in the dominant theory concerning the cause of AIDS, and to question the treatments that are being prescribed and, in some cases, imposed.

The focus on HIV and AIDS is relatively new to our group. In the past, WHI has worked on issues of women's reproductive rights and women and pharmaceuticals, promoting our feminist vision of holistic and integrated approaches to health care that increase women's control over our own bodies and health, and that focus on prevention of illness. We believe, together with many others, that women's health status is fundamentally linked to the position and power of women in society, and to the social and economic conditions in which we live. The medicalization and manipulation of women's health has led to programs and strategies that ignore the root causes of illness. Women are victimized and targeted for dangerous drugs, often bypassing the right to informed consent. Further, alternative health therapies and strategies are ignored. This focus on medical interventions by governments and the medical industry is based on a model that promotes and relies on a "pill for every ill" rather than the eradication of the social conditions that cause disease to flourish.

It is from our evolving understanding and critique of the medical model as applied to women's health that WHI has begun to take a look at the issue of AIDS. Our previous work on women's health has caused us to question "common knowledge" about issues, and challenge the assumptions that underpin popular beliefs. It has caused us to question in whose interest specific knowledge is constructed and disseminated. As we delved deeper into the literature and spoke with HIV-seropositive "dissidents", we began to question some of the assumptions about the relationship between HIV and AIDS. We learned that there were alternative theories about the causes of AIDS, and that the researchers and activists who questioned whether HIV = AIDS = Death, were often silenced and in other ways isolated and punished for challenging the dominant theory.

We became concerned that women diagnosed as HIV positive, particularly pregnant and breast-feeding women, are routinely advised and sometimes pressured to take extremely toxic drug therapies, such as AZT. Pregnant or nursing women who refuse retroviral drugs for themselves or their newborns, or who refuse to stop breastfeeding, have been threatened with having their children taken from them (Farber, 1998, 1999). We began to have concerns about the human rights and reproductive rights of HIV-positive women seeking treatment or having treatment imposed, in addition to many questions about the safety of the AIDS drugs, and the link between HIV and AIDS itself.

With the above in mind, WHI decided to engage in a deeper learning process, to educate ourselves about HIV and AIDS, to identify gaps in our knowledge and to seek to fill these gaps through research and consultation with others. We have written this paper as a first step in this learning and dialogue process.

We recognize that there are gaps in this discussion paper; for example, it was difficult to obtain alternative information on HIV/AIDS in the Third World. This is a priority for our future exploration.

While many women's health advocates have argued that women have been excluded from treatment and are discriminated against in programs that address HIV and AIDS, this critique has generally not extended to challenging prevailing HIV/AIDS orthodoxy itself. We feel that our own questioning in this regard is important and consistent with the history of our work. We realize that for many this paper will represent a great deal of unexplored territory and its content may be perceived as threatening to those living with an HIV-positive or AIDS diagnosis. We know that others in the women's health movement will respect our choice in asking these questions, and will engage with us in seeking answers.

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Ottawa, August, 1999



# Introduction

Our involvement in AIDS is not an academic exercise. We fear that people are dying unnecessarily as a direct result of the way that AIDS has been conceptualized and treated. In this paper, we challenge common assumptions that are made about AIDS and HIV. We ask questions that focus on three basic injustices associated with the way that HIV and AIDS have come to be understood and addressed globally. The first injustice is the unequal power and marginalization of women. The second injustice arises when people are prevented from exercising their right to fully-informed consent in issues of testing and treatment. The third injustice arises when alternative viewpoints are discredited, or worse, silenced.

Part I of this paper identifies the feminist framework that has informed our analysis. The framework identifies principles associated with women's health that guided our elaboration of the issues. These include: 1) critiquing the medical model of disease; 2) defining women as experts in our own health; 3) enshrining principles of informed consent; and 4) challenging the current allocation of research funding.

In Part II, we ask specific questions about the AIDS paradigm. Each section begins with a set of common assumptions or "common knowledge" on a particular

issue, followed by a series of "uncommon questions" – questions that are rarely asked, but ought to be. While we do not have all the answers ourselves, we believe that these questions have to be asked, and ultimately, they have to be answered. Identifying the "uncommon questions," and developing a discussion around them, began with reading extensively in the mainstream literature on AIDS, as well as literature by those dissenting from the popular understanding of AIDS. Our bibliography, and Appendix A, include many of these resources. We conclude this section by exploring how the AIDS paradigm has been constructed, with particular reference to the medical establishment and pharmaceutical companies which have had overwhelming control over the scientific information produced and disseminated publicly about AIDS.

Finally, in Part III, as a contribution to the dialogue we hope to promote, the paper outlines some of the policy implications which emerge from what we have learned in creating this discussion paper. A series of appendices is also attached to the discussion paper, which provide more detail on points raised throughout the document.

# I. A Feminist Framework

Women have unequal power in society, which results in less control over our lives and health, fewer choices, unequal treatment and, for many women, physical and psychological violence that critically affects our health. In addition, women's health and disease, and the research and treatment of women's disease, are defined by those who hold most power in society. It is in this context that women's health needs and problems have to be understood. The concepts valued by the women's health movement promote better lives and health care for women, and for all people.

The women's health movement has a powerful tool in feminist theory which, at base, includes a critique of male-dominated and hierarchical power structures that underlie poverty and powerlessness. A feminist analysis of women's health problems is based upon core principles with which to approach the phenomena of disease and health, as well as the related processes involved in the research, treatment and prevention of disease. The following principles are central to a feminist analysis of health.

## Critique of the Medical Model of Disease

The medical model of disease, including its preoccupation with the germ theory of disease, is a limited and often harmful model. The medical model assumes that illness is caused by a specific and identifiable agent, bacteria or virus, that invades the body. When the body cannot fight off the invader, a person succumbs to the attack and becomes ill. The physician identifies the agent through laboratory tests, and then prescribes specific drugs designed to repulse the invading organism. This model implies that the causes of disease lie within the (weak and imperfect) individual, and focuses therapeutic intervention on individuals, and on symptoms, while ignoring other variables and elements within the social and physical environment. The model defines the body in a mechanistic way and sees medicine quite literally in military terms as a "war" against hostile agents, requiring the use of an arsenal of drugs to combat the disease. Just as in war, the side effects of therapies are seen as unfortunate but necessary consequences of medicine, echoing the military notion of "collateral damage".

A feminist perspective attempts to de-medicalize disease and health by taking a broader, more holistic and comprehensive view of these processes. It takes into consideration the multi-factorial elements of disease, including the economic, social and political factors that have a direct impact on health. It recognizes that health is affected by a whole range of factors, including nutrition, stress, pollution and other contaminants. A feminist perspective emphasizes the need to recognize the complex way the *internal* environment, which is the body, interacts with the external environment.

We recognize the role and power of mind in maintaining health, as well as in healing, and the interactive effects of our social environment on our state of wellness (or illness). We advocate for improving peoples' social conditions and for preventing disease rather than treating people exclusively with powerful drugs. Confronting and resolving the causes of poverty, stress and addiction are central to dealing with disease.

## Women as Experts: Knowing our Bodies, Defining our Health

We advocate that women have the central role as experts in their own health and illness. Women need to be heard and their experiences validated. Fundamental to a feminist perspective is the recognition that consciousness-raising is a powerful tool to empower women, and that women's health depends on that empowerment. When we share our experiences and gain knowledge and authority to make decisions, we can prevent many harmful practices and promote alternative solutions. Consciousness-raising and political activism brought about the childbirth movement, identified violence against women as a major global problem, made visible and reduced the psychiatrizing and tranquilization of women, and built a movement for women to regain reproductive control of our bodies.

It is through discussion with other women that we have named our experience, identified the powerful forces that have kept us dependent on, and often harmed by, medical processes, and empowered us to find alternatives. This process has played an important role in "de-medicalizing"



disease and going beyond measures that focus on individuals and too often "blame" us for our own illness. Consciousness-raising, sharing experiences and becoming fully-informed, allows us to redefine problems and create healthy solutions.

Women need to be a central part of all processes dealing with disease and health. Our experiences and voices need to be included in every phase of research, treatment and prevention programs. Women's needs are different from men's needs, and our bodies react differently than men's. Women's reproductive and breastfeeding capacities place us in a critical and vulnerable position. What happens to a pregnant woman can directly affect her baby *in utero* and after birth. Further, the gender roles that women are ascribed by society may also create specific health problems that need to be addressed. For example, it is well documented that women are more likely to work in the unregulated sector of the economy where occupational health issues go unaddressed by formal regulations and where they are physically and psychologically vulnerable.

## Informed Consent

A central principle that has been promoted by the women's health movement is that every person has the right to control over her own body and to fully-informed choice and consent concerning medical interventions. This means that therapeutic alternatives should be presented with the full range of risks and benefits outlined. It means receiving full information on alternative therapies, as well as the consequences of refusing treatment.

The importance of informed choice extends to testing. No one should be coerced into being tested for a disease. For consent to be truly informed, information should be based on sound research conveyed accurately, honestly and objectively. It is also fundamental that the potential consequences of our choices should never be exaggerated.

## Funding Research

The women's health movement has questioned why women's health problems receive such a low proportion of funding in comparison to funding for male-identified diseases, and specifically in comparison to research on AIDS. Comparison with funding for breast cancer research is illustrative. In 1992, Health Canada pledged \$25 million over five years to the Breast Cancer Initiative. At the same time, it allocated \$203.5 million for a five year national AIDS strategy. And yet, in the fourteen years between 1982 and 1996, while 9,500 Canadians (565 women) had died of AIDS, more than 60,000 died of breast cancer. In other words, in this period for every person who died of AIDS, 6 women died of breast cancer, and for every woman who died of AIDS, 106 died of breast cancer (Mallet, 1996)<sup>1</sup>.

This disproportionately low level of funding for research on women's specific health issues is a serious flaw in current research programs, but we must also question medical research priorities in general, regardless of their gender bias. Research funds are weighted heavily in favour of funding the medical/pharmacological approach to understanding and addressing disease, rather than emphasizing prevention and alternative therapies that take social and economic conditions into consideration.

The application of these four principles as a guide in our analysis of women's health issues has focused our concern that current research, testing, treatment and portrayals of AIDS are remote from a feminist understanding and approach and may be putting women and their children at risk. This process has led us to explore the very meaning and definition of AIDS, and the potential human rights questions arising from the testing and treatment of women.

1. Because AIDS is considered a relatively "new" health problem, funding might for a time justifiably have been higher than for a health problem with an already well established research program. However, the unprecedented investment in AIDS research and the rapid establishment of AIDS research facilities since the mid-Eighties - coupled with the fact of the failure of early predictions of AIDS developing as a widespread and deadly epidemic - confirm the conclusion that the present disproportionate levels of funding for AIDS research and prophylaxis cannot be justified.

## II. Common Knowledge/ Uncommon Questions

### 1. How is AIDS Defined?

#### COMMON KNOWLEDGE

HIV = AIDS = DEATH

#### UNCOMMON QUESTIONS

*Is HIV the cause of AIDS? Does HIV always lead to AIDS? Has the definition of AIDS changed over the years? Are there alternative theories? Is death inevitable? Do social, economic and political factors play a role in developing AIDS?*

*Is HIV the cause of AIDS, and does  
HIV always lead to AIDS?*

The relationship of HIV to AIDS is not an obvious and undisputed fact, but rather a theory constructed, advanced and defended by the scientific and medical community. The dominant medical model of AIDS (Acquired Immune-Deficiency Syndrome) states that AIDS is a condition directly linked to HIV, a virus that attacks the body's T-Cells and immune system, weakening the body's capacity to resist disease, thereby making it susceptible to a long (and rapidly lengthening) list of 'opportunistic' infections. AIDS is a medical "construct", and integral to its definition and diagnosis is the presence of HIV. In the U.S. for example, according to the Centers for Disease Control's definition, a person cannot have AIDS, regardless of other symptoms, unless she has HIV, since HIV is considered the cause of AIDS and is part of its diagnosis. As Celia Farber reports, "it is the perfect circular definition, and has ensured the AIDS establishment a near perfect correlation between HIV and AIDS" (Farber, 1997: 99).

*Are there alternative theories?*

Even within the scientific community there is controversy over the cause and treatment of AIDS.<sup>2</sup> A number of established researchers have challenged the prevalent theory that HIV causes AIDS and have raised alternative explanations for the disease. Robert Root-Bernstein, Professor of Physiology at Michigan State University and author of *Rethinking AIDS: The Tragedy of Premature*

*Consensus* (1993), was one of the first to publicly ask: "What if HIV doesn't cause AIDS?" Root-Bernstein – along with other scientists such as Peter Duesberg, a renowned microbiologist and virologist, member of the National Academy of Science, and a former candidate for the Nobel Prize, and Eleni Papadopulos-Eleopulos, biophysicist and chairwoman of the Board of the International Forum for Accessible Science – has pointed out many gaps in this simplistic virus-disease causation theory. They assert that even within the medical paradigm, HIV does not meet the criteria of a human retrovirus, nor does it follow the epidemiological course of an "epidemic" (Root-Bernstein, 1993). Nobel Laureate (Chemistry), Kary Mullis, asserts that "...we have not been able to discover any good reasons why most of the people on earth believe that AIDS is a disease caused by a virus called HIV. There is simply no scientific evidence demonstrating that this is true" ("Introduction" to Duesberg, 1996: xiii).

Despite strong resistance to their speculation and alternative theories, many members of the scientific establishment continue to raise questions about how "AIDS" functions. Root-Bernstein, for example, places emphasis on an immune system already weakened by any of a wide variety of possible "co-factors" (other than HIV) which allows the infections associated with AIDS to take hold. Others, such as Joseph Sonnabend, suggest that there are other, more specific, co-factors which play key roles in the onset of AIDS (Sonnabend, 1993). K. Shallenberger asserted in the journal *Medical Hypotheses* that the single HIV infectious pathogen model of AIDS, "just does not

<sup>2</sup> See Appendix A: *Alternative Activists, Theories and Organizations*.



fit the bill" (Shallenberger, 1998: 67-80). Shallenberger has developed a theory of AIDS based on the immune system itself, rather than a single invasive virus. He does not question the existence of HIV, but argues that AIDS is a multifactorial condition based on a reversal of the traditional roles of the two principle arms of the immune system, "cell mediated immunity" (CMI) and "antibody mediated immunity" (AMI). Shallenberger suggests that AIDS is a disease event entirely separate from HIV, and found principally in people most subject to repeated antigenic exposure, including 1) people with multiple sexually-transmitted diseases, and viral, bacterial and parasitic infections; 2) drug addicts exposed to various hepatitis and other pathogens via dirty syringes and contaminated street drugs; and 3) hemophiliacs exposed to commercially-made clotting factor consisting of 99% alloantigenic impurities (Shallenberger, 1998: 67-80).

*Do social, economic, and political factors play a role in developing AIDS?*

The greatest number of AIDS cases are reportedly among groups which are socially and economically marginalized. It is well known that social, economic and political conditions play integral roles in building, or in destroying, immunity. People living in poor social and economic conditions do not have access to good nutrition, safe water, or adequate health care. Their immune systems may be weakened and they are often much more susceptible to disease.

In Europe and North America, AIDS-defining diseases include over 30 conditions,<sup>3</sup> including tuberculosis and cervical cancer. In addition, an HIV-positive test and a T-cell count below 200 in the absence of other symptoms may be adequate for a confirmed diagnosis (Gesheker, 1994). Conversely, despite the official definitions and AIDS orthodoxy, in Africa and other developing countries the presence of HIV is not necessary for an AIDS diagnosis, and testing is rare. The World Health Organization's clinical-case definition for these countries is based on a list of symptoms that include chronic diarrhea, prolonged fever, ten percent body weight loss in two months and a persistent cough.<sup>4</sup>

These criteria for AIDS are disturbingly similar to endemic diseases such as dysentery, tuberculosis, cholera and malaria. Many experts, such as Dr. Harvey Bialy, eminent Science Editor of *Bio/Technology*, a sister publication of the journal *Science*, argue that AIDS is simply a new name for old diseases that result from inadequate health care, widespread malnutrition, endemic infections and unsanitary water supplies (Shenton, 1998; Murphy, 1994). In this case, it would be very easy for widespread, and counter-productive, misdiagnosis of AIDS. For those who do undergo testing for HIV, the tests have been proven remarkably unreliable, particularly in developing countries (Johnson, 1996: 5). The potential for false positives is very high partly due to anomalies in the tests themselves, but also because – as is now well-documented – people who live in areas where leprosy, malaria, and TB are prevalent, routinely produce false positive HIV test results since the test reacts to the proteins of the antibodies for these diseases" (Harrison, 1996:9).

A growing number of scientists and researchers argue that, to be effective, AIDS research and prevention has to address structural poverty, unhealthy living conditions and the lack of primary health care, rather than simply attempting to change peoples' sexual behaviour (Murphy, 1994; Gesheker, 1997). Shenton reports that in Uganda, "As a result of the redefined AIDS problem, coping with malaria, a curable disease, has become seriously neglected with cutbacks in funding for malaria control and medication" (Shenton, 1998: 168).

The focus on the HIV virus as the cause of AIDS and the key to its prevention means that research and treatment programs continue to search solely for pharmaceutical cures. Financial and human resources are diverted away from addressing the underlying social and economic causes of the chronic immune suppression that blights the lives of hundreds of millions who live in grinding poverty.

3. See Appendix B: *Chronology of CDC's AIDS Definitions*.

4. See Appendix C: *Provisional WHO Clinical Case Definition for AIDS (Bangui)*. In Africa there are upwards of 2,200 documented cases of people who met the WHO definition of AIDS and who are HIV-free. At a leading African centre for AIDS research in Abidjan, the researchers found that, "over one-third of cases not qualifying as AIDS under [the] Bangui definition of symptoms were HIV-positive, and one-third of cases that did qualify as AIDS were HIV negative" (Shenton, 1998: 13 ).



### *Has the changing definition of AIDS affected women?*

The list of AIDS-defining diseases is being continually changed, and from year-to-year diseases are added to or deleted from the list. Recently, more attention has been given to women's specific conditions related to AIDS. In the beginning of 1993, the Centers for Disease Control (CDC) in the United States added cervical cancer and pelvic inflammatory disease (PID) to the list of AIDS-related conditions. Notably, and not surprisingly, at the same time that these diseases were added, the number of women diagnosed with AIDS and HIV increased rapidly, and often retroactively. However, many researchers believe that there is in fact no causal link between HIV and cervical cancer, and that the potential for misdiagnosis is very high (Ratcliffe, 1995: 15). In both cervical cancer and PID, researchers claim that the conditions themselves may cause a woman to test positively, but falsely, for HIV antibodies. It is important to note that no other kind of cancer, with the exception of kaposi sarcoma, has been linked to AIDS or to other immune suppression conditions.

### *Is death inevitable?*

It is the standard assumption that there is no cure for AIDS. We are told that if we contract HIV we will eventually develop AIDS and ultimately die from its effects. When a person is diagnosed as HIV-positive, she is pressured to take whatever drug treatments she can afford, regardless of whether she has symptoms of disease. Even when asymptomatic, she is forced to struggle with the presumed fatality of her condition, and the rapidly debilitating side effects of the drugs. However, the number of healthy long-term HIV-positive people – particularly sero-positive women, men and children who have not initiated drug treatments – is an increasingly identifiable group, and more and more we are hearing dissenting and concerned voices pose the question: is AIDS really the fatal disease and epidemic that we have been led to believe? (Doherty, 1999; see also HEAL Website [www.epcnet.com](http://www.epcnet.com); and Appendix A attached).

## 2. AIDS as an Epidemic : Reviewing the Statistics

### **COMMON KNOWLEDGE**

*AIDS spreads rapidly and has now reached epidemic proportions. AIDS is not just a gay disease. Everyone is at risk. More and more women are getting AIDS, and the fastest growing risk group is heterosexual women.*

### **UNCOMMON QUESTIONS**

*Does AIDS follow the pattern of an epidemic? Is there an AIDS explosion? Are heterosexual women really at high risk? Have we been manipulated by AIDS statistics? Do we need to re-assess this "epidemic?"*

#### *Does AIDS follow the usual pattern of epidemics?*

As Celia Farber asks, "If the HIV-spreads-like-wildfire-kills-like-a-truck model of disease were true, then why wouldn't there be a heterosexual explosion by now?" (Farber, 1996: 87). One of the reasons why AIDS is assumed to have reached "epidemic" proportions is because of the mainstream belief that AIDS is caused by an infectious agent, HIV, which is transmitted through the blood and other bodily fluids, such as semen or breast milk. While these routes of transmission would actually make it more *difficult* to contract HIV than, for

example, a flu or a virus transmitted through the air, the assumption persists that the general population is at high risk of contracting HIV, particularly men and women who are sexually active, people who come into contact with infected blood products, and infants born to HIV-positive women. Because of these assumptions about how AIDS is spread and the high risk associated with the routes of transmission, AIDS is (quite understandably) believed to be spreading rapidly and evenly across the general population.

Following this logic, if we assume that AIDS works like a typical infectious disease, then we would expect that it would follow the five characteristics of an infectious disorder (Horton, 1996: 14), that is:

1. It would spread randomly between sexes;
2. It would rapidly appear, at least within months;
3. It would be possible to identify "active and abundant (HIV) microbes in all cases";
4. Cells would die or be impaired, beyond the ability of the body to replace them;
5. There would be a consistent pattern of symptoms in those infected.

In the case of AIDS, most of these characteristics have not been met. In the U.S. and Europe, men are affected far more commonly than women, particularly homosexual men. In 1988, Toronto-based epidemiologist, Eric Mintz, already questioned the epidemic hypothesis: "...if the median time between HIV seropositivity and full-blown AIDS is at least 7 years (or 15 years, as has been recently claimed), then this epidemic is about 20 years old. Since it has begun to plateau, it is most likely in middle age. If there has been no widespread heterosexual spread, why would one expect it to occur now, as the reservoir in most of the high-risk groups is diminishing?" (Mintz, 1988: 28).

The disease does not appear rapidly; in fact, for most it has *never* appeared even many years after the original diagnosis. This is evident by the fact that only 1 percent of HIV-positive people in the USA develop AIDS per year (Duesberg, 1987). Further, it is not possible to identify active and abundant HIV microbes in all cases. The CDC has shown that 10 percent of cases diagnosed with AIDS have no sign of antibodies to HIV (Shenton, 1998: 11). Cells do not die out in the numbers necessary to cause disease and death. Finally, in Africa, the symptoms associated with AIDS are very different from those seen in North America and Europe, although this can be partially explained by the fact that immune deficiency will make people more vulnerable to the infections endemic in their specific locale, which may differ from place to place.

In fact, figures published by the U.S. Centers for Disease Control for the year ending 1997 show total U.S. HIV/AIDS diagnoses declined from 68,808 in 1996 to 60,634 in 1997 in a population of 272,000,000. In 1996, heterosexual contact was ascribed to 14 percent of all cases; in 1997, 13 percent. In absolute numbers, heterosexual-contact cases declined from 9,526 in 1996, to 8,112 in 1997. Female adult diagnoses declined from 13,767 to 13,105. Pediatric diagnoses declined from 671 to 473, of which all but 63 were among those defined as "racial/ethnic minorities".

#### *Is there an AIDS explosion?*

According to Health Canada the global figure of all reported AIDS cases, living or dead, as of December, 1996, was 1,393,638. North America accounted for 555,321 of these cases. The remaining cases were distributed among all the countries of Europe (167,571) and the other continents, including the Third World. Africa accounted for 499,035 cases, with all other regions combined reporting the remaining cases. All of Asia accounted for only 29,705 cases. These statistics are from the World Health Organization (WHO) for the diagnosed incidence of AIDS to December 1996 (Health Canada, 1996: 5).

The totals in these statistical updates from the WHO are *cumulative* since 1979, and reflect not merely cases diagnosed in a particular year, but *all* cases ever reported worldwide, living and dead. There is no other endemic or epidemic disease for which such cumulative statistics are maintained (Murphy, 1995: 39-46).

Even at that, these numbers are far lower than the predictions made about the scale of the problem. The frequent explanation for the differential between the predicted incidence of HIV/AIDS and the more modest figures that are actually reported is that: 1) very few countries have the capacity to diagnose AIDS; and 2) they resist reporting the true incidence because they do not want to admit to the problem. While some countries may not have the capacity, or inclination, to do wide-scale testing for HIV, these countries are still diagnosing AIDS in the absence of the test. As a result, given the potential for mis-diagnosis based on common symptoms, actual cases of AIDS may well be much *lower* than reported, rather than higher.



In any case, the idea that governments resist reporting AIDS has little credence, given the pressure on governments to bow to the agenda of the WHO and other international institutions, and the funds made available to governments willing to accept AIDS as a priority. In many cases virtually the only international health money available is for AIDS research and treatment so there is a great incentive to diagnose AIDS wherever possible, and to focus on sexual/reproductive behaviours in treatment and education programs. A common complaint of Third World NGOs is that if they do not give priority to AIDS, there is little international funding available for their health activities. Given this pressure, together with the tremendous interest in tracking down and reporting AIDS by the multilateral and non-governmental humanitarian sector – not to mention the lucrative pharmaceutical industry and its associates in the medical training and research field – we can have some confidence that the numbers reported above are not significantly below actual incidences. The idea that the incidence of AIDS is worse by a factor of five, ten, or twenty has no basis. In many countries, NGOs are hard-pressed to find AIDS sufferers (Health Canada, 1996: 4).

Many activists are concerned about the effect of claims that AIDS has reached epidemic proportions in Africa and other developing countries. These claims have been used to justify the use of Third World populations, particularly in Africa, but also in South-East Asia and the Americas, for vaccine trials and drug tests that are not permitted in Europe and North America. Poor countries in the South – desperately seeking health care funding and drugs to curtail the reported “epidemic” – employ much less strict regulations over testing of drugs and vaccines, and are under extreme pressure to acquiesce to sponsoring such experimental trials. When governments in the South make decisions that run counter to prevailing orthodoxy on AIDS, as was recently the case in South Africa, they come under extreme attack from AIDS advocates (Mickleburgh, 1999; Murphy, 1999).

It is the theoretical premise that the cause of AIDS is primarily viral, together with the social-sexual theories about the spread of AIDS, that leads to a prediction of an epidemic, not the observable facts. If a deadly virus was indeed spreading widely and rapidly throughout the

globe through sexual transmission, the present modest numbers would be much higher. Indeed there would be no controversy, because the numbers in Canada and the United States themselves, where diagnosis and reporting is aggressive and rigorous, would already be astronomical, which they are not. The facts simply do not back up the theory.

One explanation given for the present low numbers in North America is that the figures are in part due to the increased use of more effective anti-retroviral drugs which are prolonging the onset of full blown AIDS in those with HIV. Yet there is serious debate about the positive and negative impact of AZT and the so-called “drug cocktails”, with many critics challenging the claims of their effectiveness in preventing the onset of disease in HIV-positive people. The recent use of these drugs cannot explain the failure of the prediction made in the mid-1980s that North America and Europe would experience a major catastrophic epidemic by the early nineties. Indeed, research compiled by Kevin Doherty (1999) indicates that the three most common characteristics of long-term “HIV-positive survivors” are:

1. They avoided taking chemotherapy/anti-retroviral drugs such as AZT, ddI, ddC, d4T, and 3TC;
2. On learning of their HIV status (HIV-positive), they stopped all high-risk activities such as drug use and unprotected sex;
3. They began taking charge of their lives, including their nutrition, exercise, and health.

Clearly, more research is required that carefully accounts for these factors.

#### *Are heterosexual women really at high risk?*

In hard numbers, relatively few women are diagnosed with AIDS even with the inclusion in recent years of specific women’s diseases such as cervical cancer. As Celia Farber reports, fewer women are becoming infected, and “the bulk of heterosexual transmission is taking place within a disenfranchised community that is marked by poverty, poor health care, sexually-transmitted diseases and drug use” (Farber, 1996). This conclusion is not new.



Stephen Strauss, a science editor for the *Globe and Mail*, years ago asked the critical question, "If AIDS is caused solely by HIV, and spread via sexual intercourse, then why is it not spreading along sexual lines so much as along sociological lines, with poverty and drug use being central co-factors?...prostitutes have no higher incidence of either HIV or AIDS than any non-risk groups – unless they are IV-drug users" (Strauss, 1993). The work of Eric Mintz (1988) discussed earlier also undermined the conclusion that women were at significant risk of contracting HIV through sexual contact.

#### *Have we been manipulated by AIDS statistics?*

It appears that AIDS statistics are often manipulated to give the illusion of an increase in AIDS cases, when there has actually been a decrease. In a very revealing example, Christine Maggiore (1997) reports that:

In Canada, a nation with an extremely low incidence of AIDS, AIDS groups and reporters play up the few cases they can find and often perform their own magic with the numbers. For example, new Canadian AIDS cases for 1995 were 1,369 and of these, 111 or 8% were among women. In 1996, when the number of new AIDS cases dropped by almost 50% to a total of 712, the media and AIDS organizations not only ignored the good news, but devised a way to make it appear bad. Since 67 of the 712 AIDS cases for 1996 were among women (a decrease of 44 from the year before), the lower number of cases among women was now part of a smaller total. This provided an opportunity to express a decrease of 44 as an increase of 1.4% (emphasis added).

Maggiore provides the following chart to illustrate:

<i>Year Reported</i>	<i>Total New AIDS Cases</i>	<i>Number of Women</i>	<i>% of Cases of Women</i>	
1995	1369	111	8%	What makes the News? Rise of AIDS among Women by 1.4%
1996	712	67	9.4%	

[From: *What if everything you thought you knew about AIDS was wrong?* by Christine Maggiore, 1997: 37]

What is key here is that in 1996, only a miniscule total of 67 women – among a population of over 15 million women – were diagnosed with AIDS in Canada; and although this itself was an almost 50 percent *reduction* in new cases, we read about it as a major and continuing *increase*. We can only ask why, and in whose interest, are statistics reported this way?

In addition, unlike other statistics on disease which are reported on an annual basis, AIDS statistics in Canada and around the world are calculated *cumulatively*. This means that statistics report the cumulative total of people who have AIDS or have died from AIDS since it was first defined as a category in the late seventies. Thus, of the total number of AIDS cases ever reported in Canada between 1979 and December 1998 (that is, 16,236 cases), 71 percent (11,525) are deceased. Since 1995, the number of AIDS deaths each year has significantly declined, with an 89.5 percent drop in deaths in 1998 as compared with 1995. Deaths peaked at 1,420 in 1995, and fell to just above 100 in 1998. Similar trends are visible in the incidence of positive HIV tests, which have declined 23.3 percent between 1995 and the end of 1998 (Health Canada, 1999:5). This is precisely the kind of plateau and decline in figures predicted by people like Eric Mintz over ten years earlier.

Since numbers on their own are difficult to interpret, especially given the differing ways numbers are presented, it is important that these figures are contextualized. Well over 100 women and children are murdered across Canada every year. In Quebec alone, between December 6, 1989, when 14 women in Montreal were killed by a gun-wielding anti-feminist, and December 6, 1998, 501 women and children were killed by men (Montreal Men Against Sexism, 1998).

The generalized confusion and fear about AIDS is caused not by direct experience, but by speculation out



of proportion with the scale of events in the real world. Prevailing preoccupation about AIDS among most Canadians, for example, could not be based on direct personal experience since, according to the official Government of Canada cumulative statistics as of December, 1998, reported above, there has been a total of 16,236 cases of AIDS reported in the almost twenty years since records have been kept, of which 1,218 were women. As in the United States, most of the increase in diagnosis in Canada in the past several years has been due to the retroactive inclusion of new diseases within the diagnostic definition of AIDS, rather than the discovery of new cases. As Brian Murphy emphasizes, "...compared to other deadly conditions, such as breast cancer and heart disease, for example, which are far more prevalent, or the horrendous incidence of traffic deaths and occupational accident and disease, this number of cases in and of themselves would have relatively little direct impact on 30 million Canadians, very few of whom have ever met a person with AIDS" (Murphy, 1995).

Another poignant example is the alarming statistic that iatrogenic death (death from medical treatment) is now one of the largest causes of death in the United States. A recent ground-breaking study by Pomeranz, Lararou & Corey (1998) documents the very serious adverse effects of both prescription and over-the-counter drugs, revealing that adverse drug effects are one of the leading causes of death worldwide. The side effects of drugs are between the 4th and 6th leading cause of death after heart disease, cancer and lung disease. Following analysis of thousands of hospital patients in 39 U.S. cities, the researchers found that adverse reactions – which didn't include prescribing errors or drug abuse – kill 100,000 Americans every year and seriously injure 2.1 million more (Pomeranz, Lararou & Corey, 1998: 1200-1205)!

In 1995, 12 times more Americans died of cancer (538,455) and 17 times more of heart disease (737,563) than died of AIDS (43,115). Yet today at the U.S. National Institute of Health, funding for AIDS research (US\$1.5-billion) is second only to cancer research (\$2.2-billion) and exceeds the \$1.4-billion spent on heart disease (Bailey, 1995). As Celia Farber notes, "because AIDS is perceived as 'everybody's disease', funds that might have saved lives had the education campaigns been better targeted were instead squandered across a broad population, most of whom were never at risk" (Farber, 1996).

Joan Shenton argues that money is at the root of the alarming AIDS figures put out by the UN system. "In the early 1990s, the WHO's Global Programme on AIDS [later to be taken over by UNAIDS] was employing between 2,000 – 3,000 people. They continually fed highly inflated figures to the press, and officials at public meetings began to quote their estimated cases for AIDS in order to drum up funding, quietly dropping the actual reported figures. When they were challenged there was acknowledgment that the figures they were using as fact were no more than guesswork" (Shenton, 1998: 59). By 1995, the WHO AIDS program dismissed 750 of its workers because none of the pandemic predictions had come true.

### *Do we need to re-assess this "epidemic" ?*

The fact is, the number of people with AIDS is not astronomical; the numbers are not increasing but decreasing, and they reveal none of the mathematical characteristics of an epidemic. The projections issued by the UN and other bodies concerning "estimated" cases worldwide are just that – projections based on estimates, specifically estimates of infection with HIV – all based on a theory that itself is highly suspect, and in direct contradiction with the actual diagnosed incidence of AIDS. And increasingly we are seeing this question being asked even in the popular media, when only a few years ago headlines predicted only apocalypse.

A challenge to the epidemiology of AIDS must be made, because such extravagant numbers are used to justify the preoccupation with AIDS. In an open letter from the Secretary General of the International Forum for Accessible Science (IFAS), Michael Baumgartner advocates a full reappraisal of the HIV-AIDS hypothesis by an international independent scientific committee. He asserts that, "Epidemiological data does not support the predictions made in 1984 that the conditions labeled AIDS were caused by a new specific retrovirus, transmissible by sexual intercourse, inevitably fatal and spreading uncontrollably in the general population, culminating in a global pandemic. Independent epidemiological research together with the passage of time has since shown that this hypothesis and the ensuing predictions are wrong" (Baumgartner, 1998: 11).



### 3. AIDS and Testing

#### COMMON KNOWLEDGE

*Everyone should be tested for HIV. The tests designed to determine a person's HIV status are accurate and reliable. If you test positive for HIV you will eventually get AIDS. Pregnant women should have an HIV test as part of their routine testing.*

#### UNCOMMON QUESTIONS

*Does HIV even exist? What do HIV tests actually measure? How reliable are HIV tests, and what are the chances of getting a false test result? Should pregnant women be subject to routine or mandatory HIV tests? What are the effects of being diagnosed with HIV? What are the human rights implications of such a diagnosis? How might someone be discriminated against having tested positive or been diagnosed with AIDS?*

##### *Does HIV exist?*

Eleni Papadopoulos-Eleopoulos and a group of HIV/AIDS dissident scientists at the University of Western Australia, known as the 'Perth Group', maintain that HIV has never truly been isolated, that the proteins alleged to be specific to HIV are actually stress proteins released in response to a severe disease condition. The various indirect molecular, biochemical and genetic findings have been interpreted as meaning HIV isolation, but none have offered conclusive direct evidence of HIV – that is, HIV has not been isolated as an independent, stable particle – and therefore, according to Papadopoulos-Eleopoulos, HIV may not exist at all (Papadopoulos-Eleopoulos, 1993 and 1995; Ankomah, 1996).

##### *What do HIV tests actually measure?*

Current HIV tests do not test for the HIV virus itself, but for its antibodies. In fact, tests look for any antibody whose "key" fits the "lock" of the proteins in the mixture. The most commonly used test world-wide for the detection of HIV antibodies is called ELISA – the Enzyme Linked Immunosorbent Assay. The proteins reacting with the antigens of the ELISA test are supposed to be exclusive to HIV. According to the Canadian Medical Association, "A positive test result indicates that the person has been infected with HIV and can transmit the infection to others" (CMA Guidelines, 1995: 12). However, the ELISA test is known to produce false positive results because the solution reacts to many different antibodies, not just HIV antigens. CMA guidelines therefore recom-

mend that all positive test results be verified by repeat ELISA tests and a second independent assay, usually the Western Blot immunoblot or radioimmune precipitation.

The Western Blot test demonstrates antibodies to specific viral proteins. The different proteins are separated and a person's serum is placed over each of the antigens. If the antibodies are present in the serum, they will bind to the test antigens causing a colour change or dark band. The formations of various bands of the viral proteins is considered a positive result because the bands are said to confirm the presence of specific HIV antibodies in the person's blood. The Western blot is technically difficult and expensive (Malarkey, 1996:158). When a person has a negative or indeterminate result, it is recommended that she be tested again in 6 weeks.

According to many AIDS experts, the Western blot is more specific than ELISA, but neither is accurate enough to be used as a benchmark for measuring HIV status. Notably, the criteria for a positive Western Blot test varies widely around the world. The number of bands of proteins needed to react before considering the Western Blot positive depends on where and by whom the test is done, reflecting a lack of standardization globally. "Around the world different combinations of two or three or four of the ten possible bands are deemed proof of infection. In Africa you need two bands but in France, the United Kingdom and Australia you need four and under the U.S. FDA and Red Cross rules you need three" (Turner, 1998, as quoted by Christie, 1998: 14). The number of bands



is set according to the prevalence of HIV infection. In theory, by emigrating from New York to Australia, an HIV-positive status can become negative.

*How reliable are HIV tests, and what are the chances of getting a false test result?*

Several AIDS experts critique the HIV tests because they are unreliable. HIV antibody tests lack what are technically known as *specificity* and *sensitivity*,<sup>5</sup> and according to Peter Duesberg, "the [ELISA] test can be wrong over 50% of the time" (Guccione, 1996: 9).

Antibodies are known to be non-specific and they cross-react with many conditions and proteins. Valendar Turner of the Perth Group says that "all the (antibody) test indicates is that some antibodies in patients react to some proteins present in cultures of tissues from the same patients. But, given that information, what a scientist is obliged to do next is make the comparison with the virus gold standard, before pronouncing the test highly specific for diagnosing HIV infection" (Christie, 1998:18). In other words, scientists must be able to find the virus itself to determine the presence of HIV. Without this "gold standard" there is no way to interpret test results accurately. Turner suggests that it is incorrect for scientists to claim that HIV antibody tests are better nowadays because they use purer proteins, because the gold standard comparison has not been used (because HIV itself has never been independently isolated in the lab). He goes on to say that it is a "tragedy that these tests were introduced in the total absence of proof of their specificity" (Turner, cited in Christie, 1998: 18).

Further, "In 1988 the U.S. Army tested over a million soldiers and found that even in healthy military recruits, half of all the 12,000 first positive ELISA's were negative second time around. And after a second positive ELISA two thirds failed to react on a first Western Blot. And some first Western Blots failed to react on a second Western Blot" (Turner, cited in Christie, 1998: 18).

The potential for false positive test results escalates when the population tested is likely to have infections such as those frequently seen in the Third World or among immi-

grants from these countries. There are more than 70 conditions and proteins that can cause false positive HIV tests, including hepatitis, TB, malaria, leprosy and even certain types of influenza which produce similar antibody proteins as the so-called HIV antibodies.<sup>6</sup> Both the ELISA and Western Blot tests have difficulty detecting the difference (Burkett, 1995: 13; Christie, 1998; Johnson, 1996). Pregnancy can itself cause an antibody reaction. Repeating the test is only likely to repeat the same cross-reaction to non-HIV antibodies. Furthermore, new cross-reactions are being discovered all the time.

In spite of these serious and well documented limitations, kits for the rapid and simple testing of the presence of HIV advertise that they can provide a person with a definite negative or preliminary positive result in 10 minutes or less. As of April 1995, none of these tests had been approved for sale in Canada. However, the CMA Guidelines suggest that these tests have advantages over current protocols (for example, they do not require complex laboratory equipment or technical training to perform) in specific settings, such as remote areas, or developing countries, even though in their own document they admit that these tests raise "significant scientific, technical, epidemiological, cost and ethical issues" (CMA Guidelines, 1995: 19). Given the probability of errors, widespread use of these kits can have serious and dangerous consequences.

In addition to some of these technical factors in generating unreliability in various tests, Root-Bernstein explains the statistical error (known as Bayes Law) involved with reliability of diagnostic tests in general. When testing is done on a random or a screening basis for people who are not at specific risk for AIDS due to other factors (usually socio-economic), the number of false positives escalates. Under laboratory conditions tests are reliable about 97 percent of the time. This sounds good on the surface, but it actually means in random testing under laboratory conditions, "...about eight false positives for every true positive. [And] if the test kit were 90 percent reliable, a home test for HIV would yield between twenty-five and several hundred false positives for every true positive" (Root-Bernstein, 1990: 7). This high probability of error is one of the reasons tests should be re-confirmed and administered only to people who belong to an identified

5. *Specificity* is essential for reliability and is usually indicated as a percentage. Specificity is a measure of how often a positive test turns up when it is known that HIV is absent; this is called a false positive result. A test should not react unless the HIV antibody is actually present. If the test is negative 100 times in 100 people with no HIV, then it is considered 100% specific. *Sensitivity*, on the other hand, is a measure of how often a test is positive when you know HIV is present. If you get a negative result when HIV is present, this is commonly called a false negative (Christie, 1998: 18).

6. See Appendix D, *Factors Known to Cause False Positives*.



risk group or who already display other symptoms of AIDS, such as opportunistic infections, and therefore have a much higher than average probability of being infected. "Accuracy begins to approximate reliability only when an appreciable fraction of the population is afflicted – say 10 percent – or if the test is limited to [people] who display symptoms suggesting a high probability of being infected – that is, when testing is not random" (Root-Bernstein, 1990: 7).

#### *Should pregnant women be subject to routine or mandatory HIV tests?*

While HIV testing of pregnant women is theoretically done only with the consent of the woman, some provinces have recently made routine HIV testing and counselling the norm. In 1998, the Ontario Ministry of Health announced that the provincial screening program was being expanded to include voluntary prenatal HIV testing for all pregnant women, regardless of other risk factors. Under the new program, approximately 150,000 prenatal HIV screening tests will be performed annually (Government of Ontario, 1998). According to the Health Ministry, the primary goal of the new program is "to assist women in accessing appropriate treatment for HIV as early as possible. Anti-retroviral treatment will help to maintain the health of the woman as well as reduce the risk of passing the virus to the baby" (Government of Ontario, 1998). According to the Ontario Government, "many women with HIV do not have obvious risk factors – most are diagnosed only after their children are found to have the virus" (Government of Ontario, 1998). The test is also being recommended to all women considering becoming pregnant.

Elsewhere in Canada other provinces are making changes. The Quebec Ministry of Health and Social Services has initiated a new program recommending that all pregnant women, and women contemplating pregnancy, be offered an HIV test. Since 1993, the Northwest Territories' Maternal and Perinatal Committee, which has representation from the Department of Health and Social Services and the Northwest Territories Medical Association, has recommended that all pregnant women be tested for HIV. This is now considered routine, although technically women may "opt out" (Health Canada, 1998; Samson, 1998).

There are real concerns about routine HIV testing of pregnant women. First, pregnancy is a condition that is known to cause cross-reactions with HIV tests, leading to higher rates of false positive test results. The Alberta Reappraising AIDS Society (ARAS) asserts that testing this low-risk population will likely result in many false positives, with dangerous consequences. They maintain that the health of every pregnant woman who is branded HIV-positive, as well as that of her baby, will be damaged by both toxic AZT therapy (used to fight HIV) and the prohibition against breastfeeding. ARAS suggests that people have forgotten some of the lessons history has taught us about the dangers of certain drugs in pregnancy. For example, they wonder, "Does anybody remember Thalidomide?" (ARAS press release, February 23, 1999).

#### *What are the effects of an HIV-positive diagnosis?*

One of the problems of consenting to an HIV test in the first place, especially in the case of asymptomatic persons, is that a positive test causes profound psychological distress and immediately moves a person into the medical system and treatment with toxic drugs. In the case of a pregnant woman, she will be given information on terminating her pregnancy and if she continues with the pregnancy, drug treatments will be recommended in the belief that AZT administered to the pregnant woman reduces mother-to-child transmission of HIV. She often will be advised to have her birth by cesarean section. Furthermore, breastfeeding will be strongly discouraged, and possibly prohibited, because it is believed that uninfected infants breast-fed by HIV-positive women can become infected (CMA, 1995: 17-18). All of these drastic measures are based on the assumptions that HIV is accurately detected by the tests, that HIV causes AIDS, that drugs such as AZT effectively treat and prevent AIDS, and that it is justifiable to use AZT in the presence of positive HIV tests, even in asymptomatic infants and their mothers. We, along with many others, question each of these assumptions and point out the serious impacts – physical, mental, emotional, economical, social and legal – that can result.

The implications of testing include real physical, psychological and economic concerns. When people are diagnosed as HIV-positive, their doctors often suggest that



they begin to take chemotherapeutic drugs to treat their condition. The medical model of disease and treatment cultivates this response. People who are misdiagnosed, or are in any case asymptomatic, are still treated with potent drugs, such as AZT, which have hazardous effects; indeed, effects that precisely parallel the defined symptoms of AIDS itself, since these chemotherapies destroy virtually all growing cells and critically undermine the immune system along with much else in the body. In this case, testing – which leads to treatment – jeopardizes a person's health.

The Canadian Medical Association (CMA) recommends that testing only be carried out with the consent of the patient and when the patient considers the advantages to be greater than the disadvantages, and that the person be counselled pre- and post-testing. However, even though the CMA promotes "informed consent", the underlying assumptions are that 1) tests actually identify the presence of HIV; 2) HIV will lead to the development of AIDS; and 3) an HIV-positive test should be followed by medical treatment (CMA, 1995: 10).

Meanwhile, beyond all of these risks to health, there is the risk of alienation and social isolation. The public continues to stigmatize people who are identified as HIV-positive or diagnosed with AIDS. A person is blamed for her condition – it is her fault because she is "promiscuous"; it is his fault because he is gay; it is their fault because they are drug addicts. In many people's eyes, it is "wrongful" behaviour that has led to this condition. The responsibility for contracting the disease is placed on the sufferer; she is made to feel guilty and shameful for her condition, in addition to being pressured into making choices of testing and treatment.

*What are the human rights implications of an HIV-positive diagnosis? How might someone be discriminated against having tested positive or been diagnosed with AIDS?*

In the United States there have already been cases where HIV-positive women have had their babies removed by child welfare authorities, and then been ordered by the courts to give their newborns AZT and to stop breastfeeding, under threat of losing custody of their children. This is happening even though, as Farber points out, the U.S.

Centers for Disease Control and Prevention specifies in their recommendations that: "Discussion of treatment options should be non-coercive, and the final decision to accept or reject AZT treatment recommended for herself and her child is the right and responsibility of the woman. A decision not to accept treatment should not result in punitive action" (Farber, 1999).

It is these kinds of actions that concern us because, despite the right of women to informed consent, the wide acceptance of the assumption that HIV causes AIDS and can be transmitted by breastfeeding poses very real potential for human rights violations, over and above health implications. It is already happening, in the United States, and in Canada.

Yet there continue to be calls for mandatory testing and treatment for HIV in North America. Already in some cases, employers or health insurance companies will not consider applicants without proof of HIV-free status. The potential for discrimination is clear: people may lose their jobs or be prevented from access to employment, may not be granted health care, and may not be able to visit or immigrate to some countries. According to a recent report, "Canada is considering whether it should routinely screen would-be immigrants for HIV, the deadly virus that causes AIDS, as it does for communicable diseases such as tuberculosis and syphilis. The government says that it is the first time it has raised the possibility of testing and excluding carriers of the virus. The review is linked to proposed changes to immigration policy..." (*The Ottawa Citizen*, January 9, 1999: A4).

Another serious implication of HIV-positive status is the possibility of being denied treatment for other illnesses. For example, at a clinic in Haiti where patients come for treatment for TB and other infectious diseases, those identified as HIV-positive have been refused treatment on the assumption that they "will definitely die of AIDS" and that the clinic "cannot afford to give HIV-positive patients medication" (Shenton, 1996: 12-14). There is considerable anecdotal evidence among Canadian aid workers and their Third World counterparts, that this reaction is very common in poor areas of the world where they work.



## 4. AIDS and Breastfeeding

### COMMON KNOWLEDGE

*Although breastfeeding is normally the best infant care possible, women with HIV should not breastfeed because the baby can get AIDS from breastmilk.*

### UNCOMMON QUESTIONS

*Can a mother pass on the HIV virus through breastmilk? Do infants develop AIDS through this kind of transmission? Should HIV-positive pregnant women be discouraged from breastfeeding, especially where conditions are known to be unsafe for formula feeding?*

*Can a mother pass on the HIV virus through breastmilk, and do infants develop AIDS through this kind of transmission?*

A number of reports claim that HIV infection rates increase with breastfeeding. UNAIDS states that more than one third of infants infected through "vertical transmission" (mother-to-child transmission) are infected through breastfeeding. In a recent report, UNICEF announced that a child stands a 20 percent risk of vertical transmission of the virus in late pregnancy and childbirth and is at an additional 14 percent risk of infection through breastmilk. Obviously, these conclusions are controversial, and the policy dilemmas enormous, given the staggering implications for breastfeeding practices worldwide. Yet despite the potentially disastrous consequences, in 1998 the UN released a statement warning HIV-positive women not to breastfeed their children, but rather resort to infant formula.

There are a number of points that need to be raised in connection to AIDS and breastfeeding. The first question is whether the studies which indicate that breastfeeding increases the rate of HIV transmission are valid. In fact, these are speculative statements, projections from models of prevailing AIDS theory – like all projections on AIDS issued by the UN. The hypothesis that AIDS can be contracted from mother to child in this way has not yet been proven. Some of the studies simply compared the chance of vertical transmission in developing countries, where women generally breastfeed, and developed countries, where the rate of breastfeeding is much lower, and showed the risk to be higher in the developing countries, and extrapolated breastfeeding as the determining variable in the difference (Goldfarb, 1993). Obviously, without looking at control samples, such studies are not conclusive.

The American Academy of Pediatrics, while presently holding that breastfeeding can be a source of HIV infection, does state that, "currently no randomized clinical trials are available that accurately document the incremental risk of HIV transmission through breastfeeding over that occurring during the intrauterine and intrapartum periods. Evaluation of populations that vary only by method of infant feeding have been limited to date, due to the homogeneity of feeding practices in current cohorts, with breastfeeding the norm in developing countries and formula feeding the norm in industrialized countries" (AAP Policy Statement on Human Milk, Breastfeeding and Transmission of HIV in the US, 1997).

Secondly, while some accept that HIV can be present in breast milk and conclude that it is the source of some infants testing positive for HIV antibodies, there is as yet no study done on the number of those infants developing AIDS. In fact, some studies have shown that breastfeeding slows the progression of the disease in babies who are born HIV-positive. A 1995 study showed that human milk contains a factor that inhibits the binding of HIV to specific receptor sites on human T-cells (La Leche League, 1995). It is important to note also that there have been multiple anti-infectious, protective substances which have been identified in human milk (Jelliffe & Jelliffe, 1978; La Leche League International, 1995; Radetsky, 1999).

Another issue that has significant policy implications derives from the fact that world-wide, most pregnant women are not aware of their HIV status. There is no reliable test that guarantees against false positives and it is highly unlikely – and in any case, undesirable – that all pregnant women could be tested for HIV antibodies,

particularly given the cost and the reality that most women the world over do not have access even to basic prenatal care. As such, the policy of discouraging breastfeeding is absurd, and any significant shift from breastfeeding to bottle-feeding as a result of such a policy will generate child mortality figures several times higher than the best estimate of those dying as a result of HIV transmission.

*Should pregnant women who are HIV-positive be discouraged from breastfeeding, especially when conditions are known to be unsafe for formula feeding?*

In the absence of appropriate information, discouraging breastfeeding due to its purported connection with HIV is truly frightening. It is imperative that policy-makers not lose sight of the importance of breastfeeding to maternal and infant health. For decades health advocates have been able to say without hesitation that breastfeeding is the best thing for both the mother and the baby. Besides being an excellent source of nutrition, a mother's milk protects her child against morbidity and mortality from infectious diseases of bacterial, viral, and parasitic origin, while the act of breastfeeding establishes a bond

between mother and infant. As a spokesperson from UNAIDS states, "In 90% of the developing world, the protection that is afforded by breastfeeding against the diseases of the Third World is higher than the rate of HIV transmission" (Meier, 1997).

Over the years, the campaign to restrict manufacturers from marketing and selling infant formula to women who are unable to use it safely, or who do not have appropriate information about its negative health effects, has been an uphill struggle. Despite an international code of conduct for the sale and marketing of breastmilk substitutes, infant formula manufacturers have continued to flaunt these codes, continuing to put profits over maternal and child health (Delahanty, 1994). The efforts by health care workers and advocates, including earlier important efforts of UNICEF, to improve infant health through breastfeeding have saved the lives of countless children – and improved their long-term health and life expectancies even more. Breastfeeding also confers significant and well documented benefits to women's health (Jelliffe and Jelliffe, 1978; Palmer, 1988; Van Esterik, 1989; Minchin, 1989; La Leche League, 1995).

## 5. Treatment

### COMMON KNOWLEDGE

*There is no known cure for AIDS but life can be prolonged through drug therapy. People with HIV-positive status should begin treatment early to prevent the onset of the disease. An HIV-positive pregnant woman should begin treatment early and have a cesarean section to avoid transmission to her child. HIV-positive infants should begin treatment at birth.*

### UNCOMMON QUESTIONS

*What are the effects of these highly toxic drugs, and how have they been tested before being administered? Could these drugs in fact be making some people sick, and even killing them, who would otherwise not be seriously ill at all? Who is benefiting from the emphasis on drug treatment? Are there any alternatives?*

*What are the effects of these highly toxic drugs, and how have they been tested before being administered?*

When we hear in the media about people who are living with HIV and AIDS, the discussion is most frequently centered around treatment. Those who have been diagnosed as being HIV-positive are advised immediately to take chemotherapeutic drugs such as AZT or drug cock-

tails known as protease inhibitors. These incredibly expensive drugs involve a highly regimented schedule. We often hear about people who are struggling to gain access to these drugs to "save" their lives. We have been told that these drugs offer the only prospect for survival and that everyone who has HIV or AIDS needs these drugs. Yet these drugs do not cure AIDS – the research



literature does not even pretend they do – and they have severe adverse effects, many of which are similar to the symptoms ascribed to AIDS itself.

What generally goes unquestioned is the safety and value of these drugs. How have they been tested before being marketed? There is conclusive documentation that the trials for AZT contain flawed data and that the trials were cut short before long-term effects could be known (Lauritsen, 1993: 381-398). Beyond this, the *known* toxicity of AZT is of real concern, for any human being, but especially when its use is proposed for pregnant women. We know the vulnerability of the mother and her developing fetus, and as a result pregnant women are discouraged from smoking, drinking and even therapeutic use of patent medicines and prescription drugs – all to protect her own health and that of her unborn child and infant. Yet now we would force powerful toxins like AZT on the mother and baby as a prophylaxis?

This seems absurd, and even more so since scientific studies have pointed towards a similarity between AZT and DES – diethylstilbestrol (Avicenne 1996: 86-102). DES is a synthetic estrogen that was used in Canada for prevention of miscarriage between 1941 and 1971. When it was withdrawn from the market in 1971, scientists knew that it had direct health impacts, including a risk for vaginal cancer, on the daughters whose mothers had taken DES during pregnancy. We question why this information about the link between DES and AZT compounds has not meant a radical re-examination of the therapeutic value of AZT use in pregnant women and their children.

Many women's groups have sought the inclusion of more women in clinical trials for HIV drugs, emphasizing that the side-effects appear to be very different for women than for men. Perhaps we should instead question why clinical trials should be done with women or men at all, when the research thus far has not attempted to determine the long-term effects of these drugs in any systematic way, and to the extent that their effects are known, they are known to be deleterious, and potentially deadly.

A good example of these problems was highlighted recently in *The Ottawa Citizen*. The article pointed to our flawed system of approving and administering HIV drugs before the adverse side effects, particularly for women,

are known. Maggie Atkinson, an HIV-positive woman who was offered a new drug cocktail, reported that her body began to change after taking the drugs: "her arms and legs started wasting away; her breasts became enlarged; her body fat got redistributed; her period came twice a month" (Foot, 1998: A5). Ms. Atkinson and a group of women with the Canadian AIDS Society criticized Health Canada for allowing the drugs to enter the market before the side effects were documented. They noted that there is no system in Canada that ensures that long-term studies of the drugs are carried out to determine their adverse effects.

Once a drug is licensed and marketed, pharmaceutical companies monitor the effects of drugs only on an ad hoc basis through sporadic reports from physicians and on-going clinical trials. Often doctors don't report unexpected side effects, either because they are not sure that the cause of the side-effect is due to a specific drug, or because the reporting process is too time-consuming.

In any case, there has not been much discussion on the long-term effects of drug treatments on AIDS itself. We know that misuse or overuse of antibiotics leads to drug resistance, the development of virulent strains which cannot be treated, and to severely compromised immune systems. How will AIDS treatment affect the "opportunistic" diseases from which people with an AIDS diagnosis actually suffer? The side effects of the drugs cause many to end treatment – side effects such as metabolic disorders, body changes like swollen abdomen and breasts, severe weight loss, soaring cholesterol levels and diabetes. Doctors have noted that many patients rationally end treatment, largely, in the words of one patient, because "sometimes battle fatigue just comes along" (Picard, July, 1998: A6).

#### *Could these drugs be killing people?*

The problems with the main anti-viral drug therapy, AZT, are massive. AZT is, in fact, a cause of death in HIV-positive people (Lauritsen, 1993: 71-86). As Christine Maggiore reports:

AZT is not a new drug. It was not created for the treatment of AIDS and is not an anti-viral. AZT is a chemical compound that was developed – and abandoned – over 30 years ago as a chemotherapy treatment for cancer.



As we know, chemotherapy works by killing all growing cells in the body. Many cancer patients do not survive chemotherapy due to its destructive effects on the immune system... AZT was designed to prevent formation of new cells by blocking the development of DNA chains. In 1964, experiments with AZT on mice with cancer showed that AZT was so effective in destroying healthy growing cells that the mice died of extreme toxicity. As a result, AZT was shelved and no patent was ever filed. Twenty years later, the pharmaceutical company Burroughs Wellcome (now Glaxo Wellcome) [took out a patent and] began a campaign to re-market AZT as an anti-viral (anti-HIV) drug and won FDA approval for its use as an AIDS treatment after one highly flawed study of only four months duration... In addition to destroying T Cells, B Cells and the red blood cells that carry oxygen throughout the body, AZT and other nucleoside analog drugs destroy the kidneys, liver, intestines, muscle tissue, and the central nervous system (Maggiore, 1997: 14-15).

The lack of efficacy of available AIDS drugs has led researchers to the widespread belief that, "...a safe and effective vaccine remains the single most important scientific goal in AIDS research, for it offers the only realistic strategy for stopping the worldwide epidemic" (*Montreal Gazette*, July 3, 1998: B7). However, the same report suggests that research on AIDS vaccines to date have shown them to be both unsafe and ineffective. Given the many questions that exist in the scientific community about the way HIV is transmitted and the factors underlying the onset of disease, the drive towards finding a vaccine appears premature and potentially unfounded (Verey-Elliott, 1997: 6-7). Who would be the target groups for receiving such a vaccine if it existed? Would a vaccine be appropriate for the general population? Would certain marginalized groups be pressured to use the vaccine against their will? We know that already the prime targets for testing are people in Africa and Asia, where some trials have already been allowed to proceed.

#### *Who is benefiting from the emphasis on drug treatment?*

How much is the drive for profit a factor in advocating drug therapy? Pharmaceutical companies have much invested in marketing their treatments for AIDS. Inevitably,

and often unwittingly, the medical profession itself is a primary vehicle to improved pharmaceutical sales, since advice to patients for earlier or increased use of pharmaceutical treatments – even without adequate testing – increases sales and profit for the companies that produce these agents. And despite the toxicity of AIDS drugs, HIV-positive people, including those with no symptoms of disease, are increasingly being told to begin early drug treatment.

Joan Shenton reveals astonishing figures in her book, *Positively False – Exposing the Myths around HIV and AIDS*. She describes how governments have spent thousands of millions of dollars on AIDS since 1984 – some US\$40 billion of public money. "With \$40 billion spent in 14 years in the U.S. alone, it is the biggest industry next to the defense department" (Shenton, 1998: 31, 246).

Shenton believes the AIDS establishment is at least partly driven by money. The sale of HIV test kits has become a source of immense revenue. Each time blood is tested, it means about Cdn\$1.00 for the company producing the kit. "Many scientists researching the AIDS virus themselves had companies selling test kits and owned millions of dollars in company shares. AIDS for these individuals was a very profitable business" (Shenton, 1998: 15). Gallo and Montagnier, the two scientists who claimed discovery of the HIV virus, worked out a settlement where they agreed to "split the royalties from the blood test kits. By 1994, those royalties had amounted to \$35 million" (Shenton, 1998: 47). Gallo holds thirteen U.S. patents and has applied for twenty-nine others. He will split the profits 50-50 with his employers, the University of Maryland. The royalties from HIV test kits were providing Montagnier's employer, the Pasteur Institute, with a steady 5 percent of its funding. The sales of diagnostic and monitoring kits totaled more at \$186 million in 1995 in the U.S. alone and were predicted to rise by 50 per cent within five years (Hodgkinson, 1998: 2).

The greatest profit is made by the pharmaceutical companies which produce drug therapies for not only those people diagnosed with AIDS, but also those who have merely tested positive for HIV but remain symptom-free. By 1997, cumulative worldwide sales of Glaxo Wellcome's AZT, the first "anti-HIV drug", had exceeded \$2.5 billion



(Hodgkinson, 1998:2). Canadian researchers have calculated that providing drug cocktails to everyone in the world with HIV-AIDS who would supposedly benefit from treatment would cost US\$36 billion annually. A three-drug cocktail would cost US\$24 billion to distribute to patients in Africa, another \$7 billion in Asia, \$4 billion in the Americas and almost \$1 billion in Europe (Picard, May 4, 1998: A5). The three-drug cocktail costs one person about Cdn\$11,000 per year. Ontario residents following these regimes have to cover many of these high drug costs themselves (see Box 1).

#### *Are there alternatives?*

Little attention is given to the underlying factors of poverty and poor social and economic conditions that have a direct and dramatic impact on health conditions and on people's immune systems, or to the social justice measures that could radically reduce people's vulnerability

to immuno-suppression and easily-preventable diseases (Murphy, 1994, 1995). Most money that goes into AIDS research is focused on the biomedical link between HIV and AIDS, rather than on examining the socio-economic causes of chronic immuno-deficiency, whether in the industrialized North or in the nations of the South. In the South, where pervasive poverty increases the likelihood of the breakdown of already weakened immune systems, the use of toxic drugs like AZT to treat HIV – rather than employing other remedial public health and economic measures – is even more questionable than it is in the industrial nations of the North. But increased use of AZT is exactly what is transpiring, as Glaxo Wellcome makes the drug available at a much lower cost – often reduced by 50 to 75 percent – through subsidized programs with local governments in developing countries. In any other case this would be called drug dumping (Marais, 1999: 1).

#### **Box 1**

##### **The cost of AIDS treatment in Ontario**

According to a study published by the Globe and Mail (May 4, 1998), it costs \$18,140 to treat a person living with HIV or AIDS in Ontario. About half goes to drugs, and one-quarter each to formal care (doctors, hospitals) and community care (mostly home care). Even though Canadians are supposed to enjoy universal health care, only about half the costs are covered by these programs. Sunnybrook research found that average out-of-pocket expenses for people with HIV-AIDS are close to \$5,000 annually. Much of that is spent on drugs as well as supplements (many necessitated by the side effects of the cocktails) as well as physical therapy and home care.

## 6. Reflections on the Construction of Knowledge about AIDS

### COMMON KNOWLEDGE

*The medical profession and the media provide the public with all the information about AIDS that is available.*

### UNCOMMON QUESTIONS

*Does the public have access to alternative information about AIDS? Who controls how we understand AIDS? What if they are wrong?*

*Does the public have access to alternative information about AIDS?*

Those people who have claimed that HIV does not cause AIDS or is not the sole cause of AIDS – and the numbers within the medical community are growing – have been vilified by both the medical establishment and the media. The most famous “heretics” in the HIV=AIDS theory – experts such as Root-Bernstein, Duesberg, Papadopoulos-Eleopoulos and the Perth Group, Mullis – all have impeccable credentials. Despite their record of excellence and scientific rigour, these scientists face severe criticism and are ostracized by the scientific establishment. Efforts to silence these and other scientists have been intense. They have lost funding and the respect of their peers and they find it difficult to publish in mainstream scientific and medical journals (Duesberg, 1996: 396; Horton, 1996).

Given the repercussions to outstanding scientists who have questioned AIDS orthodoxy, it is no wonder that others are nervous about making similar claims. When we at WHI began to think about some of these issues, we were very apprehensive about delving into this area, and particularly to entertain critiques of the HIV=AIDS connection. Grappling with these questions has not been easy, particularly in an environment where to ask a question, to express doubt, is tantamount to heresy. Still, even though at times we have felt insecure in our own course, we continue to ask the questions that need to be asked and seek answers that can increase our understanding. We believe that debate and the investigation of alternative views of AIDS, its causes, treatment and prevention, are essential. It is through healthy debate that the most appropriate health policies are promoted, particularly where treatment involves toxic and experimental drugs.

*Who controls how we understand AIDS?*

The medical-pharmaceutical industry is a powerful force rarely questioned by the media, or other institutions in society or the public. Healthy debate and adherence to accepted scientific protocols is often considered unnecessary, redundant, and even a threat to public health. This is particularly evident with AIDS. Because powerful scientific institutions and individuals believe they already have an acceptable answer, alternative investigation of AIDS is seen as diversionary and discredited. For the most part, the media uncritically perpetuate many of the myths surrounding AIDS and are reluctant to publish alternative views. As a result, mainstream media coverage of critical voices is rare.

*What if they are wrong?*

While examining the reality of AIDS is necessary, we have not asked these questions simply to determine the truth. We would not have had the courage to do that.

What has kept us going in this inquiry is the simple question, “What if they are wrong?” We realize that if the common definitions, assumptions and solutions to AIDS are wrong, or even distorted, the life and death consequences are enormous. If prevailing AIDS theory is wrong, then resources are being diverted from real needs. More importantly, the conventional solution, AZT and other drugs, are harming people, not healing them. For us, then, this investigation is about social justice and human rights. We are asking these difficult questions because silence is no longer an acceptable alternative.



# III. Policy Implications

While we ask questions about the causes of and solutions to AIDS as it is currently defined, we also know that people are dying – whatever the causes – and that solutions need to be found. Our research has led us to the conclusion that current approaches are inadequate, and we advocate for greater attention to the root causes of immune deficiency. From a public health perspective there needs to be a re-focusing of attention on issues of poverty, empowerment, drug use, social infrastructure and other determinants of health. All health problems, including AIDS, will remain a problem as long as communities face problems of poverty, malnutrition, drug abuse, and lowered health status. Governments, health authorities, and communities themselves need to address long-term solutions to health problems as a first line of action. A number of policy recommendations are implicit in our analysis. They include:

- Government and private sector research funds should be directed towards alternative theories and treatments for AIDS, including the multi-factor causation theory. Research into alternative and holistic interventions should be supported. Research on specific anti-viral therapies, including vaccines, should cease until the role of HIV in AIDS is understood.
- Research should be conducted on the toxic effects of AIDS drugs and the effects on the immune system from multiple infection, IV drug use, blood transfusions and malnutrition.
- All testing should be voluntary, and involve intensive counselling. Under no circumstances should mandatory testing be introduced, or testing be imposed on an individual or a group. Such testing increases the probability of discrimination, forced treatment and other human rights violations. In the context of highly unreliable testing, and questions concerning the relationship between HIV and AIDS, such violations can never be justified on public health grounds.
- There should be no screening for HIV, particularly for pregnant women or for immigration purposes, until problems of accuracy, reliability, standardization and specificity are addressed.
- HIV self-testing kits should be banned. These kits are extremely unreliable and the consequence of receiving a positive diagnosis can result in severe psychological and physical consequences.
- True informed consent should be promoted by requiring that alternative treatment be presented as well as full disclosure of the toxic and long-term effects of drug therapy for AIDS, as well as the consequences of refusing treatment.
- Pregnant women, including those identified as HIV-positive, should have fully-informed choice regarding drug therapy and method of delivering their child.
- The Canadian health protection system should be strengthened and actively enforced to protect the safety of Canadians, particularly with respect to drug approval processes.
- Reporting by physicians and pharmaceutical companies of adverse drug effects should be systematic and mandatory, not voluntary, and criminal sanctions for liability in cases of injuries through negligence and corruption must be maintained.
- Direct-to-consumer advertising of prescription drugs should be prohibited.
- Breastfeeding should be encouraged for all women. The risk of transmission of HIV compared to the risks of not breastfeeding should be fairly portrayed. Women should have access to all information regarding the consequences of having a positive test for HIV, including the material provided in this paper. The World Health Organization (WHO) Code of Marketing for Breastmilk Substitutes should be monitored and enforced in all countries.
- Official Development Assistance (ODA) should prioritize eradication of poverty. Budgets for health should be reflective of the true needs identified by the recipients and current levels of funding for AIDS should be reassessed in light of this information. In particular, ODA money should not be diverted from primary health programming to AIDS work.

- Public education programs and medical practitioners should impart a broad view of health and the multiple factors that affect the immune system so that prevention of immune deficiency can be enhanced.
- Governments and international organizations should critically examine the statistics on AIDS reported in

Canada and worldwide. Existing contradictory statistics bring into question the reliability of these numbers and highlight the problem of formulating policies based on these figures. Governments should re-assess whether AIDS is an epidemic in their countries, and globally, and revise their policies accordingly.



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# Appendix A

## Alternative Activists, Theories and Organizations

Bialy, Harvey, a molecular biologist, worked for many years as a tropical disease expert and is now the science editor of *Bio/Technology*. He believes that "AIDS death" in Africa is caused by poverty-linked diseases like TB, whose deadliness is exacerbated when people mistakenly diagnosed HIV-positive are denied proven conventional treatment for their already well-known diseases – TB, malaria, parasitic infections; and that much needed funding is being diverted to AIDS and away from treating these conventional diseases (Shenton, 1998: 155-160).

Duesberg, Peter, a professor of molecular and cell biology at the University of California, and a renowned pioneer in retrovirus research, challenges the HIV-causes-AIDS hypothesis and advocates for research funds into other explanations for AIDS. Duesberg argues that HIV is a harmless hitch-hiker unable to cause AIDS because: there are very low levels of HIV in the body, which never rise, even in advanced AIDS; there are too few infected cells in the body for HIV to cause disease; the latency period, from infection with HIV to full-blown AIDS, is unprecedented in any viral disease, is inexplicable within prevailing viral theory, and inconsistent with what is known of viral behaviour and effects; there are many cases of HIV infection with no AIDS; and 10 percent of diagnosed AIDS cases have no sign of antibodies to HIV (Duesberg, 1996; Shenton, 1998:11). Duesberg also does not believe that AIDS is an infectious disease, because it does not adhere to Koch's 4 postulates for infectious diseases. Instead he believes that AIDS results from toxic agents. He believes that the immune system is weakened by co-factors including the recreational use of amyl nitrates, intravenous drug abuse, repeated infections, and malnutrition. Once the immune system is deficient, opportunistic infections invade the body. His book, *Inventing the AIDS Virus* (1996) and the following articles explain these arguments. See:

Duesberg, Peter, "Retroviruses as carcinogens and pathogens: expectations and reality" in *Cancer Research*, Vol. 47, no. 5, CNREA 8, 1 March 1987, pp. 1199-1220.

Duesberg, Peter, "AIDS epidemiology: inconsistencies with human immunodeficiency virus and with infectious disease", in *PNAS*, Vol. 88, February 1991, pp. 1575-9.

Duesberg, Peter, "AIDS Acquired by Drug Consumption and Other Noncontagious Risk Factors", Appendix B, p.505-642, in *Inventing the AIDS Virus*, Regnery, Washington, 1996.

A very useful summary of Duesberg's perspective on the causal relationship between AIDS and drug use can be found in Duesberg, Peter, and David Rasnick, "The Drug-AIDS Hypothesis", a supplement insert to *Continuum*, Vol. 4, No. 5, February/March, 1997, pp. 1-24.

More information about Dr. Duesberg's research can be found at: [www.duesberg.com](http://www.duesberg.com)

Farber, Celia is a journalist who has researched and written many articles challenging the AIDS orthodoxy which were, for many years, published in *Spin* magazine. She now writes for several periodicals, including a regular column in the webzine, *Impression*. In an article written for *Mothering*, Farber comprehensively outlines the flawed process for adopting AZT for the treatment of AIDS and pregnant women who are HIV positive. Farber clearly documents the toxic effects of AZT therapy and the potential dangers to pregnant women. She also reviews the critique that HIV causes AIDS and the research that demonstrates that HIV tests are inaccurate. Farber's regular column in *Impression* can be found at: [www.impressionmag.com/aids.html](http://www.impressionmag.com/aids.html). See:

Farber, Celia, "AZT Roulette. The Impossible Choices Facing HIV-Positive Women", in *Mothering*, September-October, 1998, pp. 53-65.

*Griffiths, Mark*, a musician, tested HIV-positive in 1986 while staying at a detoxification centre in Switzerland. He relates his positive test result to a decade of alcohol and heroine addiction and his self-destructive life as a rock musician. Since his diagnosis he has transformed his life, improved his nutrition and his general emotional health. When in 1990 he found out about Duesberg and other scientists confronting the HIV/AIDS paradigm, he was confirmed in what he intuitively knew all along. He remains in good health and works at making alternative AIDS theories known in France. His story can be read on the web site: [perso.wanadoo.fr/sidasante/temoigna/temmarkg.html](http://perso.wanadoo.fr/sidasante/temoigna/temmarkg.html)

*Lanka, Stefan*, is a member of a group of retired scientists who formed a Study Group on Nutrition & Immunity, to study emerging fields of science, and they challenge the virus – AIDS hypothesis. Lanka's article, "HIV: reality or artifact?" (*Continuum*, Vol. 3, no. 1, April/May, 1995) presents the Alfred Hassig (Berne) group's opinion on the cause of AIDS. They say that AIDS is the result of a persistent stress response, shifting the metabolism of the body into a state of assault on the immune system which the body cannot sustain, resulting in chronic whole body inflammation, causing antibodies to be formed against proteins from the body's own cells. These are the antibodies that have become interpreted as HIV antibodies. They say the inflammatory response involves the neuroendocrine system much like other autoimmune disease such as SLE (lupus), and isn't viral at all. They are opposed to drug treatment and suggest practical ways of helping people with this phenomena – reducing stress, controlling inflammatory response, ensuring good nutrition and avoiding recreational/street drugs (Shenton, 1998: 225). See:

Conlan, Mark G., "Interview with Stefan Lanka, Challenging both Mainstream and Alternative AIDS Views", *Newsmagazine*, December 1998. This article about the virologist, biochemist and evolutionary biologist, describes Lanka's discoveries and viewpoints about HIV in easily understandable terms. It explains why Lanka believes that all so-called

retroviruses are actually the body's own creations; that hepatitis is an autoimmune disorder rather than a viral disease; that AIDS has nothing to do with immune suppression and that it should actually be called Acquired Energy Deficiency Syndrome – AEDS – because its true cause is a breakdown of the immune system itself. This interview can be found on the Rethinking AIDS homepage at: [www.virus-myth.com/aids/data/mgglanka.htm](http://www.virus-myth.com/aids/data/mgglanka.htm)

Also see: A. Hassig, et. al., "Errors on pathogenesis, prevention and treatment of AIDS", *Continuum*, Vol. 5, No. 4, Summer 1998, pp. 28-29.

*Passi, Siro*, is a biochemist, presently Scientific Director of the Pathophysiology Laboratory of the St. Gallicano Research Institute (Rome). Over the past two decades he has published many papers on oxidative stress and its adverse consequences in different pathologies. On the basis of his studies on HIV positive and AIDS patients, he asserts that HIV phenomena are the outcome of oxidative stress, and not vice versa. He says there are multiple factors capable of inducing oxidative stress and leading to immunosuppression: recreational drugs including amphetamines, nitrates, heroin, cocaine, alcohol, cigarette smoke, etc.; medication drugs, including antiviral, antimitotic, antibiotic, chemotherapeutic, and other drugs. He argues that malnutrition/denutrition, poor sanitation, and parasitic infections represent the main causes of African AIDS. See:

Passi, Siro, "Progressive Increase of Oxidative Stress in Advancing Human Immunodeficiency", *Continuum*, Vol. 5, No. 4, Summer, 1998, pp. 20-26. Passi, Siro, and Chiara de Luca, "Dietic Advice for immunodeficiency", in *Continuum*, Vol. 5, no. 5, Winter, 1998-99.

*Papadopoulos-Eleopoulos, Eleni*, is a bio-physicist from the University of Western Australia, and the Chairperson of IFAS (International Forum for Accessible Science). She leads a research team that argues for a reappraisal of HIV and its role in AIDS. The Perth group contends that antibody proteins are not specific to HIV and are probably endogenous (part of the body itself) and may increase when the body is under



severe immunological stress. They argue that because HIV has never been isolated according to the Pasteur Institute's criteria of 1973, it may not exist at all. See:

Papadopoulos-Eleopoulos, Eleni, V. E. Turner, J.M. Papadimitriou et al. "HIV Antibodies: Further Questions and a Plea for Clarification", in *Medical Research and Opinion*, Vol. 13, 1997, pp. 627-634.

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"Is HIV the cause of AIDS?", an interview by Christine Johnson with Eleni Papadopoulos-Eleopoulos, in *Continuum*, Vol. 5, No. 1, 1997.

More information and references can be found at: [www.virusmyth.com/aids/perthgroup.index.html](http://www.virusmyth.com/aids/perthgroup.index.html)

Root-Bernstein, Robert, held the MacArthur Prize fellowship (known as the MacArthur "genius" award) from 1981-1986, and is associate professor of physiology at Michigan State University. In his book, *Rethinking AIDS. The Tragic Cost of Premature Consensus* (1993), Root-Bernstein reviewed the entire existing body of AIDS research to that point. Root-Bernstein believes that HIV cannot be the sole cause of the immune-suppression found in AIDS patients. He argues that co-factors are necessary for AIDS, and that they alter its course (1993: 337). He shows that many people infected with HIV remain

healthy and sometimes HIV positive people even rid themselves of the virus; that sexual transmission is extremely difficult and rare – female prostitutes virtually never contract HIV unless they also use drugs; and that the predicted heterosexual epidemic has not come about. Root-Bernstein presents a "multi-factorial" model of AIDS, which views the disease as resulting from numerous insults to the immune system itself. He identifies co-factors such as illicit and prescription drug use, sexual promiscuity, anal exposure to semen, transfusions, malnutrition, or multiple infections (1993: 338). He argues that a person's life-circumstances (socio-economic) and behaviours are a much more important factor in determining a person's susceptibility to developing AIDS than is commonly accepted in the medical community. Thus he focuses on specific controllable factors that increase risk of AIDS. He advocates for more research into the various co-factors and their effects on our health. See:

Root-Bernstein, Robert, *Rethinking AIDS. The Tragic Cost of Premature Consensus*, The Free Press, New York, 1993.

Root-Bernstein, Robert, "Misleading Reliability", in *The Sciences*, The New York Academy of Sciences, March/April 1990, pp. 6-8.

#### *The Group for the Scientific Reappraisal of HIV/AIDS*

*Hypothesis* is a group of 500 scientists and health professionals, whose purpose is to study and challenge the AIDS orthodoxy, founded by Dr. Charles Thomas and Dr. Peter Duesberg and includes Dr. Kary Mullis, Chemistry Nobel Prize winner (Shenton, 1998: 12, 33). This group produces a monthly newsletter called *Reappraising Aids*.

Articles by many of the members of the group and other interesting information challenging the HIV=AIDS paradigm can be found on the group's Rethinking AIDS homepage at [www.virusmyth.com/aids](http://www.virusmyth.com/aids). Subscription information as well as an index of issues can be found at:

[www.virusmyth.com/aids/reappraising/index.html](http://www.virusmyth.com/aids/reappraising/index.html).

*Health Education AIDS Liaison* (HEAL) is a non-profit education network committed to increasing public awareness of important information not made available by AIDS service agencies and unacknowledged by most media. HEAL's mission is to inform people of the evidence that the HIV=AIDS Hypothesis is false. HEAL asserts that "anti-viral" drugs, claimed to eradicate HIV, are harmful and dangerous. HEAL supports people who have been labeled HIV-positive by assuring them that their diagnosis is not a death sentence. HEAL encourages people to EXPECT HEALTH and pursue holistic, non-toxic approaches to the prevention and treatment of disease.

The HEAL Los Angeles homepage with lots of information can be found at: [www.epcnet.com/heal](http://www.epcnet.com/heal)

There is also a dynamic HEAL chapter in Toronto. HEAL Toronto's pamphlet is available from tel/fax 416-406-4325; email: [endaids@hotmail.com](mailto:endaids@hotmail.com). The HEAL Toronto homepage is at: [www.geocities.com](http://www.geocities.com)

The French HEAL affiliate, called A.M.G. can be found at: [perso.wanadoo.fr/sidasante](http://perso.wanadoo.fr/sidasante)

The *International Coalition for Medical Justice* fights for the rights of consumers and parents to reclaim responsibility for their own health without government intrusion into the decision making. They insist on accountable scientific and medical research and try to help people make "true" informed decisions rather than simply trust the hypotheses set forth by the CDC and NIH. The ICMJ Legal Defense Fund offers patients, families and parents legal information, advice and funding, and the Fund will also establish an initiative in the United States to hold all health departments and medical practitioners to standards as they relate to testing, the toxic effects of conventional treatment and the "true" cause of AIDS and other diseases and conditions. ICMJ can be reached at 540-829-9350, or by e-mail at [icmjjustice@yahoo.com](mailto:icmjjustice@yahoo.com); their websites are [www.icmj.org](http://www.icmj.org) or [www.tripod.members/ICMJ/](http://www.tripod.members/ICMJ/)

*International Forum for Accessible Science* (IFAS) is an umbrella group which has brought together scientists, gay health activists and human rights workers to highlight radical challenges to current AIDS research, diagnosis, and treatment strategies.

*International Long Term Survivors Network* (HIV/AIDS) has been established to link and support people living with HIV for seven years and longer without recourse to anti-HIV pharmaceutical drugs, and to do research on alternative measures to maintain health. The Network is currently conducting what it has called the International Community Collaborative Long Term Survivor Survey. People wanting information about the network or to participate in the survey, can contact Clair Walton, the Network coordinator, through *Continuum*.

*The Alberta Reappraising AIDS Society* (ARAS) was "formed to challenge the myth that HIV is the cause of AIDS and to provide information to Albertans that will ensure that they realize that HIV tests are inaccurate, that AIDS is caused by exposure to toxic or immune-suppressive substances, and that anti-HIV drugs are extremely toxic, can cause AIDS, and may be fatal." ARAS President, David Crowe can be reached at [crowed@cadvision.com](mailto:crowed@cadvision.com) or (403) 289-6609.

*Continuum* is A UK-based magazine edited by Huw Christie, which promotes an open discussion of a wide variety of views on the causes of AIDS, and the consequences of orthodox views and treatments, as well as news of alternatives. The address for subscriptions is *Continuum*, Rear Unit 4, 1A Hollybush Place, London E2 9QX, phone 44-171-613-3909, fax 613-3312, email [continuum@dircon.co.uk](mailto:continuum@dircon.co.uk). An index of issues and subscription information can be found at [www.continuum.org](http://www.continuum.org) or [www.virusmyth.com/aids/continuum/index.html](http://www.virusmyth.com/aids/continuum/index.html)



*Médecines Nouvelles* is a French critical alternative health quarterly with articles on a wide range of studies and criticisms of the conventional medical system, including toxicity of vaccines, death and illness caused by pharmaceuticals, and alternative approaches to different diseases. Every issue contains one or more articles on AIDS, ranging from French translations of articles by Duesberg and Lanka, to a critique of AZT toxicity by Dr J. Avicenne, a physician and *conseiller médical* with "Positifs", an organization of "angry HIV-positive people" (as they call themselves).

*Médecines Nouvelles* can be contacted at: [www.positifs.org](http://www.positifs.org). The magazine, *Médecines Nouvelles*, can be obtained from: B.P. 2, 14130 Blangy-le-Chateau, France, tel: 31.64.63.00.

A French alternative AIDS activist website can be found at: [perso.wanadoo.fr/sidasante](http://perso.wanadoo.fr/sidasante)

*IDEAS About AIDS* is an extensive series of excellent radio documentaries on AIDS dissent and alternative AIDS theories broadcast by the Canadian Broadcasting Corporation (CBC) program "CBC Ideas" between 1987 and 1999. The series, which has won awards from the Canadian Science Writers Association, has been produced by a brilliant and courageous team of journalists led by Max Allen and Colman Jones. All transcripts, including extensive bibliographies, are available from CBC Radio at: Ideas Transcripts, CBC, Box 500, Stn. A, Toronto, Canada, M5W 1E6, or by email from [ideastran@toronto.cbc.ca](mailto:ideastran@toronto.cbc.ca). For more information and extensive resource lists, see: [www.radio.cbc.ca/programs/ideas/Aids/index/html](http://www.radio.cbc.ca/programs/ideas/Aids/index/html).

# Appendix B

## Chronology of Centres for Disease Control's AIDS Definitions

(Duesberg, *Inventing the AIDS Virus*, pp. 210-211)

YEAR	DISEASES	HIV ANTIBODY
1983	<b>Protozoal and helminthic infections</b> <ol style="list-style-type: none"> <li>1. Cryptosporidiosis, intestinal, causing diarrhea for more than a month</li> <li>2. Pneumocystis carinii pneumonia</li> <li>3. Strongyloidosis, causing pneumonia, central nervous system (CNS) infection or disseminated infection</li> <li>4. Toxoplasmosis, causing pneumonia or CNS infection</li> </ol> <b>Fungal infections</b> <ol style="list-style-type: none"> <li>5. Candidiasis, causing esophagitis</li> <li>6. Cryptococcosis, causing CNS or disseminated infection</li> </ol> <b>Bacterial infection</b> <ol style="list-style-type: none"> <li>7. "Atypical" mycobacteriosis, causing disseminated infection</li> </ol> <b>Viral infection</b> <ol style="list-style-type: none"> <li>8. Cytomegalovirus, causing pulmonary, gastrointestinal tract, or central nervous system infection</li> <li>9. Herpes simplex virus, causing chronic mucocutaneous infection with ulcers persisting more than a month or pulmonary, gastrointestinal tract, or disseminated infection</li> <li>10. Progressive multifocal leukoencephalopathy (presumed to be caused by a papovavirus)</li> </ol> <b>Cancer</b> <ol style="list-style-type: none"> <li>11. Kaposi's sarcoma in persons less than 60 years of age</li> <li>12. Lymphoma, primary of the brain</li> </ol>	not required
1985	<ol style="list-style-type: none"> <li>13. Histoplasmosis</li> <li>14. Isosporiasis, chronic intestinal</li> <li>15. Lymphoma, Burkitt's</li> <li>16. Lymphoma, immunoblastic</li> <li>17. Bronchial or pulmonary candidiasis</li> <li>18. Chronic lymphoid interstitial pneumonitis (under 13 years of age)</li> </ol>	required
1987	<ol style="list-style-type: none"> <li>19. Encephalopathy, dementia, HIV-related</li> <li>20. Mycobacterium tuberculosis any site extrapulmonary</li> <li>21. Wasting syndrome, HIV-related</li> <li>22. Coccidiomycosis, disseminated or extrapulmonary</li> <li>23. Cryptococcosis, extrapulmonary</li> <li>24. Cytomegalovirus, other than liver, spleen, or nodes</li> <li>25. Cytomegalovirus retinitis</li> <li>26. Salmonella septicemia, recurrent</li> </ol>	required
1993	<ol style="list-style-type: none"> <li>27. Recurrent bacterial pneumonia</li> <li>28. Mycobacterium tuberculosis any site (pneumonia)</li> <li>29. Pneumonia, recurrent</li> <li>30. Invasive cervical cancer</li> <li>31. T-cell count less than 200 cells per microliter or less than 14 percent of the expected level.</li> </ol>	required



## THE BANGLADESH OBSERVER

### Democracy and Human Rights

#### Trafficking in Persons Report – Report Released by the Office to Monitor and Combat Trafficking in Persons

##### Introduction

##### A Look at the Problem

Over the past year at least 700,000, and possibly as many as four million men, women and children worldwide were bought, sold, transported and held against their will in slave like conditions. In this modern form of slavery, known as "*trafficking in persons*," traffickers use threats, intimidation and violence to force victims to engage in sex acts or to labor under conditions comparable to slavery for the traffickers' financial gain. Women, children and men are trafficked into the international sex trade for the purposes of prostitution, sex tourism and other commercial sexual services and into forced labor situations in sweatshops, construction sites and agricultural settings. The practice may take other forms as well, including the abduction of children and their conscription into government forces or rebel armies, the sale of women and children into domestic servitude, and the use of children as street beggars and camel jockeys.

Traffickers often move victims from their home communities to other areas – within their country or to foreign countries – where the victim is isolated and may be unable to speak the language or be unfamiliar with the culture. In many cases, the victims do not have immigration documents or they have fraudulent documents provided by the traffickers. Most importantly, the victims lose their support network of family and friends, thus making them more vulnerable to the traffickers' demands and threats. Victims also may be exposed to a range of health concerns including domestic violence, alcoholism, psychological problems, HIV/AIDS and other sexually transmitted diseases. Victims in these situations do not know how to escape the violence or where to go for help. Victims may choose not to turn to authorities out of fear of being jailed or deported, especially because the governments of some countries treat victims as criminals. In other countries, there is no protection for victims who come forward to assist in the prosecution of traffickers.

Traffickers recruit and find potential victims in a number of ways. Traffickers advertise in local newspapers offering good jobs at high pay in exciting cities. They also use fraudulent employment, travel, modeling and matchmaking agencies to lure unsuspecting young men and women into the trafficking networks. In local villages, a trafficker may pose as a "friend of a friend," meet with families and convince parents that their children will be safer and better taken care of by the "friend". Traffickers often mislead parents into believing that their children will be taught a useful skill or trade – but the children end up enslaved in small shops, on farms, or in domestic servitude. Traffickers also promise parents that they will marry their daughters – but the girls are forced into prostitution. In some violent situations, traffickers may kidnap or abduct victims.

## **The Causes of Trafficking**

Economic and political instability greatly increases the likelihood that a country will become a source of trafficking victims. In countries with chronic unemployment, widespread poverty and a lack of economic opportunities, traffickers use promises of higher wages and good working conditions in foreign countries to lure people into their networks. Victims, who want a better life for themselves and their families, are easily convinced by the traffickers' promises. Civil unrest, internal armed conflict, and natural disasters destabilize and displace populations and, in turn, increase their vulnerability to exploitation and abuse. In some countries, social or cultural practices contribute to trafficking. For example, the low status of women and girls in some societies contributes to the growing trafficking industry by not valuing their lives as highly as those of the male population. In other societies, the practice of entrusting poor children to more affluent friends or relatives may lead to abusive and exploitative situations.

In many destination countries, commercial sexual exploitation and the demands for inexpensive labor have increased over the past several decades. Many traffickers who are part of criminal networks involved in other transnational crimes have recognized that they can profit greatly by supplying people to fill these demands. Trafficking does not require a large capital investment and it frequently involves little risk of discovery by law enforcement. In addition, trafficking victims, unlike drugs, can be re-sold and used repeatedly by traffickers. In some countries, corruption contributes to the problem of trafficking, where local officials are complicit in trafficking or turn a blind eye.

Trafficking victims are often brought through "transit countries" from a source country to a destination country. Traffickers may use false documents in doing so. Weak border controls and corruption of migration officials also may further facilitate the transit of victims.

## **The magnitude**

Given the nature of trafficking and its often hidden face, it is extremely difficult to develop accurate statistics on the extent of the problem. According to a U.S. Government estimate based on 1997 data, 700,000 persons, mainly women and children, are trafficked across national borders worldwide each year. Other global estimates of the number of victims trafficked annually range from approximately one to four million. According to an International Organisation for Migration 1997 estimate, the number of victims trafficked both internally and across national borders is four million. The United States is principally a transit and destination country for trafficking in persons. According to a 1997 estimate, some 50,000 women and children are trafficked annually for sexual exploitation into the United States.

## **The Trafficking Victims Protection Act of 2000**

In October 2000, the Trafficking Victim Protection Act (Division A of Public Law 106-386) (the "Act") was enacted to combat trafficking to ensure the just and effective punishment of traffickers and to protect victims. The Act added new crimes, strengthened pre-existing criminal penalties, afforded new protections to trafficking victims, and made available certain benefits and services to victims of severe forms of trafficking. With this comprehensive approach to the



problem, the Act created significant mandates for several federal government agencies, including the Departments of State, Justice, Labor, Health and Human Services and the U.S Agency for International Development. One of the State Department's responsibilities is the annual submission of a report to Congress on the status of severe forms of trafficking in persons; this is the second such report. The Act's definition of "severe forms of trafficking in persons" is in the following box, as are its definitions of other terms that are elements of that definition. For the purpose of this report, the term "trafficking" refers to "severe forms of trafficking in persons" as defined in the Act.

### **Bangladesh (Tier 2)**

Bangladesh is a country of origin for women and children trafficked for purposes of sexual exploitation, domestic servitude, and bonded labor. There is also internal trafficking of women and children from rural areas to the larger cities. The majority of trafficking victims are women and girls trafficked to India, Pakistan, Bahrain, and the Middle East. Boys are also trafficked to the United Arab Emirates and Qatar and forced to work as camel jockeys and to the United Arab Emirates to work as beggars.

The Government of Bangladesh does not yet fully comply with minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Bangladesh has laws that prohibit various forms of trafficking. The government has arrested and prosecuted some traffickers, and courts have handed down tough sentences. The government does investigate trafficking cases; however, the court system is backlogged by approximately one other million cases, severely hampering the ability to bring criminal cases to closure quickly. Police and government officials have received specialized training from international organisations and NGOs in investigating and prosecuting trafficking cases. Corruption is widespread at lower levels of government and police, customs, immigration officials and border guards receive bribes and may assist in trafficking. If caught, prosecuted and convicted, corrupt officials may receive reprimand; but their employment is rarely terminated. The government does not adequately monitor its borders. Regarding victim protection, trafficked victims are not detained, jailed, or prosecuted for violations of immigration or prostitution laws. The Government works closely with and refers victims to NGOs that provide shelter an access to legal, medical and psychological services. Government officials support prevention programmes and actively participate in workshops, meetings and public awareness campaigns, but most funding comes from international donors. To encourage parents to send their children to school, the government supports "food for education" programmes. To reduce drop out rates, the government provides stipends to girls attending secondary schools in rural areas. The government has initiated an anti-exploitation public information campaign for citizens going abroad to work. In January, Bangladesh signed the South Asian Association for Regional Co-operation (SAARC) Convention on Prevention and Combating Trafficking in Women and Children for Prostitution. The government has recently adopted a national plan of action to address child sexual exploitation and trafficking in persons.



## **Definition of “Severe Forms of Trafficking in Persons”**

The Act defines “severe form of trafficking in persons” as sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

### **Definition of Terms Used in the Term “Severe Forms of Trafficking in Persons”**

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Involuntary servitude” includes a condition of servitude induced by means of (A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition that person or another person would suffer serious harm or physical restraint; or (B) the abuse or threatened abuse of the legal process.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Coercion” means (A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of the legal process.

## **United States’ Efforts**

The U.S. Government condemns trafficking in persons and remains firmly committed to fighting this scourge and protecting the victims who fall prey to traffickers. The U.S. Government has taken numerous steps to enhance its efforts to monitor and combat trafficking, including the annual drafting of this report.

Pursuant to the Act, President Bush established the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons. This Task Force is chaired by the Secretary of State and is made up of the Attorney General, the Secretary of Labour, the Secretary of Health and Human Services, the Director of Central Intelligence, the Director of Central Intelligence, the Director of the Office of Management and Budget and the Administrator of the U.S. Agency for International Development. The Task Force responsibilities include coordination of the implementation of the Act as well as assisting the Secretary of State in the preparation of this report. The Task Force held its first meeting, chaired by Secretary Powell, in February 2002.

As authorized by the Act, the Department of State established the Office to Monitor and Combat Trafficking in Persons in October 2001. The Trafficking Office leads the development



and implementation of our international engagement on trafficking in persons and provides assistance to the Task Force. It also prepares reports and analyses on trafficking, coordinates international programs to prevent trafficking and to aid victims, and conducts outreach with non-governmental organizations (NGOs) and International organizations. In addition, other federal agencies represented on the Task Force provide detailees to the Trafficking Office in order to strengthen interagency coordination and assist with Task Force activities. More information about the Trafficking Office can be found on its website.

The efforts of the Trafficking Office are guided by a legislative mandate to combat and eradicate human trafficking. Given the magnitude and urgency of this task, the Trafficking Office's priorities are to:

- Assist countries with the elimination of trafficking;
- Promote regional and bilateral cooperation for trafficking eradication; and
- Support service providers and NGOs in their trafficking prevention and victim protection efforts.

The Department of State has taken numerous steps to craft and implement an overall strategy to combat trafficking worldwide within the last year. The State Department is assisting in the coordination of anti-trafficking policy and programs among federal agencies, international organizations, foreign governments and NGOs worldwide. This report, addressing 89 countries that were found to have a significant number of trafficking victims, is the most comprehensive international anti-trafficking review issued by any single government.

Leveraging the attention generated by its Trafficking in Persons Report, the State Department continuously engages with foreign government officials to promote cooperation and enhanced anti-trafficking campaigns, both regionally and on a per-country basis. The Department also continued to expand reporting on trafficking in persons in its annual Country Reports on Human Rights Practices.

The Trafficking Office is working with other U.S Government agencies that are pursuing aggressive policies to prevent trafficking, to prosecute traffickers and to protect and assist victims domestically and internationally. Various U.S. Government agencies have worked together to create informational brochures on trafficking for victims, NGOs and law enforcement personnel; to conduct training programs for U.S Government officials; to issue regulations and establish guidelines regarding the protection and assistance for trafficking victims; and to fund anti-trafficking activities in the United States and throughout the world. A chronicle of U.S. Government efforts to implement the Act is contained in the document "Overview of the Administration's Implementation of the Trafficking Victims Protection Act," which can be found on the Trafficking Office's website.

The U.S Government supported over 110 anti-trafficking programs in approximately 50 countries in fiscal year 2001. The types of assistance include the following: economic alternative programs for vulnerable groups; education programs; training for government officials and medical personnel; development or improvement of anti-trafficking laws; provision of equipment for law enforcement; establishment or renovation of shelters, crisis centers, or safe houses for victims; support for voluntary and humane return and reintegration assistance for victims; and



support for psychological, legal, medical and counselling services for victims provided by NGOs, international organizations and governments. The Department's priority is to help the governments of countries in Tiers 2 and 3 that are eligible for assistance and committed to combating trafficking. (See pages 10-12 for an explanation of tier listings.)

The State Department has actively sought out the crucial cooperation of NGOs, given their invaluable practical experience. It would be challenging to implement successfully an on-going international campaign to combat trafficking without their partnership. Within this last year, the Trafficking Office has hosted numerous meetings and briefings with NGOs to solicit their expertise and recommendations. Moreover, in preparation for this report, the Trafficking Office asked over 140 NGOs to provide information on trafficking practices and programs throughout the world. Carrying out the legislative mandate to engage NGOs, the Trafficking Office invites further suggestions to enhance NGO cooperation.

### **International Engagement**

Trafficking has reached staggering dimensions around the globe. Solving this problem and bringing relief to its many victims will be possible only through cooperative efforts. This cooperation must occur bilaterally and multilaterally among various governments, but also between governments and civil society, including NGOs. It must involve governmental coordination on national counter-trafficking strategies, as well as coordination at a local level. Destination countries must work with transit and source countries to stem the flow of trafficking; source countries must work not only to prevent trafficking, but to help with the reintegration of trafficking victims back into their home societies. The United States' international engagement is focused on bolstering international political will to combat the issue, increasing a dialogue among countries to identify ways to expand national, regional and international efforts to address trafficking, and strengthening nations' efforts to fight trafficking.

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons. Especially Women and Children, which supplements the UN Convention against Transnational Organized Crime and was adopted by the UN General Assembly in November 2000, is an important new tool to facilitate International cooperation. Governments that sign and ratify this Protocol make a commitment to criminalize trafficking, protect its many victims, and prevent future trafficking. To date, the United States and 104 other countries have signed the Protocol.

Two other International instruments that address the sale of and trafficking in children have also recently been adopted—International Labor Organization (ILO) Convention 182 concerning the prohibition and immediate action for the elimination of the worst forms of Child Labour (which the United States ratified in December 1999), and the Protocol to the Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography (which the United States signed in July 2000). ILO convention 182 requires that countries take steps to provide children removed from the worst forms of child labor, such as prostitution and pornography, with access to free basic education. The Protocol requires that states criminalize prostitution and pornography with respect to children under the age of 18. The US Government engages with its co-signatories of ILO Convention 182 to ensure that government efforts against child exploitation remain sustained and significant.



## THE REPORT

This is the second annual report to Congress, as required by the Act, on the status of severe forms of trafficking in persons worldwide. It covers the time period of April 2001 through March 2002. In this year's report, several countries have moved from their placement in last year's report, as discussed on pages 12 through 13. Some countries are not listed in this year's report because of a lack of reliable information, as discussed on pages 11-13. With this annual report, the United States seeks to bring international attention, both of governments and the general public, to the horrific practice of trafficking in persons. This report serves as a major diplomatic tool for the U.S. Government, which hopes that other governments will view this as an instrument for continued dialogue, encouragement for their current work, and an instrument to help them focus their future work on prosecution, protection, and prevention programs and policies. After the release of this year's report, the Department will continue to engage in discussions with governments about the content of the report to help strengthen cooperative efforts to eradicate trafficking. The Department will use the information gained in the compilation of this year's report to target assistance programs more effectively and to work with countries that need help in combating trafficking. Finally, the Department hopes the report will be a catalyst for government efforts to combat trafficking in persons around the world, so that this degrading practice will be eliminated.

## Methodology

To lead the State Department's efforts in preparing this report, the Trafficking Office assembled a panel with staff from the Trafficking Office and other U.S. Government agencies. The panel included representatives from the Department of Justice, the Department of Health and Human Services, the Intelligence community and the Department of State's Bureau of Democracy, Human Rights and Labor, and the Bureau of Population, Refugees, and Migration, and it received counsel from the Office of the Legal Adviser.

The State Department obtained information from a variety of sources in preparing this report. It solicited information from U.S. embassies and consulates around the world. These diplomatic posts reported on the extent of trafficking in their host countries and the host government's efforts to address the problem. Their reports reflected discussions with host government's, local and international NGOs, international organizations, immigration officials, police, journalists, academics and victims, in addition to reviews of government, press and NGO reports. Along with these reports from posts, the report panel also reviewed information from other sources including, but not limited to, other U.S. Government agencies, United Nations International Children's Emergency Fund, United Nations High Commissioner for Refugees, the International Organisation for Migration, Human Rights Watch, Amnesty International, the Protection Project, the media, academics and foreign governments. The panel also took into consideration information learned by the Trafficking Office staff in numerous meetings with foreign government officials, NGOs and international organizations. Finally, the Trafficking Office established an email address, [tipreport@state.gov](mailto:tipreport@state.gov) for NGOs to report information on government progress in addressing trafficking, provide updates on the scope of the problem, and focus attention on particular obstacles they encounter in their work.



To compile this year's report, the Department used the same two-step approach it employed for last year's report. First, the report panel determined whether or not a country is a "country of origin, transit, or destination for a significant number of victims" of trafficking. In making this determination, the panel required credible reporting that the country was country of origin, transit or destination for a number of victims on the order of one hundred or more, the same threshold that was applied in the 2001 report. Only those countries that reach this threshold are included in the report.

As a second step, the report panel placed each of the countries that are included on the report into one of the three lists, described here as tiers, mandated by the Act. This placement is based upon governments's efforts to combat trafficking. In accordance with the Act, countries whose governments fully comply with the Acts minimum standards for the elimination of trafficking were placed in Tier 1. Countries whose governments do not fully comply those standards were placed in Tier 2 if they are making "significant efforts to bring themselves into compliance" with the standards, or in Tier 3 if they are not. Each tier encompasses a wide range of countries.

### **Minimum Standards**

The Act defines "minimum standards for the elimination of trafficking", which are summarized as follows:

The government should prohibit trafficking and punish acts of trafficking.

The government should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault, for the knowing commission of trafficking in some of its most reprehensible forms (trafficking for sexual purposes, trafficking involving rape or kidnapping, or trafficking that causes a death).

For knowing commission of any act of trafficking, the government should prescribe punishment that is sufficiently stringent to deter, and that adequately reflects the offense's heinous nature.

The government should make serious and sustained efforts to eliminate trafficking. The Act also sets out seven criteria that "should be considered" as indicia of the fourth point above, "serious and sustained efforts to eliminate trafficking" Summarized, they are:

Whether the government vigorously investigates and prosecutes acts of trafficking within its territory. Whether the government protects victims of trafficking, encourages victims' assistance in investigation and prosecution, provides victims with legal alternatives to their removal to countries where they would face retribution or hardship, and ensures that victims are not inappropriately penalized solely for unlawful acts as a direct result of being trafficked.

Whether the government has adopted measures, such as public education, to prevent trafficking.

Whether the government cooperates with other governments in investigating and prosecuting trafficking.

Whether the government extradites persons charged with trafficking as it does with other serious crimes.

Whether the government monitors immigration and emigration patterns for evidence of trafficking, and whether law enforcement agencies respond appropriately to such evidence.



Whether the government vigorously investigates and prosecutes public officials who participate in or facilitate trafficking, and takes all appropriate measures against officials who condone trafficking.

The Act also states three factors that the Department is to consider in determining whether a country is making significant efforts to bring itself into compliance with these minimum standards. Summarized, these considerations are: 1) the extent of trafficking in the country; 2) the extent of governmental noncompliance with the minimum standards, particularly the extent to which government officials have participated in, facilitated, condoned, or are otherwise complicit in trafficking; and 3) what measures are reasonable to bring the government into compliance with the minimum standards in light of the government's resources and capabilities.

## **The Tiers**

### **Tier 1**

The governments of countries in Tier 1 fully comply with the Act's minimum standards. Such governments criminalize and have successfully prosecuted trafficking, and have provided a wide range of protective services to victims. Victims are not jailed or otherwise punished solely as a result of being trafficked, and they are not summarily returned to a country where they may face hardship as a result of being trafficked. In addition, these governments sponsor or coordinate prevention campaigns aimed at stemming the flow of trafficking.

### **Tier 2**

The governments of countries in Tier 2 do not yet fully comply with the Act's minimum standards but are making significant efforts to bring themselves into compliance with those standards. Some are strong in the prosecution of traffickers but provide little or no assistance to victims. Others work to assist victims and punish traffickers, but have not yet taken any significant steps to prevent trafficking. Some governments are only beginning to address trafficking, but nonetheless have already taken significant steps towards the eradication of trafficking.

### **Tier 3**

The governments of countries in Tier 3 do not fully comply with the minimum standards and are not making significant efforts to bring themselves into compliance. Some of these governments refuse to acknowledge the trafficking problem within their territory. On a more positive note, several other governments in this category are beginning to take concrete steps to combat trafficking. While these steps do not yet reach the appropriate level of significance, many of these governments are on the path to placement on Tier 2.

## **Penalties**

According to the Act, beginning with the 2003 report, countries in Tier 3 will be subject to certain sanctions, principally termination of non-humanitarian, non trade-related assistance. Consistent with the Act, such countries also would face U.S. opposition to assistance (except for humanitarian, trade-related, and certain development-related assistance) from international financial institutions, specifically the International Monetary Fund and multilateral development banks such as the World Bank. All or part of the bilateral and multilateral assistance sanctions may be waived upon a determination by the President that the provision of such assistance to the country would promote the purposes of the Act or is otherwise in the national interest of the United States. The Act provides that the President shall waive those sanctions when necessary to avoid significant adverse effects on vulnerable populations, including women and children.

## **Country Narratives**

This report provides a brief narrative for each country that has been placed in a tier. The narratives do not include extensive details or comprehensive information about the countries or their governments. Instead, they provide an overview of the trafficking situation in the country and the government's efforts to combat trafficking. The first paragraph of each narrative describes the scope and nature of the trafficking problem in the country and thus indicates the reasons the country has been included in the report. The second paragraph describes some of that government's efforts to combat trafficking, and thus illustrates the reasons the country has been placed in Tier 1, 2 or 3 of the report. This second paragraph addresses government efforts in several areas: first in the areas of law enforcement and prosecution of traffickers, then protection of trafficked victims, and finally prevention of trafficking.

Establishing task forces and action plans are methods that some countries have successfully used to create goals and benchmarks of their anti-trafficking efforts. However, these plans and task forces, on their own, are not weighted heavily in assessing country placements. Rather, the report focuses on concrete efforts that governments have undertaken to combat trafficking. Similarly, the report does not weigh heavily laws that are in draft form or that have not been enacted, because they cannot yet be used to combat trafficking. In some cases, task forces, action plans or draft laws have been mentioned in a country narrative as examples of a positive attitude, or preliminary steps that the government is beginning to take to combat trafficking.

In a few countries, armed forces beyond the government's control forced children to become soldiers or laborers, or to provide sexual services to rebels. In such countries, the government may be unable to take many steps, along the lines of the Act's "minimum standards," to combat the trafficking problem. This report categorizes such countries primarily based on what steps, if any, their governments have taken to assist these victims. These considerations are reflected in the country narratives.

The Department appreciates the response to last year's report, including reactions from the Congress, press, foreign governments and NGOs. Much of that response was positive and contributed to an increasing awareness of the issue of trafficking in persons. Mindful of the



statutory requirement for the report and of its ultimate goal to help eliminate trafficking in persons, we carefully considered suggestions that were made about last year's report. For example, we took additional steps to address the link between corruption and trafficking and the report includes more detailed information on corruption. Similarly, we strove to increase the consistency of the country narratives.

### **Tier Placements**

Some countries were not included in the 2001 report or this report. Their omission should not be construed necessarily as a positive result of such countries' efforts to eliminate trafficking in persons. Instead, their omission simply may indicate that at the time of the report's preparation, the Department did not have credible information that provided evidence of a significant number of victims of trafficking. As noted above, trafficking is an underground criminal activity, and, as such, information about it is difficult to obtain. The State Department received reports of possible trafficking in many countries that do not appear in this report. The Department cross-checked all reports with our diplomatic missions abroad and other sources. If the Department determined that the information received was not reliable or did not adequately document a significant number of victims, the country was not placed in the report. If additional information becomes available, such countries may be included in a future report. A few examples of the many countries in this situation include Uzbekistan, Turkmenistan and Botswana.

Another difficulty in obtaining information, which mainly affects transit countries, arises from the fact that it may be difficult to distinguish between trafficking in persons and migrant smuggling. The mere facilitation of illegal entry into a country is not, on its own, trafficking in persons, although such migrant smuggling may be part of a trafficking operation. Trafficking victims, as they are being moved through transit countries, may not know that they will be forced into prostitution or labor when they arrive in the destination country. Similarly, border patrol or migration officials may recognize illegal entry into or transit through a country but not have information alerting them that that smuggling is part of a trafficking situation. In preparing this year's report, the Department noted several countries, such as Croatia, that appear to have considerable migrant smuggling, and thus may be transit countries for trafficking. However, for the reasons mentioned above, the Department does not have enough information at this time to include these countries in this year's report.

The Department has only minimal information about some countries. North Korea is of particular concern, and it is difficult to corroborate anecdotal information about trafficking. Other examples of countries for which minimal information is available are Iraq and Somalia. In such cases we have minimal information because, for example, there is no U.S. diplomatic presence in the country, the society is closed, there is no free press, or few NGOs operate in the country. The Department used all information that could be gathered from available sources about these countries, but our ability to report on them is necessarily limited. We will continue to seek additional information on these countries through other means, while recognizing the difficulty of verification.



Again, countries omitted from this year's report may be included in future reports on the basis of changed circumstances or new information. The Department, its diplomatic posts around the world, and other U.S. Government agencies will continue to monitor trafficking in all countries, with a special emphasis on those countries that are not in this year's report but that raise concern for the reasons described above, and will continue to seek new sources of information for future reports. The structure of the new Trafficking Office will enable increased collection of data year round. The Department also welcomes updates to the information provided there.

Several countries that were not included in the 2001 report appear in this report because of changed circumstances or new information about the number of trafficked victims in those countries. In addition, a few countries that were included in the 2001 report are not in this year's report. This may indicate either a decrease in the number of trafficked victims to below the "significant" threshold or the availability of new information that caused a reassessment of last year's finding.

Because the placement of a country in one of the three tiers is based on a determination of that country's efforts to address trafficking, we closely examined trends and developments in each country over the last year. Several countries increased their efforts to combat trafficking since issuance of the Department's 2001 report. In some cases, the increased efforts justified moving the country to a higher tier. As an example, South Korea, which has made extraordinary strides since the last report, moved from Tier 3 to Tier 1. Romania and Israel also made great strides in strengthening their efforts demonstrating a clear commitment to this issue and implementing a wide range of activities to combat the problem. Both have accordingly been moved from Tier 3 to Tier 2. Other countries that moved from Tier 3 in 2001 to Tier 2 this year as a result of improving their anti trafficking efforts are Albania, Gabon, Kazakhstan, Malaysia, Pakistan and Yugoslavia. Although they do not yet fully comply with the minimum standards, each was determined this year, as a change from last year, to be making significant efforts to do so.

Several other countries that were placed in Tier 2 on the 2001 report improved to the degree that they now fully comply with the minimum standards, and they are in Tier 1 of this year's report. These countries are the Czech Republic, France, Lithuania, Macedonia and Poland. A small number of countries, whose efforts disappointingly lagged over the last year, dropped from Tier 2 in 2001 to Tier 3 this year.

It is possible for a country to have a high number of trafficked victims and for its government to be making significant efforts even if there are some glaring weaknesses. For example, Thailand and Vietnam are listed in Tier 2 because they do not fully comply with minimum standards but have made significant efforts to do so, by taking measures to prevent trafficking and protect victims through a variety of efforts such as public awareness campaigns; social and economic development for at risk individuals; partnering with NGOs, international organizations and foreign governments to train police; and providing services and shelter to victims. However, in both countries, law enforcement is poor due to corruption and complicity by some police and government officials. The governments of Thailand and Vietnam have conducted investigations and prosecuted some traffickers, however, they could and should do



much more to end impunity for corrupt officials and increase arrests and prosecutions of traffickers.

Regardless of tier placement, there is more that every country can do. Those countries that have been moved from one tier in last year's report to a higher tier in this year's report have particularly demonstrated progress in addressing the problem of trafficking. It is also possible for countries to be downgraded to a lower tier by reducing or limiting their efforts. No country placement is permanent. All countries must maintain and increase their efforts to combat trafficking. Toward its goal of eradicating trafficking globally, the United States will continue to monitor progress throughout the world and work with partners to strengthen international efforts to end this scourge.

*The Bureau of Public Affairs, U.S. Department of State.*

**Taken Questions office of the Spokesman Washington, DC**

Trafficking in persons: International reaction to annual report

Question: Has the Department received demarches from foreign governments protesting the characterizations in the TIP report?

Answer: There have been no specific demarches. The Office to Monitor and Combat Trafficking in Persons meets throughout the year with foreign government representatives to discuss the Trafficking in Persons Report and provide information on anti-trafficking activities. We will continue to invite governments to meet with us. Our embassies abroad were tasked with meeting with host government officials to discuss this year's report.

**Draft Only – Ratna Kapur© 2002 (footnotes omitted)**

**International Symposium: The International Legal Order**

**International Institute for Peace, Nov.4-5, 2002**

**Session I: Economy – Prosperity and Social Justice**

**Some comments on the legal regulation of trafficking, migration and terrorism:**

**Impact on cross-border movements and women's rights**

I raise three issues for discussion. The first is to discuss how global economic processes have triggered a contemporary wave of migration, legal and illegal, and the international and domestic responses to this phenomenon.

Secondly, to discuss the gender impact of anti-trafficking initiatives in the domestic and international arena, which have adversely affected women's economic choices, curtailed their rights to mobility, and produced a clandestine migration-mobility regime.

Thirdly, how recent legal responses to cross-border movements have been informed by the "War on Terror", which has converged with the discourse of the conservative Right (here and there), building on the xenophobia pre-dating September 11<sup>th</sup>, and turned it into a hostile antagonistic fear of the 'Other' who is threatening the security of the nation.

My remarks focus on how the political and legal agenda that is currently being pursued in relation to cross-border movements is diametrically opposed to women's rights and others who cross borders in their capacities as migrants, refugees or asylum-seekers. The contemporary legal interventions in the lives of the transnational 'subaltern subject' are being articulated primarily from the perspective of the host country and within the overarching concern for the security of the nation.

**The Context**

Nearly 150 million migrants are crossing borders in our world today - from rural towns to urban centers, from the periphery into the metropolis, from the global south into



the global north. And these crossings are profoundly challenging our most basic notions of women's reproductive labour, family, community, nation, culture and citizenship.

Evicted from their homelands by powerful forces of exclusion and disadvantage, a growing mass of floating migrants is squatting on global borderlands – searching for a new home, waiting to arrive. Countries of the global North and the global South are pockmarked with these global borderlands inhabited by alien migrants. The residents of the global borderlands are non-nationals, non-citizens and practically non-existent to those who reside in and manage the business and defense of homelands. While often invisible to agents of governance and the acknowledged citizenry in their host countries this new breed of migrants, are gendered. Of the numerous new categories of migrants, young women and adolescent girls predominantly from the global South and a significant majority from the Asia-Pacific region, constitute their numbers.

Globalization is invariably used to refer to the free flow of capital, deemed as critical to the efficiency of the market and intrinsic to the globalization process. The market also triggers a global flow of labour, yet the free flow of labour is not addressed within the discourse of market management. It is addressed in and through the international legal order by initiatives dealing with trafficking, human smuggling, border controls, terrorism and sexual morality. The impact of these various initiatives on cross-border movements is mediated by gender, class, religion, sexual and marital status.

What remains unaddressed in these responses is how countries of origin and destination stand to gain in significant economic ways from migration, including from clandestine migrant-mobility. In the context of globalization, migrations do not just happen – they are produced. And they do not simply involve a random cluster of countries of destination, sites of employment or mobile groups of labour. For example, as Saskia Sassen has argued that “worldwide evidence shows rather clearly that there is considerable patternizing in the geography of migrations, and that the major receiving countries tend to get immigrants from their zones of influence.” This would explain some of the patterns of migrations to the United States and the United Kingdom. It is partly an outcome of the actions of government's foreign policy and their economic involvement in country's of origin. Earlier colonial patterns also inform current migration patterns, captured in the slogan, ‘We are here, because you were there’.

In countries of destination, there is also a persistent demand on the part of capital for an increased rate of profit, which is partly fulfilled by depressing the wages of labour and lowering costs of production. The specific demand for an abundant supply of low wage labour and a shrinking supply of a local workforce especially in the global North also helps to sustain the economy of the global metropolises. At the same time, cash remittances to countries of origin have registered phenomenal increases over recent years, with recorded remittances increasing from two billion to seventy billion over the course of the past two decades. These remittances are largely invisible as they do not flow through regular channels of the economy. Few sending or receiving countries have data on the precise economic and non-economic impact of migration. Yet some studies in the Asia-Pacific reveal that the remittances flow back through informal and underground conduits, and sustain household, community and sometimes even local and national economies.

Although migration is a fact of a globalized economy, the response of the international legal order to what is cast as the *migration dilemma* is exceedingly incomplete and continues to occupy a sensitive and politically charged field. The mass movements of people have produced both domestic and international responses that fail to account for the factors that trigger such movements. At the international level, cross-border movements have been addressed within the framework of trafficking and smuggling. And as I discuss below, this approach has had a particularly adverse impact on women pushing them further into situations of violence and exploitation. At the domestic level, these movements have been addressed through appeals to assimilation and tests of fealty to the nation, as well as the criminal law and the othering of the 'alien migrant', who fails to assimilate and continues to enter countries through illegal means. Since September 11<sup>th</sup>, security has become an overarching concern, and enabled some governments to use the fear of threats to the security of the nation to detain the 'Other' in ways that fan the flames of hatred and intolerance and fail to make a distinction between the migrant, terrorist and trafficker.

While the avenues for regular, legal and safe migration have decreased worldwide, due to restrictive migration and immigration policies of countries of transit and destination, this phenomenon has actually produced a growing market for clandestine



migration services under the migrant-mobility regime. This regime is a system that emanates out of the need for marginalized social groups to migrate on the one hand and the demand for cheap, exploitable labour, on the other. Irregular labour services, smuggling, facilitation of illegal migration, provision of false passports and visa permits, underground travel operations, and trafficking constitute the array of activities that get subsumed under the expanding continuum of clandestine migration services. This regime is not an aberration or a 'rogue' regime. It is a regime produced in part by the disciplinary and at times punitive legal order that has been erected to address cross-border movements, and it is a regime that generates increased surplus accumulation in tandem with the regular labour-importation system.

### **Gendered Aliens**

The response to migration is highly gendered. Female migration is not addressed within the framework of the global economy, the search for better economic opportunities or the demand for women's reproductive labour. Women's cross border movements continue to be addressed primarily through anti-trafficking initiatives at the international, regional and domestic level. Under these initiatives, a woman's consent is irrelevant and her subjectivity denied. She is addressed primarily as a victim, to be rescued, rehabilitated and repatriated. At times her consent is acknowledged only to implicate her in the discourses of immorality,( for such migration is consistently and erroneously conflated with sex work) and criminality, to be penalized together with traffickers, and terrorists for exposing the porosity of borders and the vulnerability of the nation-state. These responses do not engage with the premise that migration is a manifestation of globalization – that it is indeed globalization. The responses are constructed along the binaries of the West and the Rest. And women, especially from the post-colonial world, are cast as either victims, incapable of decision making or consenting, or sexual deviants, disrupting the moral and social fabric of the sexually sanitized West and/or dangerous 'Others', threatening the security of the nation state.

Women are the primary squatters of the new global borderlands that constitute part of the contemporary transnational, transmigratory world. Half of nearly all migrants are women and girls, and many of these are migrating independently rather than as part of a family. The process of women's movement is determined by a number of factors that

render them amenable to migration and expose them to human rights violations: the insecurity of food and livelihood and the growing economic reliance of households on earnings of women and girls; the erosion of social capital and the break down of traditional societies; the transnationalization of women's labour in sectors which do not comply with labour or human rights standards and often rely on exploitative labour, forced labour, and slavery like practices. And this movement is rendered vulnerable as a result of several normative assumptions about gender and sexuality, quite specifically, the normative assumption that women's primary work is in the home, underscored by the sexual division of labour. The fact that women's movement is impelled by a number of economic push and pull factors remains largely unaddressed in schemes that focus on anti-trafficking, restrictive immigration regulations at borders, and the penalizing, criminalizing and deportation of alien migrants as a response to the growing "problem" of transnational migration and trafficking. Closing doors to keep the individual migrants out by resorting to the tools of deportation or incarceration, ignores the economic engine that drives transborder and female migration.

Women migrants constitute a substantial pool of workers, offering their reproductive labour in the form of sex, domestic work, and/or marital bliss. And she becomes more attractive to the global economy if her status as a migrant is illegal, in which case her social and economic options and demands will be constrained. The disadvantaged migrant woman becomes the *ideal worker* from the standpoint of capital and integral to sustaining the current structure of the economy. This situation of illegality and disadvantage also renders migrant women vulnerable to exploitative and forced labour like conditions of work,

#### Barrier Methods :

The choice of female migrants to cross borders is conditioned by the push and pull factors that induce movement. This choice is not facilitated or protected by international legal mechanisms, which are triggered once she steps across the line that separates 'here from there.' Instead, the moment of border crossing also marks the moment when her choice is determined primarily within the framework of anti-trafficking discourse. This discourse fails to distinguish between women's migration, sex work and trafficking. In fact, trafficking has come to be variously and integrally



interwoven with migration (mainly illegal), clandestine border-crossings, and the smuggling of humans. And on a parallel plane, the trafficking in women and girls is routinely conflated with their sale and forced consignment to brothels in the sex industry. This conflation of trafficking with various manifestations of migration and mobility on the one hand, and sex work on the other, lies at the core of the confusion that underpins women's cross borders movements and the legal responses to these movements.

Equating trafficking with migration leads to simplistic and unrealistic solutions – in order to prevent trafficking there is a conscious or inadvertent move to stop those who are deemed vulnerable from migrating. Even when curbing migration is not a stated programmatic focus, an inadvertent impetus is to dissuade women and girls from moving in order to protect them from harm. Conflating trafficking with migration results in reinforcing the gender bias that women and girls need constant male or state protection from harm, and therefore must not be allowed to exercise their right to movement or right to earn a living in the manner they choose.

Secondly, curbing migration will not stop trafficking, but merely drive the activity further underground, and make it more invisible. This lesson has been learnt from states who have proceeded to enforce increasingly stringent immigration controls as a response to heightened trafficking in persons and narcotics. Borders cannot be impermeable, and stricter immigration measures have resulted in pushing the victims further into situations of violence and abuse.

Thirdly, when no clear conceptual or operational distinctions are drawn between migration and trafficking, and in fact, when migration is considered equal to trafficking, then it logically follows that the number of victims of trafficking is equal to the number of those who have migrated voluntarily. This logic operates particularly in the case of adolescent girls and women migrants, and not in the case of men. This practice has resulted in an extremely flawed methodology for conducting baseline surveys on trafficking in 'risk-prone' and 'affected districts' in different South Asian countries. Absence of women or girls is routinely considered tantamount to "missing persons", and therefore, trafficked. This logic has resulted in the viewing all consensual migrant females as trafficked.

And finally, there has been a continued persistence among anti-trafficking players to conflate trafficking with sex work/prostitution. By collapsing the process with the purpose, the abuse and violence inherent in trafficking is mistaken for the actual site of work and form of labour. Furthermore, trafficking for all other purposes is largely ignored, and targeting trafficking for prostitution becomes the principal agenda of anti-trafficking interventions, policies and laws.

Women's choice to cross borders needs to be viewed within the context of empowerment and their search for better economic market opportunities. Their consent must be located in the matrix of the global economy, market demand and cross-border migrations. Currently, their cross-border movements are largely located and addressed within normative understandings about women's sexuality, the security of the nation, and the criminal law. Her choice is re-configured through international legal processes, and she is either rendered a victim, to be repatriated to her home country, or a criminal/trespasser, to be prosecuted along with traffickers and terrorists for having exposed the porosity of national borders. Legal barrier methods fail to attend to the complex factors that induce migration, and instead, target the individual, as being exclusively responsible for the problem of transnational migration. The receiving country is not implicated in this migration phenomenon, and is justified in resorting to methods of containment and confinement. These punitive measures constitute migrant women as outlaws, and compel them to live illegal lives. The international legal order has failed to facilitate women's freedom of mobility and safe migration, especially though not exclusively, from the south to the north. Her consensual movement is rendered illegal, through the foregrounding of the security of the nation-state, the conservative sexual morality that informs anti-trafficking laws, and the xenophobic responses to global movements that increasingly inform immigration laws. These "overground" legislative measures are supplemented by a parallel "underground migrant-mobility regime", where travel agents and transporters, complete with route maps, directions, and a list of the least vulnerable points of entry, negotiate how their human cargo will cross borders, avoiding apprehension by state agents and border patrols.

The focus of anti-trafficking initiatives at the domestic, regional and international level, rarely focus on providing women who move with human rights – the tools that are



critical to fighting abuse, violence and harm they may experience in the course of movement. Instead, some of these measures are morality measures that conflate women's cross-border movement with sexual corruption and contamination. Other initiatives assume that the problem exists over 'there' in the third world or post-colonial world and suggest strategies that reinforce the image of a truncated seriously battered, culturally constrained, and oppressed subject that needs to be rescued and rehabilitated by a civilizing west. More recently, trafficking initiatives have been obscured by an overarching concern with security, which perceives the 'outsider' as a dangerous threat, from which the nation must be protected.

### **Migration and Terrorism**

The issues of trafficking and migration are now being caught within the global nets cast in pursuit of the 'War on Terror'. The War on Terror has acquired a supernatural life and existence outside of the international legal order, while simultaneously pursued in and through the processes and institutions of the international regime. The Security Council and the General Assembly have been deployed to foreground the security and sovereignty of some nation-states through the abrogation of the security and sovereignty of other nation-states. The legal mechanisms endorsed in pursuit of this endeavor have resulted in the enactment of laws at the domestic and international level that have further cauterized cross-border movements, and justified going after anything and anyone we do not like.

Globally, we are witnessing a heightened anxiety about the 'Other', who is perceived as a threat or someone who is dangerous to the security of the nation. The boundary line of difference is being redrawn along very stark divides - between friend and enemy, those who are good and those who are evil. Although these concerns are most explicitly voiced by the extreme right or religious right, less noticed is the more uniformly pervasive emergence of similar forms of conservatism within mainstream discourses. The 'alien migrant' has become one of the primary targets and casualties of the failure to define either the purpose or limits of the War on Terrorism. And this failure forces migrants to continue to move through illicit channels, and remain vulnerable, stigmatized and illegitimate

The new War on Terrorism has created space for a more strident and alarming response to the global movements of people, reducing it at times to nothing more than an evil threat. If terrorism is defined as a transnational crime, then by merely committing the crime of seeking illegal movement and illegal entry these people could be defined as terrorists. Because the smugglers offer travel services to illegal migrants, they would easily fall within the category of transnational organized crime, criminals and potential terrorists. At the very worst they are terrorists and at best they are criminals who have sought to cross the border illegally. These simple equations again led to a disjuncture between reality of the illegal migrant and the issue of terrorism. The conflation of the migrant with the terrorist is not new, but it has received greater attention since September 11<sup>th</sup>. It has afforded more space for the representation of the 'Other' as a fanatic and dangerous and opposed to freedom.

The space for the migrant is being eroded through the discourse of trafficking and through the discourse of terrorism. Both justify initiatives designed to keep the 'Rest' away from the 'West'. This shift is troubling given that movement and migration is partly a phenomenon of the current phase of globalization and hence it is and will continue to be a feature of our transnational world. Criminalizing or victimizing those who cross borders forces these people to continue to move through illicit channels, and remain vulnerable, stigmatized and illegitimate. It seems unlikely that the security of what's left of the nation-state can be achieved at the cost of the security of the alien migrant. Indeed it will only serve to encourage the construction of a paradox, where the security of the alien migrant is perhaps less threatened by people smugglers than by the current international system of protection offered to people who move as migrants, refugees, or asylum-seekers.

The War on Terror has resulted in legal reforms that alienate those who have been cast as the 'new enemy' and justifies the resort of punitive measures on the grounds that these people are evil or dangerous and not entitled to due process or rights. The recourse to border controls, ethnic purity, cultural values and nationalism, are constructed along the anxieties of dealing with difference and serve to stigmatize, penalize and criminalize those who cross borders. These responses push us further away from addressing the



complexity of cross border movements and the equally complex legal and political responses required to address the issues raised by such movements.

### **Re-configuring Responses to Cross-Border Movements**

The legal interventions in the lives of the alien migrant have been articulated primarily from the perspective of the host country. The subaltern voices are omitted from these conversations and yet these are the voices that can assist in untangling the conflations and confusions that are taking place between trafficking, migration and terrorism in the international and domestic legal arenas. The voice of the subaltern needs to be foregrounded – not as a terrorist, nor as a victim, but as a complex subject who is affected by global processes, and seeking safe passage across borders. They are exposing the need to think about international law and rights in ways that are not confined to the boxes of sovereignty, the nation state and the autonomous subject of liberal rights discourse. Their stories provide a very different narrative about why people move and how to accommodate this movement.

The role of law must be determined against the backdrop of the broader transnational economic and political processes that affect flows or movements of people and recognize that such movements are an integral feature of globalization. And this in turn requires radical rethinking. As long as these issues are not viewed through the complex lens of globalization, market demand and the in/security of the nation-state, the rights and legitimacy of these people will remain unaddressed or compromised, and contribute to the growing instability of both the host country and this itinerant population. Cross border movements have been caught within the framework of a 'War' fought along the simple binaries of good versus evil, civilization versus barbarism. A response to border crossing cannot be adequately addressed through such binaries. Indeed this myopic response will do little to discourage the illegal crossing of borders or the determination of those who want to move.

The agency of women also needs to be foregrounded. She is currently invoked as either a victim in need of rescue from the conniving, manipulative, culturally primitive subaltern family or is herself equated with the deomonized Other. Her complex subjectivity remains unaddressed in the legal and policy approaches being pursued at the national and international levels. Women's choice or agency remains either non-existent,

questionable or tainted. Her choice to move must be distinguished from other situations where her consent is absent or her movement is compelled by strife or conflict.

To provide protection to women who are moved or choose to move across borders, a distinction must be made between the abuse and human rights violations committed during the entire process of transport and subjection to exploitative labour conditions, and the form of employment or the purpose of the movement. Exploitation in marriage, domestic work or the carpet industry, has not resulted in the elimination of these arenas of work. Interventions focus on targeting the abuse, violence and violation of rights that these workers endure. Similarly, eradicating the sex industry in a bid to prevent the harm of trafficking is unworkable. Sex work as the exclusive purpose of trafficking is an untenable definition of trafficking as not all victims of trafficking are sex workers nor have all sex workers been trafficked.

Regardless of why women move, their assertion of the right to mobility, self-determination and development, must not be confused with the violence, force, coercion, abuse or fraud that may take place in the course of migration or transport. The crime rests in the elements of abuse and violations, which are committed against women along the continuum of women's migration and not because of the movement or mobility per se.

Trafficking becomes an offense and a violation of human rights because of the non-consensual or deceptive nature of the movement and the exploitative or servile nature of the conditions of work and life to which the trafficked person is confined. It does not become an offense because of the purpose for which a person is move. The common elements in the trafficking are not the movement or the s women ite of work per se but the brokering, lack of consent and exploitative conditions of work. Unfortunately, most initiatives are directed at stopping movement, regardless of consent, especially of, on the assumption that they will be trafficked.

It is also important to recognize that the erection of borders through immigration policy, anti-terrorist legislation and anti-trafficking laws, will not succeed in stopping cross border movements or meet a nations security needs for two reasons. People will continue to move, illegally if legal means are not available. This process cannot be arrested through stricter border controls or immigration policy. Secondly, as Saskia Sassen has pointed out, there has been a significant reconfiguration of the nation-state in



two directions. The first is the relocation of certain attributes of the state onto supranational regime of authority, such as the World Trade Organization, the European Union or certain human rights codes and institutions. The second is an increased significance of transnational private actors that are also resulting in the emergence of a transnational legal and illegal regime for cross-border transactions that include labor mobility and exit options for refugees.

In order to address the issue of cross-border movements, we cannot simply remain confined to the domestic arena, where regulatory enforcement is focused on the individual and the border. Nor can this process be addressed in the international legal arena purely in terms of criminality or trafficking. These responses fail to understand the global context in which such movements are occurring. In order to understand and respond to the relationship between such global movements and the law, it is necessary to revisit this issue as not one that is cast in terms of binaries – the security and cohesion of the state, versus the invasion of hordes of ‘Others’. It must be addressed against this broader canvass of transnationalism. Transnational movements require a transnational response and analysis – they cannot be caught within older frameworks.

From the position or location of migrating subjects, the struggle in part requires a modification of immigration laws in ways that accommodate their transnational reality. The problems produced through trafficking, smuggling and unlawful movement can be partly alleviated by the expansion of immigration laws that acknowledge and accommodate the entry of people, other than those who are part of the information technology, highly skilled work force, or economic migrants with a big bank balance. The fear of a flood of ‘Others’ is neither grounded in statistics nor a self-evident negative process. The fear of change or survival of one’s culture and identity is based on a false assumption that cultures are static and fixed and frozen in time. Yet the colonial encounter is evidence of the fact that a return, the retrieval of a pristine and culturally authentic space is not possible.

At the same time, by virtue of her subaltern status, the transnational subject also brings a normative challenge – to the porosity of national borders, and the emergence of non-state entities as a significant force in the international arena. The sovereign state and the sovereign subject are being laid bare through the challenges posed by the worlds

constitutive 'Others'. The liberal state and the liberal subject are based on the idea of fixed borders, with clearly identifiable interests and identities. They are imbued with the power to decide, choose, and act autonomously. Yet globalization, which produces the challenge of migration and non-state actors to the legitimacy of the borders of the sovereign state and the autonomous subject, indicates otherwise. The complexity of new global formations and the dynamic character of the individual who crosses borders, challenges any notion that the state and individual are hermetically sealed and capable of exercising control through self-contained power. The inability to distinguish those who constitute national subjects from those who are alien or foreign is blurred reflecting the uneasy location of a distinct national entity with distinct borders and a distinct, clearly delineated national subject. This conception breaks down the binaries, - the us and them, here and there distinctions - and enables us to recognize how these oppositions are produced and naturalized through historical power relationships.

These challenges expose the complex global processes that instigate cross-border movements and force the international legal order to relocate understandings about social justice and prosperity in a transnational context. Cross-border movements cannot remain confined to determining the extent of legitimate encroachment on state sovereignty. Such movements are unstoppable and a policy of incarceration or annihilation merely facilitates the growth of a parallel, clandestine, migration-mobility regime. This regime continues to blunt the legitimizing tools of social cohesion, unity and sovereignty. It exposes a different way of perceiving and living in the world, but at great risk to the subaltern subject who is currently rooted in her transience and whose moment of arrival remains elusive and endangered by the international legal order.



## Enabling and Empowering Mobile Women and Girls

### Strategy paper on the Migration and Human Rights of Women and Adolescent Girls

By Jyoti Sanghera

**Note on the strategy paper:** This paper is an attempt to highlight the linkages between migration and trafficking from the perspective of development, gender and human rights. While there is a general spate in migration, both in-country and cross-border, this paper seeks to draw attention to the feminisation of migration, a specific phenomenon which has been growing over the recent two decades, especially in Asia. Since a majority of the female migrants are moving through clandestine means, this area of study is consequently mired by absence of reliable statistics. An attempt is made via this discussion paper to lay out some critical reasons for the expansion of feminisation of mobility as well as to suggest some possible areas for formulating rights-protective remedies. In looking at the gendered face of mobility this paper fore-grounds the movement of young women and girls. In so far as the category 'youth' extends way beyond the age of majority (i.e. 18 years), and in so far as a preponderant majority of female migrants do fall within the category of 'youth', the analysis in this paper is certainly located at the centre of the international community's concern with the vulnerability, rights and protection of young women and adolescent girls.

#### Context

Evicted from their homelands by powerful forces of exclusion and disadvantage, a growing mass of floating migrants is squatting on global *Borderlands*<sup>1</sup>, yearning and searching for new homes. Contained within countries of the global North as well as the global South, are growing patches of these global *Borderlands* the migrant inhabitants of which are marked perhaps by still worse exclusion and disadvantage than that which they sought to escape from when they emigrated from their homelands. The migrant residents of the global *Borderlands* are non-nationals, non-citizens and practically non-existent to those that reside in and manage the business and defence of homelands. While often invisible to agents of governance and the acknowledged citizenry in their host countries the new *Borderlanders* do have a face and a body. And increasingly this is a young woman's face with a disproportionately smaller body. Of the numerous new migrants criss-crossing borders and boundaries today a large number are adolescent girls and women, predominantly from the global South; and of these a significant majority belong to the Asia-Pacific region.

Indisputably, transnational migration as well as in-country migration is increasing in all regions of the world, including the Asia-Pacific. By now it is clear that migration is a necessity and a growing feature of the current global economy; it benefits both

<sup>1</sup> The term '*Borderlands*' is employed as an analytical category signifying exclusion from entitlements and rights. '*Borderlands*' also denotes actual physical spaces within the territorial boundaries of nation states, which are occupied by clusters of floating global migrants. Homelands are real countries with defined territoriality, sovereignty and a demographically determined citizenry. *Borderlands*, on the contrary, are fluid spaces devoid of physical definition - mere patches of floating migrant concentration upon the body of a homeland. These patches expand and contract as a function of several factors, including the interplay between demand and supply of labour and regimes of migration control. Sired by Globalization, *Borderland* is considered to be the 'illegitimate and wayward junior sibling' of the nation state, and is seen by those that maintain law and order as harbouring 'undesirable' tendencies of migrancy, vagrancy and delinquency.



countries of origin and destination in vital economic ways. Migration affects the lives of millions of women, men and children, of those who move and of those who are left behind. International responses to the 'Migration Dilemma' are exceedingly incomplete and this issue continues to occupy a sensitive and politically charged field.

Today, according to available statistics, more than 2.5 percent of the world's population is migrant. This effectively means that one in every 50 human beings, or more than 150 million people are migrants<sup>2</sup>. If one deconstructs the category of 'migrant' into its various segments, then of these 150 million, 80-97 million are estimated to be migrant workers and members of their families and approximately another 12 million are refugees living outside of their countries<sup>3</sup>. These figures do not include the estimated 20 million internally displaced persons<sup>4</sup> who are forced to move, nor the tens of millions of internal migrants who move from villages to cities and from cities to cities of their own countries. These statistics certainly do not include the millions of invisible transnational migrants who are illegal, undocumented, irregular and trafficked. These countless invisible migrants - increasingly young women and often continuously floating - constitute the principal subjects of this paper and are referred to as the *squatters of the new global borderlands*.

### **In Harms Way: The Gendered Face of Migration and Trafficking**

It is noteworthy that half of all the migrants today are women and girls, many of whom are migrating independently rather than as part of a family<sup>5</sup>. The feminisation of migration is observed to be of relatively recent origin, increasing fairly rapidly over the past two decades. It is estimated that in most countries of Asia, within a decade prior to 1987, the transnational migration of women had increased from 15 percent to 27 percent, resulting in Asian women outnumbering Asian men as overseas migrants<sup>6</sup>. The numbers of mobile Asian women have only increased since. A majority of these women come from the Philippines, Thailand, Indonesia, Hongkong, Singapore, Bangladesh, Thailand and Sri Lanka and are headed towards countries of the Middle-east, other Asian destinations such as Japan, South Korea, Taiwan, Singapore and Malaysia, and the global North. Furthermore and equally importantly, Asian women also migrate internally within regions and subregions of Asia. There is rapid mobility of women crossing borders within the Mekong region as well as within the South Asian subregion.

The right to freedom of mobility is a fundamental human right enshrined in the Constitutions of most countries. Trans-border mobility is supported by Article 13(2) of the Universal Declaration of Human Rights (UDHR) which accords every one the 'right to leave one's country'. Article 12 of the International Covenant on Civil and Political rights (ICCPR) further reinforces the right to freedom of movement within and across borders and the right to choose one's residence. Coupled with these, 'the right to a nationality' outlined in Article 15 of the UDHR, which is upheld as the 'right to have rights', should ideally provide adequate protection to migrants against the vulnerabilities emanating from mobility and statelessness as well as provide them with access to other fundamental rights in the civil, political, social, economic and cultural realms. Therefore,

<sup>2</sup> IOM, **World Migration Report**, 2000, Geneva.

<sup>3</sup> International Labour Office, **Migrant Workers**, ILO Conference Report III, 87<sup>th</sup> Session, Geneva, 1999.

<sup>4</sup> ILO, IOM and OHCHR, **International Migration, Racism, Discrimination and Xenophobia**, World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, August 2001.

<sup>5</sup> Nafis Sadiq, 'Undocumented and Irregular Migration in the Asia-Pacific Region', United Nations Population Fund, Paper presented at the International Symposium on Migration, "Towards Regional Cooperation on Irregular/Undocumented Migration", Bangkok 21-23 April, 1999.

<sup>6</sup> Lin Lean Lim and Nana Oishi, "International Labour Migration and Asian Women: Distinct Characteristics and Policy Concerns", in **The Asia Pacific Migration Journal**, vol. 5, No.1, 1996, p. 87



a young woman desirous of migrating, for whatever reasons, in order to pursue her fate and fortunes across borders should be able to do so whilst being sufficiently equipped with human rights. As she traverses borders on her journey, she should feel assured that she is a resident of this planet and not an alien, and by virtue of being a human being she is entitled to some fundamental human rights and protections, regardless of her nationality.

Why then is there an expanding litany of tales of disempowerment, violations and abuse of migrants, especially women and girls, by state and non-state actors, alike?

To answer this query it is necessary to grasp the forces of exclusion and disadvantage which contribute to the large scale movement, voluntary or forced, of so many young women, especially from the Asia-Pacific region? At the same time it is vital to comprehend the conditions under which women and girls negotiate their journeys in the public world of travel, and the various pitfalls they encounter or avert.

Gender discrimination and lack of social status together with domestic responsibilities, reduce the access of girls and women to resources, education, training and labour markets. The traditional male outmigration for employment, alongside increasing insecurity of food and sustainable livelihoods, have pushed women and girls into assuming key roles as income earners for their families. At the same time, reconfiguration of the global labour markets generates a sustained demand for a female workforce in underpaid work ghettos of the unregulated service sector. This interplay of supply and demand in the labour market has resulted in increasingly larger numbers of women and girls migrating in search of gainful employment to urban centres of their own or neighbouring countries.

Trafficking in women and girls must be viewed within the context of transborder and in-country movements and migrations that are increasingly undertaken today for a multiplicity of reasons, including the reconfiguration of economies and states as a result of globalization, displacement and dispossession of marginalized populations, search for sustainable livelihoods, armed conflict, the transformation of political boundaries, search for more challenging and fulfilling futures, and a human aspiration to explore the world. The relatively limited access of women and girls to the public world and to safe channels for mobility, as well as their lack of legal and social protection intensify their vulnerability to harm in the process of migration.

Trafficking is a harm that women and girls, and indeed persons, may encounter in the course of their migration. While all persons, including the young, have a fundamental right to freedom of movement and mobility, trafficking however, is a particularly coercive and violent form of movement, which must be prevented since it is predicated on the use of force, abuse, violence, deception and exploitation. It is important to understand that trafficking is a harm and becomes a crime because it reflects elements of abuse and rights violation along the continuum of migration. These abuses are not inherent to the migration process per se and it is perfectly possible to envisage and, indeed undertake, a journey which may be devoid of coercion and abuse, free from harm and therefore, safe. Neither is trafficking the only or most common form of violation which women and girls experience in the course of their journeys across and within borders. Depending on the extent of their marginalized status, migrant women face aggravated harms at several points in the course of their mobility, including sexual harassment and sexual violence; swindling and mugging; conning and other forms of deception; and disease and ill-health.

The clutch of vulnerabilities faced by a young girl is forever dynamic and is constructed by a combination of several social, economic and cultural factors. As a trafficked person she is vulnerable to several harms, including persecution from the state



if she is illegal or lacks citizenship rights, abuse at work if it is coercive, poor living conditions, and health risks. It is also through this clutch of vulnerabilities that trafficked women and girls are at a greater risk of contracting the HIV and other STIs as they may not be in a position to control the nature of their sexual relations and hence their sexual health.

In order to better understand the inter-linkages between gender, migration and trafficking, the following factors need to be noted:

- **Greater Connectivity** to the world via the media and increased awareness provides an impetus for young women and girls to migrate for a variety of reasons including personal factors such as, intimate liaisons, escape from abusive and dysfunctional family arrangements, or merely to explore the world.
- **Supply and demand factors:** The present feminization of migration is spawned by two simultaneous and interconnected processes which are generated by globalization: (i) the marginalization of socio-economically and culturally disadvantaged communities which has heaped greater disadvantage on already discriminated categories such as women and girls, resulting thus in an increased exclusion of women from the economic resource base. This has led to women and girls seeking out more viable and sustainable means of livelihoods, and (ii) a gendered labour recruitment due to a demand for female labour. This demand is fielded by the global growth of the service sector relying on various forms of reproductive labour requiring personalized services, including but not limited to domestic work, sexual services, care of the elderly and sick, and intimate arrangements such as marriage.
- **Gender as a category:** Until recently, in research and policy interventions on migration there has been a virtual absence of gender as an analytical category. This exclusion was based on the assumption that women are too traditional and culture-bound to migrate independently and when they do migrate it is only as associational migrants of family units.
- **Migration and Empowerment:** Voluntary migration has been recognized by gender and development experts as an indicator of women's empowerment. It is argued that women are traditionally and notionally assigned the sphere of the private and domestic realm and excluded from the public world of travel and trades due to their historical disadvantage arising out of the sexual division of labour. In the context of this notional confinement, when women seek to move to better their existing situation then this is to be viewed an act of exercising their agency. It has also been acknowledged that exposure and increased ability to negotiate structures of power in the public world amounts to women's empowerment. Therefore, increased consensual mobility has been recognized as a measure of women's empowerment. Mobility in the public world of travel and work is seen to enhance women's awareness and negotiating skills.
- **Consent, deception or non-consent:** Notwithstanding the conceptual linkage between empowerment and migration, in reality the manner in which migration occurs determines whether a woman or a girl will feel empowered or victimized at the end of this process. In other words, if she migrates consensually within or across borders into a situation of work or personal arrangement of which she had knowledge of and consented to, then she has succeeded in exercising her choice and right to freedom of mobility with a positive outcome. If, on the other hand, her need or wish to migrate is facilitated in abusive and violative ways through the use of coercion or deception where in the entire chain of events from



recruitment and transport to the end purpose is exploitative then the woman discovers herself to be trafficked. *Trafficking is the process of transforming an agent into a victim within the context of migration. The equation between trafficking and migration is such that all trafficked women and girls are migrants but all migrants are not trafficked.*

Just as the current phenomenon of mobility is feminised so too some of the more serious risks related to mobility are feminised. And hence, alongside the feminisation of migration we also notice the feminisation of trafficking. It is noteworthy that the image invoked by the term 'trafficking' is that of a young woman, a young girl or child but seldom that of an adult man; men are invariably referred to as migrants, undocumented workers or smuggled aliens. *If freedom of mobility and migration is a right and trafficking is a harm and obstacle in the realization of that right then a key strategy for creating an enabling environment for women and girls must be to make their journeys harm-free and safe.*

### **The Migrant-Mobility Regime**

In recent years, avenues for regular, legal and safe migration have decreased worldwide, due to restrictive migration and immigration policies of countries of transit and destination. This has given rise to a growing market for clandestine migration services under, what this paper refers to as the **migrant-mobility regime**. The migrant-mobility regime is a system which emanates out of the need for marginalized social groups to migrate on the one hand and the demand for cheap, exploitable labour at sites of origin, on the other. Irregular labour services, smuggling, facilitation of illegal migration, provision of false passports and visa permits, underground travel operations, and trafficking are some of the numerous activities subsumed under the expanding continuum of clandestine migration services. The migrant-mobility regime is not an aberration or a 'rogue' regime. It may be the 'villain' but at the same time is an integral player in the plot to generate increased surplus accumulation, in tandem with the regular labour-importation system.

In the playing field of global economics, migrations do not just happen; they are produced. And they do not simply involve a random cluster of countries of destination, sites of employment or mobile groups of labour; these are all patterned<sup>7</sup>. Countries of origin and destination stand to gain in significant economic ways from migration, including from clandestine migrant-mobility. Cash remittances and transfer of skills, when computed, register phenomenal increases over the recent years. It is estimated that recorded remittances have increased from two billion to seventy billion today, in a matter of two decades<sup>8</sup>. It is also widely acknowledged that a majority of the remittances from migrants do not flow through regular channels of the economy and are therefore largely invisible. In fact few sending and receiving countries have data on the economic and non-economic impact of migration. Micro studies from various parts of the global South, including the Asia-Pacific region reveal that the remittances of women migrants travel back through informal and underground conduits<sup>9</sup>, and sustain household, community and sometimes even local and national economies.

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<sup>7</sup> For a detailed critical analysis see also, Saskia Sassen, *Globalization and its Discontent*, the New Press, New York, 1998

<sup>8</sup> *Supra* note 5, at p.1

<sup>9</sup> There are equivalents of the famous 'hawala' system in all regions of the world. The hawala system, emanating out of India, is a massive and efficiently organised system within the underground parallel economy which specialises in money transfers within and across borders.

### **The Clutch of vulnerabilities: From Agents to Victims**

In order to fully grasp the integral link between gendered migration and trafficking as well as other related harms, it is necessary to untie the clutch of vulnerabilities faced by young girls and women. Some of these vulnerabilities arise out of structural disadvantages that girls and women might face as members of specific social groups which are marginalized. Yet other vulnerabilities are specifically gendered and patterned on norms of sexuality, femininity and gender. The complex clutch of vulnerabilities is socially constructed in juxtaposition with the construction of disadvantage, which in turn is woven through several identities, including gender, sexuality, class, ethnicity, religion and others which carry social value. Comprehending this critical and dynamic interplay of intersectionalities is vital to untying the clutch of vulnerabilities. At the very outset we learn that no single, unilateral approach, be it gender, class or ethnicity, will suffice to address the issue of vulnerability of girls and women. The complex web of vulnerabilities must be understood and addressed through a complex *intersectionality perspective* which ultimately aspires to the remedy of social justice.

Principal elements of gendered vulnerabilities which render girls and women amenable to migration and exposure to subsequent human rights violations are:

- Insecurity of food and livelihood, and the growing economic reliance of households on earnings of women and girls;
- The erosion of social capital and the break down of traditional societies;
- Increased need to migrate for work and a growth in the feminisation of migration as well as female-headed households;
- Lack of access to information on mobility and travel, employment, reproductive health and rights;
- Increasing transnationalization of young women's labour in sectors which do not comply with any labour or human rights standards, and often rely on exploitative labour, forced labour, and slavery-like conditions of work;
- Rapid increase in closure of regular avenues of migration and immigration through stringent policies on the part of countries of transit and destination.
- Absence of safe channels of migration and a rapid consolidation of the clandestine migrant-mobility regime;
- Non-recognition on basis of lack of citizenship of the right of migrants to residence, labour protection, health provisions, human rights, and other legal protections.

### **The Ultimate Vulnerability: From Migrants to Criminals**

It is necessary to enumerate certain vital economic facts which are integral to the sustenance of the global economy today:

- a. Growing and persistent demand on the part of capital for an increased rate of profit which can only be fulfilled by depressing the wages of labour and lowering cost of production.
- b. Need for abundant supply of low wage labour to sustain the economy of global metropolises,
- c. Demand for a vast feminized, menial workforce of sexualised, racialized service providers involving intimate and personalized services,
- d. Shrinking supply of a local workforce especially in the global North, which is willing to accept low-waged, unregulated, menial service-provision jobs,



- e. Growing demand for a supply of migrant women who are sufficiently disadvantaged and vulnerable to accept undervalued, underpaid, unskilled jobs which are unprotected, unregulated and invisible.

In view of these economic facts which have been amply detailed by several economists and analysts<sup>10</sup>, *disadvantaged migrant women constitute the "ideal" workforce from the standpoint of capital and are integral to sustaining the current structure of the economy.*

The category of the "ideal worker" which young migrant woman from the global South represents can be made more "ideal" by deepening her vulnerability and hence exploitability, still further. This is done by foregrounding her citizenship status in the country of destination. If her status as a migrant is illegal, then her social and economic options are severely constrained. Illegality is the ultimate vulnerability which incarcerates young migrant women into situations of forced labour and slavery-like conditions.

Since a large majority of migrant women and girls may not have or want the option of "returning home" they continue on in their country of destination as illegal migrants, and are identified in the lexicon of immigration services as illegal aliens. From then on they are defined as criminals and trespassers by law enforcement agencies. Rendered stateless and status-less these migrants may be "jettisoned as useless workers"<sup>11</sup> and evicted at will. This is the final moment in the social construction of their vulnerability, the moment when they are made into criminals<sup>12</sup>.

In the construction of the identity of the migrant woman as criminals destination countries play a key role. This identity is carefully fashioned through (a) overground legislative measures stipulated by immigration departments, as well as by (b) underground extra-legal means devised by the clandestine migrant-mobility regime. Passports and legal identity documents are routinely appropriated by brokers, employers and sometimes even agents of the state. The move to divest a migrant of her passport is a critical step in securing her ultimate vulnerability and in endorsing her identity as an illegal alien. Rendered stateless, she is stripped of all legal rights and becomes a persona non grata, and hence, a trespasser and a criminal.

### **A Strategic Approach for Safe Migration and Citizenship**

A strategic framework for enhanced understanding and consolidated action on issues of feminisation of migration, trafficking and related harms is grounded in the understanding that trafficking is not merely a problem of law and order but a development issue, and is integrally grounded in the context of migration. Any effective action for the protection of migrants and prevention and care and support of those

<sup>10</sup> Some writings on this issue are, Lin Lean Lim and Nana Oishi, "International Labour Migration and Asian Women: Distinct Characteristics and Policy Concerns", in **The Asia Pacific Migration Journal**, vol. 5, No. 1, 1996; Geertje Lycklama a Nijholt, "The Changing International Division of Labour and Domestic Workers", in Noeleen Heyzer, et al (eds), **The Trade in Domestic Workers**, Asia and Pacific Development Centre, Kuala Lumpur, 1992; B.S Bolaria and Rosemary Bolaria, **International Labour Migrations**, Oxford University Press, 1997; M. Abella, "Contemporary Labour Migrations from Asia: Policies and Perspectives of Sending Countries", in Kritiz et al., (eds), **International Migration Systems: A Global Approach**, Clarendon Press, Oxford, 1992; Gregory Albo, "The World Economy, Market Imperatives and Alternatives", in **Monthly Review**, vol. 48, no. 7, 1996; Daiva Stasiulis and Abigail Bakan, "Structural Adjustment, Citizenship, and Foreign Domestic Labour: The Canadian Case", in Isabella Bakker, **Rethinking Restructuring: Gender and Change in Canada**, Univ. of Toronto Press, 1996.

<sup>11</sup> Istavan Meszaros, **Beyond Capital**, Monthly Review Press, 1995.

<sup>12</sup> For a detailed discussion see Jyoti Sanghera, **Poverty, Patriarchy and Prostitution**, Ph.D thesis, University of California, Berkeley, Chs. 9-10.



affected by trafficking and related harms, must be informed by an intersectionality perspective and based on a development, gender and rights protective approach.

Recognizing the key elements of sustainable livelihood and migration as vital needs of those affected by trafficking, a rights protective strategy would be based on:

- Promoting avenues for sustainable livelihoods and safe health for women and girls in their communities and at sites of origin.
- Promoting the rights of migrants to safe, healthy and secure mobility and transportation.
- Promoting the rights of women and adolescents (over 16 years of age) to employment which is safe and free of health hazards, exploitation, coercion and abuse.
- Promoting the provision of such care and support services to women and girls affected by trafficking and related harms, which do not stigmatize, discriminate and recriminalize but rather support their right to a decent and safe livelihood, autonomy, and bodily integrity.

As discussed above, trans-border migrations and feminisation of migration are embedded in larger geopolitical and transnational economic dynamics, and yet the site of enforcement of restrictive immigration regulations is always the individual border-crosser at the border as though it is she who is responsible for the “problem” and indeed the “scourge” of transnational migration. The current rules in most states to penalize, criminalize and deport migrants as a response to the growing “problem” of transnational migration and trafficking reflects a striking poverty of imagination and analysis. Any half-serious study on migration reveals that the onus for the recent spate in all forms of migrations cannot be on the individual woman or man who moves; it is systemic. Therefore closing doors to keep individual migrants out, deporting or incarcerating another handful is merely a facile and unthought-out response. The powerful economic engine which drives transborder and feminized migration is almost completely absent in responses based upon the barrier-method to deter migrant trespassers who are viewed as the aggressors. Both sending and receiving countries merely step out of the narrative and present themselves as the passive and aggrieved parties.

Given the benefits accruing from the migration of women and young girls to both countries of origin and destination, there is a pressing need for multilateral approaches to trans-border migration. Sending and receiving countries need to recognise the ongoing contribution of migrant women and girls to their economic health, and locate them as partners in development, not as aggressors, trespassers or criminals. Such a bold shift in the retelling of the narrative of migration and its feminisation will not only be closer to the truth but will assist in formulating multi-lateral policies to right the wrongs. Such responses are necessary in order to protect the rights of all migrants, including women and girls; curtail the power and profit of the clandestine migrant-mobility regime; and to maximize the contribution of migrant women and girls to sending and receiving countries as well as to their households; and to prevent trafficking.

Some noteworthy initiatives have been taken in the Asia-Pacific region to address the specific harm of trafficking in the course of migration. These are:

- The SAARC (South Asian Association for Regional Cooperation) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, January 2002
- The Asian Regional Initiative Against Trafficking (ARIAT) Regional Action Plan Against Trafficking in Persons, Especially Women and Children, March 2000



- Thailand's Memorandum of Understanding (MOU) on the common guidelines for Agencies Concerned with Cases where women and Children are Victims of Human Trafficking (B.E 2542), June 1999

The above initiatives together with the International Principles and Guidelines on Human Rights and Human Trafficking recently finalised by the Office of the United Nations Commissioner for Human Rights (April 2002), do reflect a growing commitment on the part of states in the Asia-Pacific region and the international community to address the crime of trafficking and its feminisation. But the feminisation of migration is not a crime, even though some of the most common state responses tend to see it as such. There is an urgent need to shift thinking and critically analyse the gamut of state responses in order to develop new ones which are more in harmony with forces of transnational economics, national needs, development imperatives, and the goals of gender/child rights and social justice.

*Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential that the protection of all human rights must be at the centre of any measures being taken to prevent and end trafficking. Anti-trafficking measures shall not adversely affect human rights and dignity of all persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced person, refugees and asylum seekers.*

Draft Guidelines and Principles for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the UN Convention Against Transnational Organised Crime (2000)

One international instrument which will strengthen the rights of migrant communities is the *UN Convention on the Protection of the Rights of All Migrant Workers and members of Their Families*. This Convention was opened up for signature in December 1990, and more than a decade later it is still short of ratifications and cannot enter into force, yet. However, it needs to be pointed out that the term 'migrants' is much broader than 'migrant workers', and indeed, a majority of female migrants as well as minors who travel independently are clustered in sites of labour in the informal sector which may not be even defined as 'work'. Certainly prostitution, begging, forced marriage and other sites which contribute to commercial sexual exploitation fall within the purview of labour defined as 'non-work'. How do we extend human rights-protection to these migrants who are exploited for their labour but are deemed 'non-workers'? The sphere of rights-protection needs to be expanded to incorporate the concept of "human rights of all migrants". As a result important categories of migrants, such as victims of trafficking, undocumented workers, contract workers, and all those working in non-recognised sectors of work including sex workers should receive protection<sup>13</sup>.

#### **Rights protective responses on safe migration:**

Any rights-based response to safe migration must rest on the three non-negotiable human rights guidelines – **participation** and **representation** at every level, of migrant and trafficked women in developing programmes for their empowerment; and the principle of **non-discrimination** must lie at the very centre of any strategy.

<sup>13</sup> See also Piyasiri Wickramasekara, "Migrant Workers in Asia and the Pacific: Issues in Human Rights and the Principle of Non-Discrimination", report presented at the **Asian-Pacific Regional Seminar of Experts on Migrants and Trafficking in Persons with Particular Reference to Women and Children**, Bangkok, September 2000



1. **Comprehensive Policies:** Develop more coherent national policies regarding trans-border and in-country migration which are based upon a comprehensive understanding of the socio-political and market forces which drive migration and the feminisation of migration. These policies need to be realistic and veer away from responses which penalise and criminalize migrant women and girls.
2. **Access to Information:** Sending countries and stakeholders within these must urgently consider developing programmes which provide sound and easily accessible information on safe channels for legal migration, the possible harms of illegal migration including trafficking, and information on services in destination countries and cities on travel, translation, job placement, legal rights, health, and housing. Information must also be provided on women's groups, human rights organisations, legal aid services, various governmental services and counselling services.
3. **Simplify Procedures:** Sending countries relying on overseas migration and remittances must simplify procedures to facilitate the safe mobility of migrants including young women. Considering that the literacy and exposure levels of migrant women are often low, assistance must be extended to them to expedite procurement of passports, visas and all necessary travel and employment documents.
4. **Regulate Labour Recruitment and Travel Agencies:** Agencies involved in labour recruitment and transportation of migrants must be regulated in efficient ways. Procedures for accountability as well as those which ensure safe living and working conditions must be developed and monitored. This would go a long way in preventing all kinds of harms and abuses, including trafficking.
5. **Harmonize Policies in Relation to Demand:** Receiving countries should assess the demand for migrant women's labour in the various sectors and proceed to harmonize their immigration, migration and labour policies in commensuration with demand. In furtherance of this, a serious review of existing immigration laws and policies must be undertaken along with policies dealing with migrants.
6. **Building a Data-base:** It is imperative and urgent that a sound and rigorous evidence base be built by countries of origin and destination on transborder migration as well as on in-country migration. This data must be disaggregated on basis of gender, age, region, etc., and must pertain to the demand sectors, supply, and volume of remittances. Currently, the evidence base on transborder migration including on female migrants is too weak to inform sound policies on migration. There is a severe paucity of data on the causes and consequences of feminisation of migration in all regions, partly because of its clandestine nature and partly because migration has not constituted a priority issue.
7. **Promoting multi and bilateral dialogue:** There is an urgency to step up dialogue between countries within and across regions to address issues of feminisation of migration. Such dialogues would be facilitated by a strong evidence base yielding information on the linkage between poverty and feminisation of migration; the impact of in-migration on wages, housing, health and education; and on the forms and extent of human rights violations of women and girls.
8. **Enforcement of minimum national employment labour standards:** This involves enactment and enforcement of clear national minimum standards for the protection of migrant women workers, both national and foreign. ILO Conventions on such aspects as occupational health and safety, against forced labour and child labour in hazardous conditions, and on discrimination should provide the international norms for national legislation. A necessary complement



is monitoring and inspection especially in areas of irregular employment, in order to prevent trafficking, forced labour, slavery-like practices and exploitation of children.

9. **Anti-trafficking measures:** While difference in understanding and approach on certain dimensions of feminisation of migration may occur between sending and receiving governments, yet agreement and joint action must be aimed for on the issue of trafficking, which is one of the worst human rights violation of migrant women and girls. International instruments must be implemented, and regional as well as national policies, legislations and action plans based upon the human rights framework must be formulated and implemented effectively. This includes adopting and implementing *the UN Convention against Transnational Organized Crime* and its *Protocol on Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (2000).
10. **Racism, xenophobia and discrimination:** Recognising that racism, discrimination and xenophobia may both be a cause and a consequence of migration and trafficking, states of the region must effectively enforce the protections against these which are enshrined in the constitutions of most countries of the Asia-Pacific region. These protections must be incorporated into domestic legislation, policy, practice and jurisprudence.
11. **Security of food and livelihoods:** Acknowledging that among the root causes of migration is the drive to seek out secure livelihoods, states as well as non state actors must step up their responses to create alternative forms of sustainable livelihoods for women and young people. This would include skills training, partnerships with new players such as the corporate sector, and creation of quotas, bursaries and incentives for women and girls. Pro-active and intensified schemes for expanding and strengthening sustainable forms of livelihoods need to be urgently developed.
12. **Combating Poverty:** While the rate of absolute poverty has declined globally and the number of very poor people fell by 200 million between 1980 to 1998, the magnitude of inequality has increased. The average income in the richest 20 countries is now 37 times that in the poorest 20 countries. The ratio has doubled in the past 40 years<sup>14</sup>. This is a cause for increased migration from the Global South to the North. States of the Asia-Pacific region as well as non-state actors should collaborate actively in working towards the realisation of the *Millennium Development Goals* (1990-2015), which seek to eradicate hunger and poverty by halve during this period; achieve universal primary education; promote gender equality and empower women; ensure environmental sustainability, reverse the trend of HIV/AIDS and develop global partnerships for development.
13. **Monitoring objectives for gender empowerment:** Given the increase in feminisation of migration in the region, special focus must be given to gender vulnerability and discrimination, particularly to the multiple jeopardy that arises when gender, class, race, ethnicity, religion and cultural identity intersect. Treaty bodies as well as regional task forces (CEDAW, CRC, CERD) must pay special attention to this area in their reports. Detailed studies should be undertaken into the human rights violations of female migrants and trafficked women and girls.
14. **Focus on Adolescent Girls:** Considering that adolescent girls are the most vulnerable to harms, including trafficking in the process of migration, special programmes for life-skills training which equip them to access viable

<sup>14</sup> The World Development Report 2003, The World Bank, p. 2.



employment, education, reproductive health information and awareness about their rights must be developed and implemented in the out-migration areas as well as in cities where migrants are concentrated. Safe migration initiatives must be specially designed for adolescent girls.

15. **Greater sensitization:** Sensitization and capacity building programmes based upon a gender and rights approach for educators, social welfare personnel, members of judiciary and police, border security personnel must be undertaken to sensitize them to deal with migrants and trafficked women and girls. Greater involvement of civil society organisations in awareness-raising, out-reach and evaluation of government policies should be sought.
16. **Strategic Approach:** states, NGOS, and CBOS must develop and harmonize their strategic approaches to addressing issues of trafficking and other harms while providing support to women and girls desirous of migrating internally and across borders. This strategies must be consistent with development. Gender and rights based approaches, and must be transparently articulated through national plans, policies and laws.

## Conclusion

The writing on the wall is clear. Migration is a necessary and growing feature of the global economy; it benefits both countries of origin and destination in vital economic ways. If there is one key aspect which will stand out in this century according to all major Development Reports as well as observations by scholars and demographers, it is the massive expansion of mobile populations – women, men and children - both within and across countries. Paradoxically, most states have not accepted this reality. Some sending countries in the Asia-Pacific region, such as the Philippines, Thailand, and Sri Lanka have developed departure and training programmes for their prospective women migrants in order to enable their journeys and alternative livelihoods to be safe. However, there is hardly any country of destination which has formulated policies and programmes to protect the rights of in-migrating women and girls. There may be NGOS in the receiving countries that provide information and services to migrants but unfortunately, none of the governments of receiving countries have policies other than punitive towards migrants. It has been observed that no Asian country operates an immigration policy that favours settlement; all have exclusionist policies in this arena. Sometimes these exclusionist policies are even race-driven<sup>15</sup>.

Ignoring the issue of gendered migration and furthermore, not to foreground it, implies that a significant dimension of the new globalized world and the violation of rights of mobile women arising thereof will be left unattended. This we can least afford to do especially as more than half of all migrants are women and young girls who are travelling in their own right as independent migrants. Bereft of citizenship, nationality and livelihoods, migrant women are also the ones who have the least rights, and no platform to stand on in order to ask for their rights. They have no entitlement even over the physical ground they stand upon and can legally be evicted at any moment. Organisations and governments which advocates for rights of future citizens and residents of this planet through good governance would be lagging very many steps behind if they do not immediately and urgently place the future of women migrants at the very centre of their advocacy project.

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<sup>15</sup> See Ronald Skeldon, "Discrimination against Migrants in the Asian Region: General Trends, Priorities and Obstacles", *Asian-Pacific Regional Seminar of Experts on Migrants and Trafficking in Persons with Particular Reference to Women and Children*, Bangkok, September 2000.



Asia with an overwhelming proportion of the world's population, has the largest proportion of migrants. These mobile women and youth are the most vulnerable to HIV/AIDS, worst forms of labour, abysmal lack of housing and education, sexual violence, sale, and trafficking. Feminisation of migration and migrants are not issues the Asia-Pacific region can afford to ignore as these also constitute the potential core of heightening contradictions, conflict, and destabilisation in the future.

## Mukti-Paani Declaration

### On the occasion of 2nd SAARC Peoples Forum the participants adopted the Mukti Paani declaration

We, the peoples from South Asia region, where nearly one quarter of the world population lives, have gathered here in Katmandu from 18 to 21 December to build solidarity between our people in order to collectively defend our (1) Rights to Livelihood and Food Sovereignty, (2) Rights of Movement and Personal Security and (3) Right for Self-determination. We are expressing our commitment to continue our struggle to achieve these goals and we are defending the same rights of all the people of the world whose rights are being systematically violated.

We deplore and denounce the way in which 'globalization' is being imposed and pushed which indeed means globalization of exploitation, violence, militarization, destruction of our livelihood and communities, homogenization of culture and above all consolidating the rule of the multinational corporations through Bretton Wood institutions like WTO, World Bank and IMF. While our rights to livelihood, movement and self-determination are being systematically violated the 'rights' of commodity; capital and multinational corporations are instead being established. This is not acceptable to us.

We are deeply concerned that our governments have written off their sovereignty over the economic sphere of the State and reduced the State into a policing agent in order to defend corporations and capital so that they can continue to accumulate and privatize World resources, exploit us and destroy our livelihoods. In the process people are being increasingly disposable and few rich are controlling the wealth of the world. It is horrifying for us to realize that the word 'citizen' has lost all meaning and State has no power to defend and





protect their citizens, except mediating exploitation and policing the people.

It is not acceptable to us that white movement of capital and commodities are ensured by the State the movement of the people is being controlled by armed border patron, racist immigration policies of the northern countries and other coercive means. The movement of people is being curtailed in the name of controlling infections diseases, particularly HIV/AIDS and by various moralizing and patriarchal controls over the movement of women. State must be responsible to ensure secure and safe movements of all their citizens who seek livelihood options within or outside their countries.

We are very concerned and oppose proposed US Bill on trafficking to be placed before the Senate shortly. Through this racist and discriminatory bill United States of America will impose non-humanitarian sanctions against the countries of origin who are unable to control trafficking problem and thereby play a policing role which is absolutely undesirable. It will further refuse redress and assistance to



**Young camel jockeys; Azam and Ashiq**

trafficked women who are entering USA from selective places of origin. We denounce this bill as racist and discriminatory that this will further deteriorate the situation of trafficked women who have already suffered violence. We also think it is a shame for USA that it is one of the two countries of the world that has not ratified CRC and CEDAW. It is a joke to us when US claims itself as champion of "human rights". We deplore the fact that the real purpose of the US bill is to set up more stringent immigration control in order to make US border more impermeable to undesirable immigrants as well as to penalize and criminalize them for entering USA for livelihood options.

We are deeply concerned about the people, particularly women and children, who are displaced from their homes and immediate environments and are increasingly thrown into insecure and vulnerable situation due to war and violence of the State. We refuse to accept the term "refugee" for these people because under this terminological guise the people are forced to go back to the same place of violence and States use this as a strategy to control their population.



We reject the idea that biotechnology and genetic engineering or any adventurous manipulation of genes, dictated by corporate profit and greed, can increase food production. Rather than demonstrating any positive promise genetic engineering is ensuring monopoly market of herbicides, chemicals and other patented products of the companies and increasing risks for health and biological pollution. Technology driven by the greed of corporate profit is eroding local and indigenous knowledge systems that has been historically proved to be efficient, sustainable, diverse and grounded on the collective community ethics and responsibility. To stop our communities from disintegration we demand that our science and technology policy is based on our historical knowledge, skills and ethics.

We reject any technology that is against our moral, ethical and cultural values but concentrate power and wealth in multinationals and accelerates economic disparity and social injustice. Adventurous genetic manipulation to control life, nature and economy is not acceptable to us. While our farmers are already producing surplus food and grains rotting in the storehouses it is bizarre and ridiculous to claim that we need biotechnology and genetic engineering for more food production. There are ample evidences that South Asia produces more food than the population growth rate in the region. With good planning ensuring access of the poor through efficient distribution policies, our region is absolutely capable to deal with the food and malnutrition problem. We demand that our governments pay full attention to distribution strategies based on cooperation and collective action. They should not be fooled by adventurous, unsustainable and risky technologies in order to solve the problem of hunger and malnutrition.

We, the peoples of the member countries of SAARC are deeply concerned about the failure of the political leaders of our countries to keep up with the objectives and spirit of SAARC as promised by the SAARC Charter. The SAARC leaders agreed during its inception that the primary objective of the association will be to improve the "quality of life" of the peoples of the region irrespective of the difference in political systems, religion or culture in order to foster socio-economic cooperation. The Colombo Declaration of the 10th SAARC Summit clearly declares that Heads of State or Government will remain committed to "promote mutual trust and understanding". They have also recognized the fact that "the aim of promoting peace, stability and amity and accelerated socio-economic cooperation may best be achieved by fostering good neighborly relations, relieving tensions and building confidence". On the basis of such realization and understanding they agreed that a process



of informal political consultations would prove useful' to resolve the differences, conflicts and tensions between them. The promise was to continue the SAARC Summits. We feel that our leaders have betrayed the peoples of the region and failed to keep up with the promise and declaration they themselves formulated. We, the peoples of the South Asia region therefore demand that 10th SAARC Summit is held immediately and without any excuse.

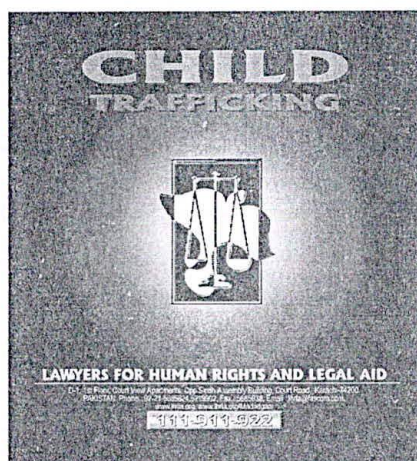
We also like to reiterate that the excuse given for not holding the 11th SAARC summit is against SAARC Charter and spirit. Therefore, such excuses are not congenial for the spirit of cooperation, sense of unity and therefore are directly against the interest of the peoples of the region.

Against violent globalization that has made us uprooted from our livelihood sources, and consequently made our body and soul into commodities in the market, we are committing ourselves to work for globalization of human relation for collective prosperity based on equity, care, diversity and sustainability in order to enhance our capacity to end all forms of exploitation and violence.

### **CRC Article 35**

**"Member States shall take all appropriate measures at the national, bilateral, and multilateral levels to prevent kidnapping, sale or trade of children for whatever purpose and under whatever form".**

On the occasion of  
South Asia Consultation  
LHRLA designed a  
brochure on child  
trafficking





## **Repatriates? Infiltrators? Trafficked Humans?**

### ***Cross-border migrants in Bengal***

Much has been written on the Partition of British India and the creation of the states of Pakistan and India in 1947. A major theme in these writings is the creation of the international border between the two countries. What is remarkable about these writings is how limited their scope is. Almost all deal exclusively with the high politics leading up to the territorial division; and they are peppered with the names of certain middle-aged men: Louis Mountbatten, Jawaharlal Nehru, Mohammad Ali Jinnah and, above all, Cyril Radcliffe. They also tend to be written from partisan positions, attempting to demonstrate how national interest – British, Indian, Pakistani – was served or betrayed by the fateful territorial decisions of the final days of colonial rule, blaming individuals, parties or alliances for the outcome. And finally, these writings rarely address developments at the border after 1947. The border remains a mere symbol of partition, nationhood, and uprootedness – it has not become a subject of serious inquiry.

As a result, hardly anything is known about the border as a historical reality. How did the 'Radcliffe line,' made public in Delhi on 16 August 1947, turn into a social fact with a huge impact on the lives of millions of people in the second half of the twentieth century? How was it established, maintained, challenged and subverted? How could certain people turn it to their economic, political or social advantage? How did it affect social transformations in the borderland on either side? These are important questions for anyone wishing to understand the ways in which South Asian states developed, the extent to which South Asian economies became bounded by borders, and how national identities became internalised.

This paper presents a section of an ongoing study into the Bengal borderland. It looks at the eastern Partition which created an 'East Pakistan' separated by a 4,000 km border from India and Burma. The larger study examines how the states went about identifying the border on the ground,

demarcating it, and resolving border disputes. It also looks at how they policed the border and sought to establish control over the borderland population. Equally important are the ways in which borderlanders defied, ignored and subverted the border, and how they used it to escape state retribution in various ways. A third theme is how trade across the border became entangled in networks of illegality and corruption. This paper takes up another subtheme: the movement of people across the border. It is an important theme, not only because of the number of people involved and the economic significance of cross-border population movements, but also because these movements have become a major irritant between Bangladesh and India and are likely to keep the relationship between these states volatile well into the twenty-first century.

### **'Coming home'**

When the new border came into existence in 1947, people were found to move back and forth across it. Some of these movements followed well-established practices, others were new. The complexity of population movement across the Bengal border has not been analysed. Instead, our understanding has been hostage to a few dramatic narratives which conceal as much as they reveal. Here I give very brief outlines of these dominant views before suggesting a more nuanced approach to major cross-border population movements since 1947.

In the master narrative of Partition, the cruelty and violence of nation-building is epitomised by the intense suffering of millions of uprooted people who had to cross the border in order to save their lives. The conceptual model has always been the Punjab, where population exchange in 1947 was swift, massive, ruthless and almost complete: it has become the touchstone of Partition migration.<sup>1</sup> A second case which has received considerable attention is the movement of Bengali Hindus from East Bengal to West Bengal. This movement was less intensely dramatic because it started later, extended over a much longer time, and was less complete.<sup>2</sup>

In both India and Pakistan, Partition migration has been studied and interpreted overwhelmingly within nationalist



frameworks. Attention was focused firmly on immigrants, who were seen as sons and daughters of the nation coming home, to the almost complete exclusion of emigrants, who were seen as abandoning the nation.<sup>3</sup> In this view, the tragedy of the immigrants was that they were members of a nation whose territory had suddenly become confined between new borders and who found themselves excluded from that territory. Their trek across the border – the legal spatial delimitation of the nation – was a homecoming: they joined the nation to which they belonged and in which they had full rights. Their material loss, traumatic uprooting and suffering on the way were all sacrifices to the nation, and obliged the nation to take care of them.

But gradually the mood changed. Later immigrants found it more difficult to establish their national credentials, and their citizen's rights were increasingly challenged.<sup>4</sup> This erosion of immigration rights reflected a stronger territorialisation of national identities in the region. Those who had spent years on the other side of the border were seen as having acquired a measure of membership of that nation, making inclusion in their nation of immigration problematic. The erosion of immigration rights also reflected a history of conflicts over resources, especially land, between local populations and newcomers.<sup>5</sup> Those who footed the bill for the 'homecoming' were not so much the spokesmen for the nation as those people, often in the borderland, upon whom the immigrants descended.

Moreover, the communal (Muslim/non-Muslim) basis for the creation of Pakistan and India was reinforced by experiences after 1947, as relations turned bitter and both state elites used communal symbols in their quest to establish and maintain power. Pakistan had been a communal entity from the start and non-Muslim immigration remained small. But in India, which claimed to be a homeland for all, including Muslims, Muslim immigrants were not welcome and, increasingly, Hindu immigration from East Pakistan/Bangladesh was resented.

The old spirit of welcoming immigrants into the national fold never died, and it would flare up whenever refugees arrived in the wake of riots.<sup>6</sup> But gradually it was nudged aside by a new approach. In East Bengal, immigration issues

dropped from the public agenda as Muslim immigration tapered off sharply after the birth of Bangladesh.<sup>7</sup> But in India a new discourse gained popularity as migration from Bangladesh, of both Hindus and Muslims, continued. This was the discourse of infiltration.

### 'Infiltration'

The view that immigration was *not* a homecoming first developed in Assam and Tripura. Here many inhabitants saw post-Partition immigrants not primarily as fellow Indians being cast out of Pakistan and in need of help but as Bengalis moving into non-Bengali areas and taking over.<sup>8</sup> In Tripura local protests took organised form right from 1947 when Seng-khak, the first anti-refugee and anti-Bengali political union, was established.<sup>9</sup> It orchestrated clashes with immigrants and kidnappings when 'refugee colonies' were set up and 'tribal' land was given to Bengali newcomers.<sup>10</sup> The immigrants became an important vote bank and so Bengalis began to control Tripura politics, calling forth further protests by the local population. Major confrontations took place in 1953 and 1954 and these focused increasingly on the ownership of land. In an attempt to defuse the tension and return some lands which immigrants had occupied unlawfully, the alienation of 'tribal' lands was made more difficult by law.<sup>11</sup>

The language of infiltration first surfaced in official discourse when, in 1962, the Indian government in parliamentary debates identified immigrants in Tripura and Assam as *infiltrators* and proceeded to expel them.<sup>12</sup> It was also used in 1964, when,

about 2 lakh [200,000] people belonging to linguistic and religious minorities were physically seized by the police and left at the border without any kind of judicial process. The government had to stop the operation of the scheme after large-scale public protest and was convinced that the Foreigners' Act, 1946 was not applicable in Eastern India.<sup>13</sup>

In the same year, the Indian government started an international propaganda campaign on the topic of 'infiltration' from East Pakistan. And since then, it has become commonplace in Indian political debates to talk about



infiltration.<sup>14</sup> The term became widespread in the northeast during the Assam movement, started in 1979, which spoke to Assamese fears of 'being swamped by foreign nationals' as a result of 'misplaced notions of national commitment' and the failure of Indian laws to 'prevent infiltration from Bangladesh.'<sup>15</sup> The Assam movement criticised an Indian law of 1950 which openly encouraged free entry into Assam of Hindus who were victims of disturbances in East Bengal. Prafulla Mahanta, the leader of the Assam movement, wrote with irony: 'In secular India, the Hindu East Pakistanis were permitted to settle as refugees and the Muslim Pakistanis were thrown out.'<sup>16</sup>

Since then the discourse of infiltration has been elaborated in two ways. In public debates in northeast India, there have been attempts to strengthen the insidious connotations of the term 'infiltration' by using the hyperbole of 'demographic attack.' In the words of a politician in North Bengal,

the threat [of deliberate, large-scale and sustained infiltration by Bangladesh residents] is there: it is so profound that it may affect a demographic change in Indian areas around Bangladesh so much so that they may one day cease to be Indian territory. The idea of such demographic aggression against India has been there since 1958, but it has been put into practice with intensity after the emergence of Bangladesh as a nation.<sup>17</sup>

In a report to the President of India in 1998, the Governor of Assam saw a sinister design behind what he called 'demographic invasion': to create a Greater Bangladesh, providing Lebensraum for Bangladeshis by 'severing the entire land mass of the North-East, with all its rich resources, from the rest of the country.'<sup>18</sup> In reaction to such allegations, Bengalis in North-East India tried to create organisations to protect their interests.

There was a second way in which the discourse of 'infiltration' was elaborated. This was done by politicians in other parts of India who detected illegal immigrants from Bangladesh and sought to deport them. In 1992-93, in an action code-named Operation Pushback, authorities in New Delhi and Bombay rounded up hundreds of suspected Bangladeshis and shipped them to the border with

Bangladesh. Bangladesh refused to take them back, and the Indian government was forced to abandon the operation. Further deportations followed in 1994, 1997 and 2000.<sup>19</sup> In 1998, police officers in Bombay arrested 'infiltrators' and escorted them to the West Bengal-Bangladesh border to hand them over to the border guards.<sup>20</sup> Speaking of the deportation of 'Bangladeshi infiltrators' in the Maharashtra assembly, the Deputy Chief Minister said: 'This is a question of Indianness, nationalism and patriotism,' and he linked immigration from Bangladesh with 'a well-organised conspiracy to infiltrate ISI agents into the country.'<sup>21</sup>

The discourse of infiltration was developed by local politicians in northeast India in the 1940s and 1950s to deny citizen's rights, and particularly land rights, to immigrants from East Pakistan. In the 1960s it surfaced in Indian government statements in connection with the first mass expulsions from northeastern India. In the 1980s, it was taken up by Hindu fundamentalist politicians in other parts of India and by the 1990s it had become a core argument in national debates in India which sought to link immigration from Bangladesh with the planned subversion of India. The duty of any Indian patriot was *not* to welcome immigrants as repatriates, but to deport them as foreign agents out to destabilise India, Islamise parts of it, and ultimately annex them to Bangladesh.

In East Pakistan, and later Bangladesh, successive governments developed a bizarre counter-discourse: they simply denied that any of their citizens migrated to India at all.<sup>22</sup> For example, in August 1998 the Prime Minister of Bangladesh stated: 'We do not accept that there is any Bangladeshi national living in India. So the question of deporting any Bangladeshi by the Indian Government does not arise.' As Indian border guards tried to push back what they named 'Bangladeshi infiltrators,' Bangladeshi border guards tried to foil the 'push-in' of what they considered to be 'Indian citizens.'<sup>23</sup> During Operation Pushback in India (which Bangladesh branded as 'Operation Push-In'),

The deportation process suffered a severe setback in September 1992 when 132 deportees were sent to the border. The [Border Security Force] tonsured their heads, stripped them and burnt their belongings. The event blew up into a diplomatic row when



Bangladesh accused India of trying to push out West Bengal Muslims.<sup>24</sup>

From the point of view of the Bangladesh state, a porous border was clearly a welcome device to export jobs. No attempts were made to keep Bangladeshi labour migrants from crossing into India but their forced return was vehemently opposed. This created great problems for Bangladesh as a modern state. Happy to use its border to disown its mobile citizens, Bangladesh sought to protect the integrity of its border in other respects – unauthorised trade (smuggling) and unauthorised entry (Rohingya refugees from Burma, Indian border police, Jumma rebels from hideouts in India being cases in point). The ensuing ambiguity regarding the territorial integrity of the nation-state became one of the main problems of contemporary statecraft in Bangladesh.

Intellectuals in Bangladesh were equally unconcerned with claiming migrants to India as expatriate Bangladeshis.<sup>25</sup> Contrasting sharply with the heroisation of successful Bangladeshi migrants to the North, there has been a deafening silence about the ingenuity, creativity and resilience of the much larger groups of Bangladeshi migrants to India, some of whom clearly also 'made good.' There was a serious problem in acknowledging these migrants as Bangladeshis because of the older tradition of seeing them as repatriates, and therefore as traitors to the nation, who opted for the rival nation of India.

By now, however, millions of Bangladeshis in India are truly transnational in three ways. First, they are not accepted as Indian citizens and live the shadow existence of illegal immigrants worldwide, a floating underclass who are in India but not of it. Second, their motives for crossing the border have long stopped being related to nationalist ideologies. Instead they join many migrants worldwide in pursuing the good life which is denied them back home – in terms of a decent income, freedom from oppressive social control, and prospects for a better future. And third, like their counterparts all over the world, they think transnationally when they remit money and make occasional visits back home. Unlike the early 'repatriates,' they often retain contacts with Bangladesh through transnational networks of increasing complexity.

It is not impossible that in future Bangladeshi intellectuals will discover migrants to India as cultural heroes, people who despite enormous odds were able to survive in that huge society, creating new cultural and social forms of 'transnational' Bangladeshiness in the process.<sup>26</sup> Till that time, the Bangladeshi discourse on migration to India is likely to be marked by denial, disdain and disinformation.

### Bengalis on the move

The creation of the border affected a well-established population flow. The deltaic region of Bengal had long supported dense agricultural populations whose numbers were kept fairly stable by high mortality due to epidemic disease and natural calamities. In the nineteenth century, this population began to expand and in eastern and central parts of the delta increasing landlessness led to a stream of out-migrants looking for land in less densely populated parts of Bengal. In this endeavour, they were often encouraged – both the colonial authorities and landlords who were keen to expand their tax base. It was in this period that cultivators established themselves in the Sundarban wilds in the south, the Barind area in the north, and on *chors* (silt banks) in the major rivers of Bengal. Others moved into sparsely-settled non-Bengali speaking regions to the north, east and south – in the densely-settled west there was little scope for expansion. They followed the course of the Brahmaputra into the Assam valley and they settled in northern Arakan and Tripura.<sup>27</sup> As the population continued to grow and the economy of Bengal stagnated, would-be settlers found it harder to find productive and safe land in Bengal. They moved onto islands and *chors* in the Bay of Bengal which were dangerously exposed to hurricanes and tidal bores, and they pushed further into areas where local populations increasingly began to resist Bengali immigration.<sup>28</sup> This was the demographic scenario on which the Partition border impinged.

The creation of the border had two effects. First, the fairly unobtrusive movement of settlers out of Bengal suddenly became international migration. When it was declared illegal to move without papers, the movement continued underground.<sup>29</sup> Second, the throes of state formation in East Bengal led to additional out-migration after



1947, often in waves. Although the Indian discourse of homecoming identified these as political migrants (repatriates, refugees, displaced persons) and ignored the longer-term trend, the distinction between 'economic' and 'political' settlers was often of little importance to those on whose land they settled. The border gave resisters to migrant settlement a new argument that the state could hardly ignore, and the discourse of infiltration was constructed around that argument: no state could allow foreign nationals to cross the border illegally and simply occupy land and avail themselves of the services provided by that state. This formal argument gained power when it could no longer be maintained that immigration from Bangladesh was overwhelmingly 'homecoming' migration by East Bengal Hindus. The discovery that many, if not most, immigrants from Bangladesh were Muslims coincided with the emergence of political Hinduism (or Hindu fundamentalism) in India which was based on the tenet that Hindu India was under threat.<sup>30</sup> It was through this political movement that the focus on Bangladeshi 'infiltration' became a national issue. In the Indian debate on 'infiltration,' questions of citizenship dovetailed with rising communal sensibilities.

Indian authorities took various positions in this debate, and these shifted under the influence of continuing migration from Bangladesh.<sup>31</sup> The Assam government switched from the homecoming thesis to the infiltration thesis after violent anti-Bengali disturbances in the early 1980s.<sup>32</sup> Authorities in Delhi and Bombay did the same after Hindu fundamentalist parties came to power there. Only the West Bengal government stuck to the homecoming line till 1999, when it, too, caved in and adopted the language of infiltration.<sup>33</sup>

These permutations were of great importance to the borderland. In the early days, both India and Pakistan welcomed immigrants and demanded that they be allowed to pass the border unmolested. A newspaper cartoon published in India in 1952 expresses indignation at the humiliations to which Pakistan customs officials subjected East Bengali Hindus migrating to India. The two countries were keen to ensure that migrants from India to Pakistan and from Pakistan to India were treated in exactly the same way.<sup>34</sup> This led to parallel and fairly uniform arrangements in the borderland.

The emergence of the Indian discourse of infiltration, however, brought an end to this balance. As migration from East Bengal to India came to be seen as undesirable, measures were taken to contain it. Such measures were not taken on the East Bengal side of the border but their effects were noticeable on both sides. Three measures were of particular importance: border fencing, detection and identification, and deportation.

### 1) A fence around the border

Very short stretches of border, especially near customs posts, had been fenced from the late 1940s.<sup>35</sup> In the 1960s, the Indian states bordering on East Pakistan proposed to the Delhi government to 'erect a wire fencing *all along* the land borders primarily to prevent infiltration into these States by Pakistani Muslims,' but Delhi had not acted upon it.<sup>36</sup> Especially politicians in Assam had been pushing for a fence along the entire border but not until 1985 were they able to place this issue on the national agenda.<sup>37</sup> In 1986 the Indian government approved the Indo-Bangladesh Border Roads & Fence Project 'with a view to preventing infiltration by Bangladesh nationals.'<sup>38</sup> Progress was very uneven and it was slow. According to Indian press reports in 1998, 'the total border fencing is about 190 km in West Bengal, 20 km in Assam and almost non-existent in Tripura and Mizoram.'<sup>39</sup>

The border fence caused great offence in Bangladesh 'because it humiliates and belittles us before the world.'<sup>40</sup> According to existing agreements between the two states, nothing can be constructed within 150 metres of the border without the approval of both governments, so where the fence came up it created a 150-metre wide belt of no man's land on the Indian side. When in 1999 the West Bengal government changed its mind about immigration and decided to contain 'infiltration' by fencing its border with Bangladesh, it found that no less than 450 villages were located within 150 metres of the border and would therefore lie in the fenced-off no man's land.<sup>41</sup> In parts of Meghalaya where a border fence had come up, cultivators on the Indian side reported that there was an insufficient number of gates to allow them to work their fields; as a result, their counterparts from Bangladesh



had taken over the 150-metre strip of Indian territory, cultivating right up to the fence.<sup>42</sup>

The social destruction which a border fence would bring to these villages may be deduced from a sketch of two of them:

Every time Nazir Rahman Bhuia moves from one part of his house to another, he crosses an international boundary. For the India-Bangladesh border at marker number 2033 runs right through his home in a village set in lush green countryside in the eastern Indian state of Tripura ... the village has two names now – Motinagar on the Indian side, Dhajanagar on the Bangladeshi. The Indian village has electricity, the Bangladeshi has none. Both are inhabited by Muslims ... Life goes on as usual, even when border guards show up occasionally. The villagers meet each other, celebrate marriages and bury the dead together. "We feel strange about the border running through the village like this, but we've adjusted to it," says Bhuia.

A group wedding [was] celebrated in a West Bengal village – three brides and two grooms were from India, three grooms and two brides were from Bangladesh. Bengalis live on both sides of the border. "The marriages were solemnized in the village council office. The people have never recognized these border pillars that were suddenly erected," adds the [Border Security Force] officer, who is responsible for policing a big part of the zanily zigzagging frontier.<sup>43</sup>

In Assam, politicians were dissatisfied not only with the very slow progress of the fencing of the Indo-Bangladesh border, but also with the quality of the fence. A report by the Governor of Assam argued that the fence should be 'of the same height as along Punjab's border with Pakistan,' and that observation towers, speedboats and floating border outposts were necessary.

A description of the Punjab border fence gives an idea of what the governor had in mind:

It is a formidable barrier, erected well inside Indian territory ... at a cost of \$85,000 a kilometer. It consists of two 3-m high barbed wire fences with razor sharp concertina wire running in between. It also has what border policemen call cobras: five

electricity wires fixed at different heights from the ground. At night the cobras come alive, along with powerful sodium vapor lamps that illuminate the fencing ... Recently, one ... itinerant worker was electrocuted near Wagah when he tried to crawl across during a brief power shutdown – standby generators came on automatically, roasting him inside the concertina.<sup>44</sup>

In 1998, India was reported to consider erecting a 150-km electrified fence on the Bangladesh border, 'charged with a low, non-fatal voltage, immigration officials said.'<sup>45</sup> But despite the rhetoric, in the twentieth century the technocratic dream of sealing the Indo-Bangladesh border by means of fences, floodlights and motorised border patrols did not materialise. The cost of construction and maintenance would have been high, the political fallout for India's relationship with Bangladesh considerable, and the efficacy of the fence doubtful. Occasionally, parallels were drawn with the most high-tech border sealing in the world, at the US-Mexican border, and the ways in which Mexican migrants were able to circumvent it. Clearly, as in the USA, the *de facto* immigration policy of the Indian government was *not* to make the Indo-Bangladesh border impermeable to the passage of 'illegal' entrants, for reasons to which I will return shortly.<sup>46</sup>

In places where fences did come up, however, borderland society was not bisected. Borderlanders who wished to negotiate the border simply became more dependent on the mediation of local border guards and customs officials, cut holes in the fence, or crossed over in a fenceless section. There was no evidence to show that Bangladeshi migration to India was slowed down by the border fence; crossing the fenced border remained 'as easy as slicing butter with a knife'

## 2) Detection and identification

A second line of defence against 'infiltrators' from Bangladesh was identifying culprits and sending them back to the Bangladesh side of the border. This was much more difficult than it seemed. First of all, migrants usually travelled without identity papers (although there was a sizeable group of Bangladeshis who entered India on visaed passports and



never returned). Second, there was little to distinguish newcomers from residents. They spoke the same language, might dress in Indian-made clothes smuggled into Bangladesh, and blended in very easily. Even if they spoke an East Bengal regional dialect, there were many established Indian citizens in the borderland who originated from the same regions. Third, there was always confusion about the cut-off point between 'homecoming' and 'infiltration' because local politicians, the government in Delhi and the Bangladesh government used different definitions. An agreement between the prime ministers of India and Bangladesh (the Indira-Mujib Pact of 1972) 'tacitly provided that Bangladesh would not be held responsible for persons who had illegally migrated to India before the birth of the new Republic prior to March 25, 1971,' and therefore the year 1971 was officially considered the beginning of 'infiltration'.<sup>47</sup>

Identification of Bangladeshi immigrants was further hampered by the fact that Indian borderlanders often protected them. Earlier immigrants offered newcomers shelter and support, employers were keen to exploit cheap labour and politicians were interested in expanding their electorate. Making use of the imperfect registration of Indian citizens and ample opportunities for forgery, many immigrants secured an 'Indian' identity by acquiring a ration card, a fraudulent birth certificate, or school certificate, by enrolling as voters and – ultimate proof of Indian citizenship – by availing themselves of the Election Commission's identity card.<sup>48</sup> And for those with money and connections it was not difficult to 'manage' a passport. As a result, administrative measures to detect immigrants failed dismally.

**Laws.** By the late 1990s, the Indian government was seriously revising the Foreigners' Act, 1946, and a controversy was raging over the proposed repeal of the special anti-infiltration act for Assam, the Illegal Migrants (Determination by Tribunals) Act of 1983, because it had failed to facilitate the deportation of Bangladeshis from Assam.<sup>49</sup> According to one source, since 1983 about 300,000 people were screened under this act, but only 25,000 were tried by tribunals, and a mere 1,500 were deported as illegal immigrants.<sup>50</sup> The total number of post-1971 immigrants from Bangladesh to India is unknown; Indian politicians and journalists usually quote a

figure of 10 million, and the Indian government put the number 'unofficially' at 12-18 million, of which some 5 million might have settled in West Bengal.<sup>51</sup>

**Identity cards.** Other administrative measures had proved to be as ineffectual. Border guards often found it impossible to identify persons without some form of identification:

"How can we stop infiltration?" said Mr Balbir Singh Sahal, the [BSF] Sector Commander [at the West Bengal border, Nadia district], "We do not understand Bengali. These people speak the same language, wear similar clothes and look no different. It is impossible to distinguish between a Bangladeshi and an Indian. Also, many live in houses adjacent to each other. Indians should be issued identity cards immediately."<sup>52</sup>

Plans to issue identity cards to Indian citizens, especially in 'sensitive' border areas, were discussed for years, and floated in 1989, 1994, 1997 and 1999.<sup>53</sup> Such drives did nothing to reduce immigration. On the contrary, a report from the fenced border at Dhubri (Assam) indicated that Indian citizens encouraged immigration because they earned money by conducting Bangladeshis through the border: they rented out their passports, identity cards and residential certificates to them.<sup>54</sup> Even in the absence of such actions, identity card schemes appeared to be doomed from the start. Not only were they very expensive and labour intensive, but in the absence of a reliable national citizens' register it was impossible to keep such schemes up-to-date. Most importantly, they were vulnerable to fraud:

An Indian reporter approaching some fresh Bangladeshi immigrants waiting for a train at New Cooch Behar railway station found that, as soon as he questioned them, they whipped out certificates issued by the chief of a *gram panchayat* (local council), showing them to be Indians. Although everyone was aware that one of a 'mushrooming tribe of agents' had procured these for them, no Indian state official was willing, or perhaps able, to check the veracity of these certificates.<sup>55</sup>

In the same vein, Bangladeshis happily voted in Indian elections (as Indian borderlanders also did in Bangladeshi elections) because they could register as voters.<sup>56</sup> Before



elections, there would be enormous publicity about the cleaning up of the electoral rolls in the Indian border districts, but illegal immigrants with political patronage and armed with voter's identity cards could not be sent away from the polling booth.<sup>57</sup>

Clearly, it was impossible for the Indian state to handle the immigration of Bangladeshis administratively. Its main weakness was that it could not implement the laws and schemes that it devised because its registration of citizens was inadequate, it employed too few border guards, it could not trust those guards and other state personnel to put the interest of the state before their own interest, and it failed to check Indian citizens who encouraged illegal immigration and registration. It was no surprise that the state explored other means to rid itself of unwanted Bangladeshis: deportation.

### 3) Deportation

From their inception as separate states, both India and Pakistan practised the removal of unwanted individuals from their territories. There were several forms. Those who were considered a threat to the state could be externed, fugitives from the law could be extradited, and so could, from 1952, those who arrived without valid passports and visas. By far the most important form of removal in terms of numbers was the expulsion of minorities; local state representatives often played a role in this.

The deportation of people on the ground of their being 'infiltrators' or 'foreigners' first occurred on a large scale in India in the 1960s.<sup>58</sup> In the 1990s deportation once more became a core issue in India. Public opinion was primed for these deportations by campaigns depicting Bangladeshi immigrants as a security risk and a burden on Indian society.

When waterlogging persisted in parts of Mumbai for three days, the Shiv Sena mayor blamed the illegal Bangladeshi population for the mess. "Their filth blocked up the gutters," he said. In Delhi, the BJP added to its following by generating antipathy towards Bangladeshi immigrants. As civic amenities came under strain, the hapless Bangladeshi immigrant became a convenient scapegoat. The president of the Delhi BJP argued: 'Is our country a *dharamshala*

[charity institution] that whoever wants to come and stay here can freely enter? It is a matter of national security ... There is too much pressure on the resources here [in Delhi]. Outsiders should be removed.' And the Chief Minister of Maharashtra linked immigrants with subversion when he said: 'we cannot tolerate this nonsense whether it is a Bangladeshi or a Pakistani national indulging in law and order problem.'<sup>59</sup>

Criminalisation, deportation and humiliation went hand in hand. Police squads would check out neighbourhoods, identify Bengali-speaking Muslims (who might be Indians from West Bengal) and herd them together.

Sitting inside his dimly-lit hut in Delhi's Seemapuri, home to an estimated 50,000 Bangladeshi immigrants, 50-year-old Altaf Hussain still remembers the time his sons Milon and Haroon were caught by the authorities in the wake of an anti-Bangladeshi drive by the local BJP Government in 1994. They were paraded on donkeys, had their heads shaved, put on a train to Calcutta and, finally, forced back to Bangladesh at gun-point. For nine days, starving and without any familiar address to call on, the two brothers wandered around, until a Good Samaritan smuggled them back to Seemapuri.<sup>60</sup>

Fourteen-year-old Nanu from Mumbai was rounded up but had no papers to prove that he was an Indian. With 14 other Bengali-speaking Muslims, he was taken to West Bengal by train. 'After taking us to the jungle, the police told us to keep on walking and not look back or else we would be shot.' Nanu alleged that, in the jungle, women in his group had been raped by [Maharashtra] police who were accompanying them.<sup>61</sup>

The rough way in which deportations were carried out led to protests. Maharashtra police also chained the deportees, and tied their chains to railway coach windows. A senior member of the West Bengal government commented: 'They are not cattle, to be pushed back under the cover of darkn They should be treated like human beings.'<sup>62</sup>

The deportations were a disaster for the deportees because the Bangladesh border guards refused to accept them as Bangladesh citizens. As a result, they would wander about



the borderland till they found the means to return to their places of residence, or they ended up in West Bengal jails which soon ran out of capacity to accommodate them.<sup>63</sup> Not deterred by Bangladesh's attitude, the government in Delhi devised two new ways of identifying and isolating immigrants. In 1998 it was reported to be contemplating setting up detention camps near the Indo-Bangladesh border 'to ensure the success of its "push-back" scheme of illegal immigrants.' In these camps (dubbed Bangladesh Transfer Facilitation Centres) immigrants would be fingerprinted, photographed, and so on, and held till such time as Bangladesh would accept them as its nationals.<sup>64</sup> In 1999 the government in Delhi sanctioned the setting up of a 3,500-man-strong Prevention of Infiltration Force (PIF) which it saw as 'a second line of defence against infiltration' and which would be deployed at some distance from the Indo-Bangladesh border.<sup>65</sup>

### Bangladeshi diaspora

None of the government measures taken in India were effective in disrupting the flow of Bangladeshi migrants across the border. Border fencing, identity cards, deportation drives and border detention camps were no doubt important rhetorical devices in Indian national politics but their impact on Bangladeshi immigration was immaterial. The same can be said about the violent campaigns of intimidation in Assam and Tripura in which many Bangladeshi immigrants, or their descendents, died.

The period since 1971 was one in which Bangladesh society rapidly developed global links. One result was a diasporic spread of Bangladeshis all over the world. The settler migration of earlier days continued but new flows of labour migration developed and emigration out of Bangladesh grew explosively as the country's oversaturated labour markets were completely unable to accommodate growing numbers of labourers. Many Bangladeshis left from Dhaka airport, either as short-term labour migrants to the Gulf states and Southeast Asia, or as legal or illegal migrants to the highly-industrialised societies of the North.<sup>66</sup> Some boarded ships at the ports of Chittagong and Chalna. But the majority

continued to cross the land border into India or Burma in their quest for a better life.

They were not always headed for Indian or Burmese destinations, though. Some Bangladeshi migrants used Burma as a corridor to employment in Malaysia, Singapore, Thailand and Japan, and many Bangladeshi migrants used India as a corridor to employment in Pakistan and the Middle East. The term 'exfiltration' was coined in the Indian press to describe the movement of Bangladeshis from India to Pakistan.<sup>67</sup> In the 1990s it was estimated that there were about a million Bangladeshis in the Pakistani city of Karachi alone.<sup>68</sup> The heavy barbed-wiring of parts of the Indo-Pakistan border led Bangladeshis to opt for the most dangerous routes. One was through the hot, parched wasteland of the Thar desert and the Rann of Kutch. Here one group of nearly 40 Bangladeshi migrants, mostly women and children, died of thirst in the early 1990s.<sup>69</sup> Another route was through the unfenced border (or, more precisely, line of demarcation) between Indian-held and Pakistan-held Kashmir:

Well organised brokers charge money for accompanying them from their native places to ... West Bengal and to places near the international border in Jammu and Kashmir. Throughout their journey, they are accompanied by different brokers, who leave them near the border for crossing over to Pakistan.' If Pakistan-bound Bangladeshis were apprehended by the Kashmir police, they were not booked or produced before a court. Instead, according to senior police officers, 'the best way to get rid of them is to huddle them into a Calcutta-bound train without ticket.' Homeward bound Bangladeshis returning from Pakistan, however, were arrested under the law of the land. Some of these infiltrators, after completing their jail terms, remained lodged in police lock-ups for repatriation for many years.<sup>70</sup>

The search for a better life was no longer oriented primarily towards finding a plot of land. Increasingly, Bangladeshi immigrants in India and beyond were looking for cash incomes. 'In Calcutta and Delhi, they appear to have carved out a niche for themselves as domestic helps, construction labourers and ragpickers. In Mumbai, they are crucial as weavers and zari workers.'<sup>71</sup> Even among those who stayed in the borderland, wage earners became more



important. Many of the rickshaw-pullers and day labourers in Indian border towns such as Agartala (Tripura), Silchar (Assam), or Siliguri (West Bengal) were Bangladeshis. According to one report, 10,000 rickshaw-pullers in Siliguri came from Bangladesh illegally.<sup>72</sup>

The Bangladeshi diaspora took many shapes and involved many different groups. Some migrants bravely set out on their own, others took the assistance of relatives and friends, and yet others put their fate in the hands of agents.<sup>73</sup> And then there were those who were forced into migration. The cross-border trafficking of human beings came to be noticed from the 1980s but may have existed much longer.<sup>74</sup>

At the border, the distinction between migration-by-consent and trafficking was not always clear. For example, groups of Bangladeshi women being ferried across the Ganges to India in the 1980s thought they might get a factory job in Calcutta, or a husband in Bihar.<sup>75</sup> Such groups were often taken by train to Calcutta, accompanied by local women who might themselves be migrants. 'A Bangladeshi woman settler who is now residing in Guma [24-Parganas, India], told the survey team that her principal vocation was trafficking in women. She accompanies a group of women every evening by train from Guma to Calcutta.'<sup>76</sup> Often it was only after the women reached their final destinations (in India, Pakistan, the Gulf states or Southeast Asia) that they realised they had been tricked: often they were sold to brothels.<sup>77</sup>

In the case of many women and children, however, it was not consent or enticement but force or sale which brought them to the border. Kidnapping was common, especially of young children, even babies, but some parents sold their children; in this way, about 15,000 children were believed to cross the border every year.<sup>78</sup> Young girls were sought after as domestics and especially as sex workers.<sup>79</sup> Boys aged between 2 and 12 were in high demand in the Gulf states as jockeys in camel races.<sup>80</sup> Young girls were said to 'command a high price as they are likely to be free from HIV/AIDS,' and,

In West Bengal, children used as jockeys in camel races are the most expensive, followed by those used for prostitution, while those pushed into begging or

used as labourers cost the least. In Bangladesh, the prices are said to be very low, with the average ranging between Rs.1,000 and Rs.5,000.<sup>81</sup>

As these migrants passed through the borderland, they might experience special exploitation but also protection. On the one hand, border police of both countries would charge women money for crossing the border.<sup>82</sup> If the money was not given, sexual assault was a possibility. 'Some women had their first experience of "trading" their bodies when they were raped by the police at the border for failing to pay the money they would need to buy their way into India.'<sup>83</sup> On the other hand, borderlanders have been known to resist trafficking in women and children. In northern Bangladesh, an old woman was beaten to death by a mob charging her with having abducted children, and train passengers on routes from the border to Calcutta attacked or detained people they suspected of being traffickers and their victims.<sup>84</sup>

Human trafficking was doubtless the most exploitative and humiliating form that the Bangladeshi diaspora took. By most emigrants who passed the borderland were not being trafficked; they were labour migrants in search of a good life rather than human chattels. The volume of Bangladeshi emigration shows clearly that there was a strong and sustained demand in India and beyond for the cheap labour provided by Bangladeshis. If there were indeed some 10 million illegal Bangladeshis in India, there were obviously millions of Indians keen to employ them. And yet, in Indian discussions about 'infiltration,' the contributions which these millions of Bangladeshi workers obviously made to the Indian economy went largely unnoticed. As Indian politicians built careers on 'infiltrant bashing' and stressed the costs of these illegal immigrants in terms of law enforcement and state services, they were supported by many who themselves employed cheap Bangladeshi domestic, agricultural or industrial labour. 'Infiltrant bashing' served not only as a vote-getter, it also kept Bangladeshi labour immigrants stigmatised and vulnerable, and therefore cheap and pliable.

### **Emigration and the borderland**

In 1947 a border was imposed on a region whose population dynamics were expansionary. For several decades



the official discourse in India ignored this, as the official discourse in Bangladesh continues to do. Most of the population expansion took place over land and the border turned into a whistle-stop on the outward journey of East Bengali migrants. As Indian political discourse increasingly conceived of the border as a war zone – an area where the nation was vulnerable to hostile invasion –, crossing the border began to require more circumspection in certain sections where surveillance was stepped up.

There is no evidence to suggest, however, that emigration was effectively hampered. On the contrary, new forms of assistance and exploitation sprung up on both sides of the border. Labour contractors, cross-border guides, providers of documents, border guards and many others could now earn better money off migrants. As the state sought to regulate migration but was clearly unwilling to invest sufficient energy and resources in reaching that goal, it created opportunities for organising cross-border migration rackets and for a more effective fleecing of migrants. In some sections of the borderland unassisted crossing remained as easy as ever, but where surveillance had increased, migrants became more and more dependent on the services of borderland brokers.<sup>85</sup> These brokers could well have positions in the state which they used to their own advantage. In 1993, a journalist visiting Cooch Behar observed,

I found Congress and CPI(M) politicians joining hands to bring Bangladeshis in Matador vans from the border and then putting them on to the Teesta-Torsa Express bound for the Nizamuddin railway station in Delhi.<sup>86</sup>

The borderland brokers took advantage of two sets of circumstances which originated outside the borderland. The first was the forces which continued to compel inhabitants of Bangladesh to seek a better life abroad. The Bangladeshi diaspora will show no signs of slowing down as long as scarcity and instability continue to predominate in the Bangladesh economy, thwarting the life chances of millions. Second, the discourse of infiltration which Indian politicians developed in their quest for state power had the effect of increasing the stakes and making the role of cross-border migration brokers ever more lucrative.

Solutions cannot be expected from more rigorous border surveillance by the Indian state or from the ostrich policy adopted by successive Bangladeshi governments. The Indian discourse of infiltration points ominously to demonising cross-border migrants and a future of anti-Bangladeshi pogroms. The Bangladeshi discourse of denial is no more than a short-term diplomatic device and fails completely to address central issues of citizenship. By seeking to criminalise the Bangladeshi diaspora and turn it into a numbers game, politicians in both countries gamble with the life chances of individual migrants.

What we need is a much better understanding of cross-border population movements which takes account of the perspectives of the migrants themselves. We are likely to find that individual migrants have individual reasons to leave or enter Bangladesh. Analysis should take place at the level of the living strategies of individual people fleeing environmental degradation, intense economic exploitation, political harassment, stifling family relations, or a future which they fear holds no promise. Their contributions to the Indian economy as well as to that of Bangladesh need to be made visible, as do the patterns of circular migration in which many of them are involved, and the cross-border networks of support in which migration is embedded.

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## Notes and References:

<sup>1</sup> See e.g. *Disturbances in the Punjab, 1947* (Islamabad: National Documentation Centre, 1995); Ritu Menon and Kamla Bhasin, *Borders & Boundaries: Women in India's Partition* (New Delhi: Kali for Women, 1998).

<sup>2</sup> See e.g. Kanti B. Pakrasi, *The Uprooted: A Sociological Study of the Refugees of West Bengal, India* (Calcutta: Editions Indian, 1971); Prafulla K. Chakrabarti, *The Marginal Men: The Refugees and the Left Political Syndrome in West Bengal* (Calcutta: Naya Udyog, 1999 (2nd ed.)).

<sup>3</sup> Menon and Bhasin, *Borders & Boundaries* (1998) is one of the first studies to try and overcome this bias by looking at women refugees crossing the Punjab border in both directions.

<sup>4</sup> Thus in 1964 a policy was introduced under which no direct rehabilitation was to be given to the 'new migrants' from East Pakistan in West Bengal, i.e. people who had arrived in India after 1 January 1964. *Report of the Committee of Review on Educational Facilities for New Migrants from East Pakistan to West Bengal* (Calcutta: West Bengal Ministry of Labour, Employment and Rehabilitation, 1968), in Prafulla Chakrabarti Papers, IISH\*.

<sup>5</sup> On raids by West Bengal landlords on immigrant East Bengal squatters, see Chakrabarti, *The Marginal Men* (1999), 82-83. Similar conflicts between in East Bengal, see petitions by locals against immigrants from West Bengal and Assam in the Rangpur border area, and against 'a gang of Kabulies' who squatted in Parbatipur, Dinajpur (\*87, \*229).

<sup>6</sup> Over the years, a veritable jungle of legal and political nomenclature would develop to refer to cross-border migrants in India and Pakistan. Here we do not concern ourselves with the niceties of distinguishing refugees, evacuees, *mohajirs*, repatriates, displaced persons, *bastutyagi*, *bastuhara*, *asroyprarthi*, *shoronarthi*, etc. Not only were these differences of little or no concern in the border areas, but definitions also differed between India and Pakistan. For example, in the Pakistan (Protection of Evacuee Property) Ordinance, 1948, refugees from Pakistan to India were considered to be 'evacuees' and those fleeing the other way 'refugees.' What Pakistan called an evacuee, India would call a refugee.

<sup>7</sup> It did not disappear completely. In June 1979, following riots in West Bengal, 20,000 Indian Muslims were reported to have entered Bangladesh. Azizul Haque, 'Bangladesh 1979: Cry for a Sovereign Parliament,' *Asian Survey*, 20:2 (1980), 228; cf. *The Bangladesh Observer* (24 June 1979).

<sup>8</sup> In 1947 the local population of Tripura consisted of many linguistic and religious groups. The majority religion was Hinduism. They are usually referred to as 'tribal,' a term which has meaning only in connection with the legal category of 'scheduled tribes' in the Constitution of India. The Maharajas of Tripura had begun attracting Bengali Muslims as agricultural labourers and

sharecroppers, and Bengali Hindus as professionals and clerks. In the 1870s, 36% of the population had been 'non-tribal' (i.e. mostly Bengali), a figure that rose to 48% in 1931, 63% in 1951, and 71% in 1971. Gayatri Bhattacharyya, *Refugee Rehabilitation and Its Impact on Tripura's Economy* (New Delhi/Guwahati: Omsons Publications, 1988), 93.

<sup>9</sup> Seng-krak was soon outlawed. It was followed by a host of successors, e.g. Paharia Union (1951), Adibasi Samiti (1952), Tripura Rajya Adibasi Sangha (1953), Adibasi Samsad (1954), East India Tribal Union (1956), Tripura Upajati Juba Samiti (TUJS, 1967), Seng-krak (revived in 1967), Tripura Sena (c. 1968), Barki Halam (1974), Tripura National Volunteer Force (TNVF; 1979), and Army of Tripura Peoples' Liberation Organisation (ATPLO; 1980). After 1980, when widespread violence engulfed the state, many new organisations cropped up (e.g. All Tripura Tribal Force (ATTP, c.1985). For details, see S.R. Bhattacharjee, *Tribal Insurgency in Tripura: A Study in Exploration of Causes* (New Delhi: Inter-India Publications, 1989), 127-134. Cf. Panjoubam Tarapot, *Insurgency Movement in North-Eastern India* (Delhi: Vikas, 1996), 174-180.

<sup>10</sup> In 1948, the Tripura government for the first time released almost 800 km<sup>2</sup> of tribal reserve land 'for increasing land revenue economic growth, and particularly for refugee rehabilitation' Bhattacharyya, *Refugee Rehabilitation* (1988), 17-20.

<sup>11</sup> Government of Tripura, Law Department, *The Tripura Land Revenue and Land Reforms Act, 1960*. For significant amendments in 1974 and 1975, see Bhattacharyya, *Refugee Rehabilitation* (1988), 98-100. See also S.R. Bhattacharjee, *Tribal Insurgency in Tripura: A Study in Exploration of Causes* (New Delhi: Inter-India Publications, 1989), 114-117.

<sup>12</sup> Parliamentary debates on the issue had been going on since May 1961. In August 1962, the Home Minister, L.B. Shastri, informed the lower house that about 45,000 Muslims had 'infiltrated' into Tripura; his deputy reported 250,000 to 300,000 'infiltrators' in Assam over the preceding 10 years and similar 'infiltrations' were alleged to have taken place in Manipur and West Bengal. By late 1962, according to Indian sources, some 50,000 Muslims from Assam and some 16,000 from Tripura had been evicted. Pakistan refused to identify them as *Pakistani infiltrators*; instead it described these deportees as *Indian Muslims* and complained about the Indian action. It set up an enquiry committee which reported that almost all deportees were Indian citizens. It also held that over 520,000 Muslims were evicted from India up to mid-1965 (Jha, *Indo-Pak Relations* (1972), 271-286). In 1962, the Assam Pradesh Congress Committee adopted a resolution stating that it was 'of confirmed opinion that the infiltration of Pakistani nationals without valid travel documents into Assam is likely to endanger the security of the country' (Prafulla Kumar Mahanta, *The Tussle Between the Citizens and Foreigners in Assam* (New Delhi: Vikas, 1986), 82). From mid-1962, 'India started deporting from Assam and Tripura



persons whom it called *Pakistani infiltrators*.' Jha, *Indo-Pakistan Relations* (1972), 242 (italics added).

<sup>13</sup> 'Joint Communique by the Home Ministers of India & Pakistan, April 11, 1964,' in: *Selected Indo-Pakistan Agreements* (New Delhi: Ministry of External Affairs, 1970), 30; Anindita Dasgupta, 'Thinking with the head: Foreign nationals in Assam,' *The Daily Star* (6 May 1999).

<sup>14</sup> *Influx – infiltratie uit Oost-Pakistan* ('s-Gravenhage: Information Service of India, Ambassade van India, 1964). ). In July 1965, the Chief Minister of Assam claimed that over one million 'illegal Pakistani infiltrators' had entered Eastern India between 1951 and 1961, and provided an uncannily precise breakdown – 220,961 in Assam, 459,494 in West Bengal, 297,852 in Bihar, and 55,403 in Tripura. 'Assam Expels More Than Half of 220,000 Infiltrators,' *The Statesman* (28 July 1965); cf. '126,000 infiltrators still in Assam,' *The Statesman* (15 December 1965)..

<sup>15</sup> The title of a book by the leader of this movement and later Chief Minister of Assam, Prafulla Mahanta, emphasises the point: *The Tussle Between the Citizens and Foreigners in Assam* (1986; quotes are from 86, 89, 116). He dedicated this book 'to the law-abiding and Constitution-following citizens of India residing in Assam who have waged a relentless tussle against the invasion of illegal foreigners masquerading as minorities playing to the designs of the political tricksters and economic exploiters.' For a description of widespread anti-Bengali agitations in Assam in 1960-61 driving about 45,000 refugees into Jalpaiguri, Cooch Behar and Darjeeling districts, see Saroj Chakrabarty, *With Dr. B.C. Roy and Other Chief Ministers (A Record upto 1962)* (Calcutta: Benson's, 1974), 450-460, 488-490.

<sup>16</sup> Mahanta, *The Tussle* (1986), 94. The act in question is the Immigrants (Expulsion from Assam) Act, 1950. For analyses of the Assam movement, see Monirul Hussain, *The Assam Movement: Class, Ideology and Identity* (Delhi: Manak Publications, 1993); Dilip Kumar Chattopadhyay, *History of the Assamese Movement Since 1947* (Calcutta: Minerva, 1990).

<sup>17</sup> Quoted in Anil Maheshwari, 'The face behind the mask,' *The Hindustan Times – Sunday Magazine* (15 August 1998).

<sup>18</sup> S.K. Sinha, 'Illegal Immigration into Assam,' quoted in Arun Chanda, 'Assam Governor asks Centre to seal Bangladesh border,' *Rediff on the Net* (13 February 1999); cf. Samudra Gupta Kashyap, 'Diminishing Assam Border? Governor writes to President,' *Indian Express* (17 December 1998); 'Bangla's "demographic attack" must be stopped: Thakre,' *Assam Tribune* (20 June 1999). Such ideas were not new: they were expressed by the Speaker of the Lok Sabha (Indian Lower House of Parliament) as early as 1961. Jha, *Indo-Pak Relations* (1972), 273.

<sup>19</sup> Ajoy Bose, 'Nation in migration,' *Time* (11 August 1997); Anindita Ramaswamy, 'BJP's Oust Bangladeshi drive hots up,' *Indian Express* (16 September 1998); 'Delhi police not up to "find and evict" task,' *The Times of India* (10 June 2000); Brajesh

Upadhyay, 'Police find the going tough in drive against Bangladeshis,' *The Times of India* (22 June 2000). Deportations have also been reported from Uttar Pradesh: 'UP police in N Bengal to send back 225 Bangladeshis,' *The Statesman* (7 October 1999). For an early use of the term 'physically pushing out,' by the Indian Home Minister in 1963, see Jha, *Indo-Pak Relations* (1972), 279.

<sup>20</sup> The government of Maharashtra claimed that it deported over 8,000 Bangladeshi 'infiltrators' between 1982 and mid-1998. In a twist to the drama, many of the deported claimed to be Muslims from West Bengal, and sympathisers tried to free them when trains reached railway stations in West Bengal, leading to exchanges of fire between Maharashtra and local policemen. The government of West Bengal also opposed the move. Rajasthan and Gujarat also deported suspected Bangladeshis. 'Joshi to deport Bangladeshis from Mumbai,' *The Daily Star* (13 October 1997); 'Bengal protests Maharashtra's action,' *The Hindu* (25 July 1998); 'Maharashtra to fight stay on deportation of "Bangladeshis,"' *Rediff on the Net* (27 July 1997); Dev Raj, 'Rights-India: Deportation of "Bangladeshis" targets Muslims,' *Inter Press Service* (3 August 1998); Udayan Nambodiri, 'Illegal Immigrants: Political Pawns,' *India Today* (10 August 1998); Kalyan Chaudhuri, 'Protest in West Bengal,' and R. Padmanabhan, 'The deportation drive,' *Frontline* (15-28 August 1998); 'India acts against alleged Bangladeshi infiltrators,' *BBC News* (4 February 1999).

<sup>21</sup> ISI (Inter-Service Intelligence) is Pakistan's foreign intelligence agency. Indian politicians and journalists often suggest that Bangladesh, wittingly or unwittingly, is helping Pakistani agents to enter Indian territory. 'Deportations of illegally residing aliens will continue, says Munde,' *Times of India* (10 April 1999).

<sup>22</sup> In 1964, Pakistani Foreign Minister Z.A. Bhutto stated: 'It is inconceivable that hundreds of thousands of Muslims ... would surrender the safety and security of their homeland in Pakistan to migrate with their women and children to the uncertainty and perils awaiting them in a hostile land beyond the border' (Jha, *Indo-Pak Relations* (1972), 276-277). But until 1982, 'while denying large-scale out-migration, Bangladesh at least took back infiltrators handed over by the Indian BSF. But after 1982, they refused pointblank.' Partha S. Ghosh, *Cooperation and Conflict in South Asia* (Delhi: Manohar, 1995), 84. In 2000, Sheikh Hasina Wazed, then the Prime Minister of Bangladesh, echoed Bhutto's statement when she declared on television: 'Why should Bangladeshis go to India?' [11 June 2000 #396]

<sup>23</sup> Ironically, in Bangladesh itself a parallel discourse of infiltration was developing at the same time. Here it was directed against the Rohingyas, cross-border migrants from Arakan (Burma) who sought refugee status. At least 100,000 of them, who were not housed in camps, were considered illegal, uncleared or residual refugees, or merely 'arrivals.' In 1999, at least 1,700 of them were in Bangladeshi jails on the charge of illegal border crossing. A Bangladeshi army officer expressed a much more general sentiment in government circles when he said: 'If caught, we are pushing the



infiltrators back or sending them to jails.' *The State of the World's Refugees: A Humanitarian Agenda* (Oxford: UNHCR/Oxford University Press, 1997), 254; '25 Rohingyas languishing in Chandpur jail,' *The New Nation* (27 October 1999); 'More Rohingyas infiltrating,' *The New Nation* (31 May 2000); 'Situation of Rohingya refugees in Bangladesh,' *The Newsletter Monthly – News and Analysis of the Arakan Rohingya National Organisation, Arakan (Burma)*, 2:2 (February 2000); Mohammad Nurul Islam, '70,000 Rohingya refugees waiting for enrolment as voters,' *The Independent* (13 May 2000).

<sup>24</sup> Partha Ghosh, 'Illegal immigration from Bangladesh – II,' *The Hindu* (12 August 1998); cf. 'Presence of illegal Bangladeshis denied,' *The Hindu* (3 August 1998); 'Bangladesh terms India's claim illogical,' *The Hindu* (22 August 1998); 'Push-in bid along border in Tetulia foiled,' *The Daily Star* (19 August 1998); 'Envoy summoned: Delhi urged to take steps to stop push-in attempts,' *The Daily Star* (26 August 1998); 'Dhaka not cooperating on deportation issue,' *Hindustan Times* (18 October 1998).

<sup>25</sup> For example, see a recent research paper on international migration from Bangladesh which gives details on the number of Bangladeshis in the UK, Japan, the Middle East, etc., but completely ignores the much larger emigration to India. Raisul Awal Mahmood, 'Emigration Dynamics in Bangladesh,' *International Migration*, 33:3/4 (1995), 699-726.

<sup>26</sup> As Mexican intellectuals did with *Chicanos* (Mexicans in the USA) in the late 1970s. See e.g. Michael Kearney, 'Transnationalism in California and Mexico at the end of empire,' in: Thomas M. Wilson and Hastings Donnan, *Border Identities: Nation and State at International Frontiers* (Cambridge: Cambridge University Press, 1998), 117-141.

<sup>27</sup> Sajal Nag, *Roots of Ethnic Conflict: Nationality Question in North-East India* (Delhi: Manohar, 1990).

<sup>28</sup> See Willem van Schendel and Aminul Haque Faraizi, *Rural Labourers in Bengal, 1880 to 1980* (Rotterdam: Comparative Asian Studies Programme, Erasmus University Rotterdam, 1984), 48-57; Willem van Schendel, 'Self-Rescue and Survival: The Rural Poor in Bangladesh,' *South Asia*, 9:1 (1986), 41-59.

<sup>29</sup> Passports and visas were introduced in 1952.

<sup>30</sup> In 1991, a question was put before the West Bengal Assembly whether the Bharatiya Janata Party (BJP)'s campaign plank of a large-scale influx of Muslims had any factual basis. In his response, the Chief Minister of West Bengal presented figures to show that of the 39,000 persons caught trying to enter India in the first half of 1991, 28,000 were Muslims. 'Basu opposes ration cards for infiltrators,' *The Statesman* (2 August 1991).

<sup>31</sup> See Ashok Swain, *The Environmental Trap: The Ganges River Diversion, Bangladeshi Migration and Conflicts in India* (Uppsala: Uppsala University, Department of Peace and Conflict Research, 1996).

<sup>32</sup> These massacres left more than 3,000 dead and over 400,000 homeless. Mohan Ram, 'Eyeball to eyeball: The issues that triggered the massacres in Assam State in February remain unresolved, and both sides are standing firm,' *Far Eastern Economic Review*, 120:20 (19 May 1983), 29.

<sup>33</sup> Arup Chanda, 'Basu asks Hasina to curb infiltration,' *Rediff on the Net* (29 January 1999).

<sup>34</sup> There were several agreements on the treatment of out-migrants, e.g. the Agreement between the Government of India and the Government of Pakistan dated the 8th April 1950 (Nehru-Liaquat Agreement).

<sup>35</sup> E.g. in Hili (a border crossing in Dinajpur/West Dinajpur) a fence put up by Pakistan in 1955 'with a view to preventing the free movement of smugglers, both Indian and Pakistani' elicited a protest from India (\*505).

<sup>36</sup> 'Borders will remain sealed,' *The Statesman* (26 September 1965). Emphasis added.

<sup>37</sup> By means of the Assam Accord between the Indian government and the leaders of the Assam movement. Earlier, in the 1960s, they had not been able to push Delhi beyond sanctioning 180 additional police watch-posts on the Assam-East Bengal border and erect barbed-wire fences in selected places. Another suggestion at the time, 'to clear a stretch of territory all along the border between Assam and East Pakistan so that the security forces of the State and the Centre might gain the mobility needed to prevent fresh infiltrations,' was never implemented. In the 1990s, the Indian government even went so far as to float a plan to settle 'the families of ex-servicemen and retired Indian soldiers' as a 10-km wide human belt along the borders; this plan was torpedoed by several border states. Jha, *Indo-Pak Relations* (1972), 280, 283; cf. 'Evacuation of border people, Union Plan makes little progress,' *The Statesman* (14 April 1965); Sanat K. Chakraborty, 'Human belt to control cross-border migration,' *The Northeast Daily* (23 November 1999).

<sup>38</sup> This project, budgeted at Rs. 3.7 billion in 1986 (revised to Rs.8.3 billion in 1992 and Rs.10.5 billion in 1998), involved the construction of 900 km of border fence, 2,800 km of border roads and 24 km of bridges along the Indo-Bangladesh border in the states of West Bengal, Assam, Meghalaya, Tripura and Mizoram. Twelve years later, according to government sources, 800 km of fence, 2,100 km of roads and 17 km of bridges had been completed, and the project was supposed to be completed by March 2001 (Bangladeshi sources reported that only 541 km had been fenced). In mid-1999, the government gave a new date of completion, 2001. Embassy of India (Washington D.C.), *Union Home Secretary chairs a high level empowered committee* ([www.indianembassy.org/](http://www.indianembassy.org/), 1998); 'Border incidents: BDR, BSF to hold meeting from Oct 24,' *The Daily Star* (12 October 1999); 'Centre to complete border fencing by 2007,' *Assam Tribune* (20 August 1999).



<sup>39</sup> Udayan Nambodiri, 'Illegal Immigrants: Political Pawns,' *India Today* (10 August 1998). In 1997 the Home Minister of Tripura said: 'There were repeated communications between the Centre and the State over the question of fencing the border with Bangladesh. In 1995-96, a stretch of 490 km was considered for fencing. This was duly communicated to us. But till date the budgetary provisions have not been cleared by the Centre.' Rakesh Sinha, 'Strife-worn Tripura banking on Gujral Government to come to its rescue,' *The Indian Express* (19 May 1997). As for Mizoram, as late as 1999 the fencing of its border with Bangladesh was still no more than 'under active consideration by the Home Ministry,' according to the Prime Minister of India. 'Plan to stop influx in NE soon: PM,' *Assam Tribune* (23 May 1999).

<sup>40</sup> President Ershad, quoted in Ghosh, *Cooperation and Conflict in South Asia* (1995), 85. Some Bangladeshi soldiers were killed and injured when they attempted to dismantle a fence which Indians were erecting along the border in Assam. Salamat Ali, 'Trouble flares up on Bangladesh border,' *Far Eastern Economic Review*, 124:18 (3 May 1984), 12.

<sup>41</sup> 'Bengal to take up border fencing,' *Rediff on the Net* (5 January 1999). The harmful effects of the fence on West Bengal border villagers were also brought up in the Indian parliament in 1996. *Lok Sabha Debates*, Session II, Budget (17 July 1996). On the India-Pakistan border, where 450 km were fenced, 380 fencing gates were made, of which 280 were operational in the late 1990s. To facilitate farming in the no man's land, a Border Security Force (BSF) spokesman explained, these gates would be opened one hour after sunrise and closed at 6 p.m. 'No cause for alarm over Indo-Pak border fencing gaps: BSF,' *Rediff on the Net* (7 March 1998). For a similar arrangement at the fenced stretch of border at Dhubri (Assam), see 'Breaching the frontiers effortlessly,' *The Hindu* (15 April 1998). Villages in 24-Parganas, West Bengal, challenged the building of the fence in the Calcutta High Court which 'ordered the local authorities to find a solution' [Ganguly, 19 September 1999 #397]. Groups of cattle smugglers were also reported to try to disrupt the construction of the fence, attacking BSF personnel in Malda with sophisticated weapons. 'Cattle smugglers attack BSF,' *The Statesman* (27 June 2000).

<sup>42</sup> B.G. Verghese, *India's Northeast Resurgent: Ethnicity, Insurgency, Governance, Development* (Delhi: Konark, 1996), 203; cf. 'Indo-Bangla border in Karimganj only in name,' *Assam Tribune* (31 August 1999); R. Dutta Choudhury, 'Dhubri border farmers live in India, till in Bangla,' *The Assam Tribune* (17 April 2000).

<sup>43</sup> Maseeh Rahman, 'Separated at Birth,' *Time* (11 August 1997).

<sup>44</sup> Rahman, 'Separated at Birth.' Cf. Nirmalya Banerjee, 'Stop influx from Bangladesh, says Assam governor,' *Times of India* (10 January 1999).

<sup>45</sup> *Asiaweek* (17 July 1998).

<sup>46</sup> Cf. Kearney, 'Transnationalism in California and Mexico.'

<sup>47</sup> B.G. Verghese, *India's Northeast Resurgent: Ethnicity, Insurgency, Governance, Development* (Delhi: Konark Publishers, 1996), 39. This was also the cut-off point enshrined in the Illegal Migrants (Determination by Tribunals) Act of 1983. Under this act the government of India agreed to detect and deport foreign nationals who entered Assam after that date (Mahanta, *The Tussle* (1986), 109). In 2000, however, an accord between the government in Delhi, the state government of Assam, and the major political party pushed that date back to 1951, causing a storm of protest and further confusion ('1951 to be cut-off year for indigenous peoples: AASU,' *The Sentinel* (12 April 2000); 'Indigenous definition sparks row in Assam,' *The Northeast Daily* (17 April 2000); 'Definition of indigenous people in '51 census report,' *The Assam Tribune* (3 May 2000)). For a brief overview of immigration legislation, see 'Assam's problem of foreign infiltration,' *Oriental Times*, 2:9-10 (7-21 July 1999).

<sup>48</sup> There was also a category of borderlanders who were genuinely unclear about their 'national' identity. In numerous villages 'the international border cuts right through the homes of villagers, putting them into a dilemma regarding their nationality.' 'Indo-Bangla border in Karimganj only in name,' *The Assam Tribune* (31 August 1999).

<sup>49</sup> 'Centre may repeal Migrants Act,' *Indian Express* (12 August 1997); 'Proposed amendment of Foreigners Act: Advani seeks in-depth study by Law panel,' *The Hindustan Times* (7 January 1999); Utpal Bordoloi, 'Cabinet to consider repeal of Illegal Migrants Act soon,' *Deccan Herald* (17 January 1999).

<sup>50</sup> Dasgupta, 'Thinking with the head,' *The Daily Star* (6 May 1999). According to an Assamese M.P., however, between 1996 and 1999 about 250,000 Bengalis and Nepalis were singled out as foreign nationals under the act. The Assam government sought court permission for their deportation but the courts identified only 4,000 of them as foreigners. According to the governor of Assam, 9,600 persons had been identified as foreigners since 1983. 'Move to annul IMDT Act: Fresh Plot to deport Bengalees from Assam,' *The New Nation* (25 February 1999); Kashyap, 'Diminishing Assam Border?' *Indian Express* (16 December 1998).

<sup>51</sup> 'Centre, 5 states to file affidavits on immigrants,' *Assam Tribune* (13 July 1999); 'Problem of infiltration worse in Bengal: Joshi,' *Hindustan Times* (2 August 1998); Nambodiri, 'Illegal immigrants'; '1.5 crore Bangla aliens in country,' *The Assam Tribune* (12 May 2000).

<sup>52</sup> Alope Banerjee, 'Where two nations slip into each other,' *The Statesman* (29 May 1993).

<sup>53</sup> As early as 1964, the Indian Home Minister proposed issuing identity cards to all inhabitants of the border areas of Assam. Jha, *Indo-Pak Relations* (1972), 280. George Iype, 'To weed out illegal immigrants, government plans to issue I-cards for Indians and foreign nationals,' *Rediff on the Net* (13 June 1997). For the failure of a similar identity card project started in 1989 on the Pakistan



border, see Mihir Mistry, 'Thin dividing line raises identity issues,' *Times of India* (19 June 1999).

<sup>54</sup> 'Breaching the frontiers effortlessly,' *The Hindu* (15 April 1998); cf. Anil Maheshwari, 'The face behind the mask,' *Sunday* (15 August 1998). Another technique, allegedly practiced in Karimganj district (Assam), was for Bangladeshi women to cross the border and give birth in India, thereby automatically conferring Indian citizenship on their babies. 'Citizenship by labour!' *The Sentinel* (5 April 1997).

<sup>55</sup> Maheshwari, 'The face' (1998).

<sup>56</sup> See e.g. the description of Nabinagar village, straddling the border the Nadia/Kushtia border, in Banerjee, 'Where two nations' (1993).

<sup>57</sup> Chandan Nandy, 'Voter passport for infiltrators,' *The Telegraph* (30 August 1999).

<sup>58</sup> In early 1964, 'special officers with a judicial background were appointed to scrutinize cases of Pakistani infiltrators' and later that year statutory tribunals were introduced under the Foreigners' (Tribunals) Order 1964. Employing a term from the anti-colonial movement, the Indian authorities referred to the orders they served on suspected infiltrators as *Quit India* notices. 'Assam Expels More Than Half of 220,000 Infiltrators,' *The Statesman* (28 July 1965).

<sup>59</sup> Namboodiri, 'Illegal immigrants' (1998); Ramaswamy, 'BJP's Oust Bangladesh drive hots up' (1998); 'Joshi to deport Bangladeshis from Mumbai,' *The Daily Star* (13 October 1997). West Bengal Chief Minister Jyoti Basu stated that illegal settlers from across the border were 'a major headache for many Indian cities.' Chanda, 'Basu asks Hasina' (1999).

<sup>60</sup> Namboodiri, 'Illegal immigrants.'

<sup>61</sup> 'Bengalipura reels under fear of midnight knock,' *Hindustan Times* (30 July 1998).

<sup>62</sup> Maheshwari, 'The face.'

<sup>63</sup> According to West Bengal's Home Minister, 'Bengal to take up border fencing,' *Rediff on the Net* (5 January 1999); 'Beyond the courtesies,' *The New Nation* (26 November 1998).

<sup>64</sup> 'Dhaka not cooperating on deportation issue,' *Hindustan Times* (18 October 1999).

<sup>65</sup> At the same time the All-Assam Students' Union demanded that people living in the no-man's land be 'cleared' and relocated, that Indian border guards be authorised to shoot on sight anyone found in the no-man's land, and that patriotic Assamese youths be recruited into a 'second line of border forces.' 'Centre to complete border fencing by 2007,' *Assam Tribune* (20 August 1999); 'Mizoram for infiltration prevention force,' *Assam Tribune* (5 July 1999); 'AASU for strict surveillance along border,' *The Telegraph* (26 August 1999); 'Border fencing work not satisfactory: AASU,' *Assam Tribune* (26 August 1999); 'Centre tells State Govt: Strengthen second line of defence along border,' *Assam Tribune* (1 June 2000).

<sup>66</sup> See e.g. Katy Gardner, *Global Migrants, Local Lives: Travel and Transformation in Rural Bangladesh* (Oxford: Clarendon Press, 1995); 'The Little Bangladeshes,' *Indian Express* (6 August 1998); 'Bangladeshi youths struggling for a livelihood in Italy,' *Daily Star* (26 July 1999).

<sup>67</sup> The complex migration patterns across South Asian borders are little studied. For example, large numbers of Rohingya Muslims from Arakan (Burma) are known to have migrated through Bangladesh and India to Pakistan, and from there to the Gulf countries, where over 200,000 were thought to reside in the 1990s. Bertil Lintner, 'Distant exile: Rohingyas seek new life in Middle East,' *Far Eastern Economic Review*, 156:4 (28 January 1993), 23. On Bengali migration through India to Pakistan, see Arun Sharma, 'Bangla infiltrators go scot-free, courtesy J&K police,' *Indian Express* (11 June 1998). According to the Indian government, over 3,800 Bangladeshis were apprehended at the India-Pakistan border between 1997 and 2000. 'Lok Sabha told: 3846 Bangladeshis held along Indo-Pak border,' *The Daily Star* (26 April 2000). Cf. S.K. Ghosh, *Unquiet Border* (New Delhi: Ashish Publishing House, 1993), 100.

<sup>68</sup> As well as 200,000 Burmese, many of whom were Muslim Rohingyas from Arakan who crossed three borders to reach Karachi. Sumit Ghoshal, 'Barrier to cross-border flesh trade sought,' *Indian Express* (16 May 1997).

<sup>69</sup> Maseeh Rahman, 'Separated at birth,' *Time* (11 August 1997).

<sup>70</sup> Sharma, 'Bangla infiltrators go scot-free' (1998); cf. '48 Bangla nationals held on Indo-Pak border,' *Hindustan Times* (18 February 1999); Sanghamitra Chakraborty, 'Agents take Bangladeshis for a ride - to Pakistan and detainment,' *Times of India* (3 May 1998).

<sup>71</sup> Namboodiri, 'Illegal immigrants'; cf. Padmanabhan, 'The deportation drive.'

<sup>72</sup> Maheshwari, 'The face'; 'The Little Bangladeshes' (1998); cf. S.K. Ghosh, *Unquiet Border* (New Delhi: Ashish Publishing House, 1993), 36.

<sup>73</sup> In the late 1990s, Bangladeshi migrants had to pay agents about US\$100 to get to Pakistan and about \$4,500 to get to Europe. Chakraborty, 'Agents' (1998); 'Bangladeshi youths struggling' (1999).

<sup>74</sup> Cases of trafficking of children within East Bengal were not unknown. In 1949, in reply to an Assembly question, it was revealed that young boys, kidnapped from eastern districts of East Bengal, were sold to 'ghatu hunters' from Sylhet who turned them into *ghatus* (dancing boys) (\*281; cf. *East Pakistan District Gazetteers: Sylhet* (Dacca: Government Press, 1971), 114).

<sup>75</sup> Fieldnotes 1988.\* Cf. Kalpana's testimony in Carolyn Sleightholme and Indrani Sinha, *Guilty without Trial: Women in the Sex Trade in Calcutta* (Calcutta: Stree, 1996/New Brunswick, N.J.: Rutgers University Press, 1997), 18-19, cf. 34-51; and women's testimonies in Vorasakdi Mahatdhanabol (ed. by Pornpimon



Trichot), *Chinese Women in the Thai Sex Trade* (Bangkok: Institute of Asian Studies, Chulalongkorn University, 1998); *Red Light Traffic: The Trade in Nepali Girls* (Kathmandu: ABC/Nepal, 1996).

<sup>76</sup> 'Border crime on the rise in West Bengal,' *The Statesman* (15 April 1992). Numerous newspaper reports attest to the fact that women played a prominent role as agents in the trafficking of women and children from Bangladesh.

<sup>77</sup> According to the Bangladesh National Women Lawyers Association, about 500 Bangladesh women were illegally transported to Pakistan every day in early 1999. A Pakistani lawyers group estimated that there were over 200,000 undocumented Bangladeshi women in Pakistan in 1998. Nadeem Qadir, 'Experts warn of rising child prostitution in Bangladesh,' *Daily News* (3 February 1999); *Asian Migration News* (15 January 1998).

<sup>78</sup> E.g. 'Child traffickers held with 2 babies,' *The Independent* (8 July 1999); 'Trafficking in children on the rise in Nilphamari,' *The Independent* (19 July 1999); P.T. Jyoti Datta, 'Bid to check child trafficking through Indo-Bangla border,' *Business Line* (1 June 1999). Children of Muslim Rohingyas (refugees from Burma in Bangladesh), were thought to be especially targeted by child traffickers. *Asian Migration News* (15 October 1998).

<sup>79</sup> '27,000 Bangladeshis trapped in Indian brothels,' *Dawn* (8 April 1998). According to a United Nations report, around 300,000 Bangladeshi children were sold to Indian brothels in the mid-1990s. *The Daily Star* (15 December 1998).

<sup>80</sup> Despite the outlawing of this notorious practice in 1993. *Bangladesh Human Rights Practices, 1995* (Washington, D.C.: United States Department of State, 1996); 'Court overload traps "camel boys" in home,' *South China Morning Post* (14 August 1998); 'Rescued Bangladesh boys return home,' *The Hindu* (20 February 1998).

<sup>81</sup> I.e. between about \$25 and \$125. '27,000 Bangladeshis trapped' (1998); Sanghamitra Chakraborty, 'Repatriated Bangla children may never see their real families again,' *Times of India* (19 April 1998).

<sup>82</sup> At the Benapol-Bongaon border crossing 'local auto-rickshaw drivers, handling agents and small hotel-keepers reported that men accompanying girls and women across the border [were] a common sight, and that these men did not even bother with forged documents, they handed over the money quite openly as they came across the border.' Sleightholme and Sinha, *Guilty without Trial*, 42.

<sup>83</sup> Shib Sankar Chakraborty, 'Special Report to Dhaka: Report to Bangladeshi High Commission on Trafficking of Women,' *Anrita Bazar Patrika* (9 April 1989), cited in Sleightholme and Sinha, *Guilty without Trial*, 42.

<sup>84</sup> 'Trafficking in children on the rise in Nilphamari' (1999); 'Bangla touts arrested,' *The Telegraph* (13 May 1999); '8 Bangla guardians held for child trafficking,' *The Telegraph* (27 April

1999); 'One caught while trafficking girl child,' *The New Nation* (24 April 1999).

<sup>85</sup> Faruque Ahmed, 'Dalals charge Rs 200 to 500 to facilitate illegal entry of people from Bangladesh to India: "Infiltration business" along Indo-Bangla border in Dhubri,' *The Northeast Daily* (23 February 2000). Ghosh singles out Muslim organisations in India as helping 'infiltration' from Bangladesh 'rather than safeguarding national interest.' He gives no evidence to support his claim. Ghosh, *Unquiet Border*, 18, 20.

<sup>86</sup> 'The Little Bangladeshes' (1998).



# Towards the Construction of an Empowered Subject: A Human Rights Analysis of Anti-Trafficking Legal Interventions and Trends in South Asia

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*The pain in your shoulder comes  
You say, from the damp; and this is also the reason  
for the stain on the wall of your flat.  
So tell us where the damp comes from?*  
Bertold Brecht

## I. Introduction and Context

This simple and precise Brechtian query serves as a directive to all engaged in social enquiry and justice to go to 'the heart of the matter'. And what is the heart of the matter in regards to the issue of trafficking of persons<sup>1</sup> in South Asia?

An attempt to address the problem of trafficking in South Asia or anywhere else consists of three dimensions. The first is related to the efforts of the criminal justice system to apprehend, prosecute and penalize traffickers; the second is concerned with providing redress to trafficked persons by way of care and support as well as viable and sustainable livelihood options which will further the process of reintegration; and the third dimension involves prevention of trafficking at source by addressing its root causes.

This paper is presented in the spirit of a broad stocktaking exercise of the anti-trafficking strategies and initiatives in South Asia from an integrated perspective of human rights, gender and development. Given the overall theme of this session, greater emphasis will be placed on critically analyzing the core of legislative and policy directions, which inform the criminal justice system in the region. The fundamental query determining this analytical perspective is: To what extent are anti-trafficking measures in South Asia leading to the empowerment of affected persons? In other words, what is the impact of these measures in terms of the construction of an empowered subject?

It is argued that notwithstanding the gains secured as a result of anti-trafficking interventions in the region over the past years, certain major gaps remain<sup>2</sup>. In fact, either by omission or on account of an inadequate understanding of the issues, not only are some of these gaps being reinforced but may actually be having an impact which is quite contrary to the stated objectives of most stake-holders in the anti-trafficking arena. *In regards to certain interventions, particularly in the overall arena of legislative reform in the region, we are actually witnessing the creation of a disempowered subject rather than an empowered one.* This is happening through an inadvertent and often subtle erosion of the basic constitutional and human rights of the trafficked person in an ostensible attempt to actually protect her from abuse and

<sup>1</sup> While it is my view that any legislation or instrument on the issue of trafficking should be gender neutral, the paper will focus primarily on the trafficking of women as well as children simply because these two categories are consistently clubbed together in all major anti-trafficking initiatives and interventions in South Asia. This analysis will also focus primarily on Nepal, Bangladesh and India.

<sup>2</sup> There is no denying that several noteworthy gains have been made in the struggle to address the trafficking of women and girls in South Asian countries, least of all the high profile that this issue has come to acquire in the arena of social justice work. This analytical critique is offered in the spirit of engaging in collective thinking with fellow travelers for the purpose of 'moving on and beyond' on a serious and pressing social issue.

harm. Such an impact, which is contradictory to and at cross-purposes with the objectives of the anti-trafficking initiatives, needs to be rigorously examined. Such an impact also demonstrates a limited understanding as well as application of the human rights framework on the part of various anti-trafficking advocates and policy makers.

## **II. Persisting Problems**

Some of the major problems which continue to impede a deeper and thorough understanding of the issue of trafficking are:

- Absence of a commonly accepted definition of trafficking;
- Serious lack of conceptual clarity resulting in confusion between migration and trafficking, and trafficking and prostitution;
- Understanding and interventions on trafficking are limited only to prostitution, and seldom expand to include other purposes such as forced labour, forced marriage and servitude;
- Serious paucity of comprehensive data, and lack of a rigorous methodology for gathering reliable quantitative and qualitative data on trafficking;
- Persistent conflation of women and children in anti-trafficking strategies, laws and interventions;
- Partial knowledge of the clutch of vulnerabilities faced by marginalized women and girls, particularly of the manner in which these vulnerabilities intersect, resulting in harms such as trafficking;
- Limited knowledge of the interconnection between various harms, such as trafficking and HIV/AIDS;
- Limited experience with translating human rights into reality and operationalising them via programs. Even lesser experience with juggling competing rights, and anticipating their impact in advance.
- Limited deployment of strategies which maximize effective involvement, participation and ownership of affected communities;
- Striking absence of human rights principles in the ever increasing drastic provisions included in laws which have been drafted for the prevention of trafficking.

### **II.1. The Definition Impasse**

Until very recently, there was no comprehensive international definition of trafficking whose basic tenets were acceptable to state parties and key players. Finally, the impasse appears to have been broken, at least formally.

*Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve 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 {interpretative note (64)}<sup>3</sup>, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*

<sup>3</sup> Interpretive note (64): “the travaux préparatoires should indicate that the Protocol addresses the exploitation of prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms ‘exploitation of the prostitution of others’ or ‘other forms of sexual exploitation’ are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws”. UN Crime Commission Documents and the Protocol on Trafficking can be located at: <[http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents/index.htm](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents/index.htm)>



**UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, November 2000.**

A commonly agreed upon definition is now contained in the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime* which was adopted by the General Assembly in November 2000 and opened for signature the following month. Eighty-one countries have signed the Protocol, to date. Since the UN definition is very recent its impact will only be realized once it begins to be applied and tested.

Similarly, only recently has the international community recognised the need to expand the definition of trafficking to include purposes other than prostitution, such as, forced labour, forced marriage and slavery-like practices<sup>4</sup>. This is also reflected in the new UN Protocol on trafficking. As well, an acknowledgement of the key understanding that trafficking is a problem of human rights violation and not of law and order or public morality related to prostitution, is also of recent origin. The UN Office of the High Commissioner of Human Rights, The UN Special Rapporteur on Violence Against Women, UNICEF, the ILO and the IOM have all adopted definitions of trafficking which are more inclusive and based upon an understanding of the human rights framework.

This is a welcome step as the first hurdle, namely, of naming the problem, appears to have been finally crossed. This first step is further reinforced by the *Victims of Trafficking and Violence Protection Act of 2000*, passed by the US Congress. The US State Department has recently released its first report on trafficking

*Severe Forms of trafficking in Persons defined as:*

*(a) Sex trafficking in which commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.*

**Victims of Trafficking and Violence Protection Act 2000, The United States of America**

which evaluates the performance of 82 countries, placing each country in one of three tiers based upon its domestic efforts to meet the US Act's minimum standards for the elimination of trafficking<sup>5</sup>. Countries, which fully comply with the Acts minimum standards to combat trafficking, have the privilege of appearing in tier one. All of the major South Asian countries, which have a trafficking problem, with the exception of Pakistan, feature in tier two; Pakistan has been placed in tier three. Tier two consists of countries whose governments are making "significant efforts to bring themselves into compliance" with the minimum standards stipulated in the Act, and Tier three includes 23 countries who are deemed to be lagging behind in complying with the minimum standards to address the problem of trafficking. If these countries are still in Tier three in the year 2003 Report, they may be subject to certain sanctions, which would include non-humanitarian, non-trade related assistance. The minimum standards spelt out involve prohibiting trafficking, proscribing punishments

<sup>4</sup> See the Beijing Platform for Action, 1995, Strategic Objective D3 130 (b), which states "... trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages and forced labour".

<sup>5</sup> The US report on trafficking in persons was released on July 12, 2001. This report as well related press briefings and other information are available online at: <http://www.state.gov/g/inl/rls/tiprpt/2001>



commensurate with the crime and providing a range of protective services for the affected persons. Notably, the US has sifted the countries examined into categories but stayed clear of placing itself in any of tiers.

Considering this important development and shift towards newer, relatively more widely acceptable and inclusive definitions of trafficking could it be assumed that some of the endemic problems related to a lack of clarity inherent thus far in the concept of trafficking would be eradicated? In other words, have the principal persisting problems, namely, conflation of trafficking with migration on the one hand and with prostitution on the other been adequately addressed? Have appropriate and sound ground principles been laid down to ensure that at no event are the human rights of trafficked women and girls compromised? Considering that adults are accorded greater agency and consensual participation in a range of activities in comparison to under-age persons, have the categories of women and children been separated in these documents? Have adequate monitoring mechanisms been established to ensure that laws spawned or supported by these guiding templates do not deviate from fundamental human rights principles?

It is crucial to examine both the UN Protocol on Trafficking and the US Act, however briefly<sup>6</sup>, from the standpoint of the questions raised because these two documents do indeed provide a framework, an impetus, and a template for anti-trafficking legislative and policy initiatives to the global community. They also carry the power to elicit if not demand accountability from nation states. The implications contained in these two overarching documents for strategic interventions within the context of South Asia will be discussed subsequently.

## **II.2. The Equation Impasse**

While the definition impasse has been touched upon, at least in theory, by the US Act and the UN Protocol through more inclusive definitions of trafficking, no methodological guidelines are included for making clear distinctions between trafficking and migration or trafficking and prostitution. It is doubtful therefore, that the equation impasse (trafficking=migration; trafficking=prostitution) will be overcome or even addressed in any substantial manner.

The US State Department's recent report on trafficking has already been criticized by the Women's Rights Division of Human Rights Watch (HRW) for concentrating primarily on trafficking for "sexual exploitation" to the exclusion of trafficking into other forms of forced labour. HRW states that the report "confirms what human rights activists and experts on trafficking already know: that governments around the world treat victims of trafficking as undocumented migrants, criminals, or both. Governments should be offering protection to these victims, not hitting them with prosecutions."<sup>7</sup> The US Act views trafficking as a problem of 'migration, economics, labour, public health and human rights'<sup>8</sup>. Among its seven criteria for "serious and sustained efforts to eliminate trafficking", this Act ascertains whether governments "monitor immigration and emigration patterns for evidence of trafficking, and whether law enforcement agencies respond appropriately".<sup>9</sup> In terms

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<sup>6</sup> For a detailed discussion of the UN Protocol and the US Act see Ratna Kapur, "Tricks and the Law: Legal Regulation of Trafficking, Sex Work and Migration", paper presented at this current conference.

<sup>7</sup> Human Rights Watch's response to the US trafficking report can be accessed at the following site: <http://www.hrw.org/press/2001/07/traffick-0712.htm>

<sup>8</sup> Victims of Trafficking and Violence Protection Act of 2000, H.R. 3244, 106<sup>th</sup> Cong. S. 102 (a). For a detailed discussion of the US Act see Ratna Kapur. Supra note 6.

<sup>9</sup> US Department, Trafficking in Persons report, Supra note 5 at 7.



of monitoring mechanisms of protection measures for women and girls affected by trafficking, the US report has been criticized for glossing over the problems of state complicity and corruption.<sup>10</sup>

The trafficking *Protocol Supplementing the UN Convention against Transnational Organized Crime* presents similar problems of lack of clarity in the actual translation of the definition of trafficking into programmatic interventions. The definition of trafficking fails to distinguish between trafficking and smuggling, implying that trafficked persons would receive the same treatment as illegal migrants. It foregrounds prostitution, albeit with an interpretive note, among the sites of trafficking and considers the consent of the 'victims' irrelevant. Importantly, the Protocol does not require State parties to provide any redress measures or services to trafficked persons.

Both these documents have also failed to make a distinction between the trafficking of women and children. This again is highly regrettable. In commenting upon the SAARC Draft Convention which reflects identical problems as the two documents discussed above, the UN Special Rapporteur on Violence against Women in a recent report states, "The legal regime surrounding women should be based on a framework of rights and the concept of coercion when it comes to trafficking. The legal regime with children must be completely different".<sup>11</sup> The issue of consent for children with regards to certain arena of work including sex work is irrelevant. This is in accordance with the *Convention on the Rights of the Child* (CRC), whereas treating women like children or in accordance with similar norms infantilizes women and denies them both their right to autonomy and to make decisions. "Some women may have been trafficked while they were under age. In such a case a woman should be "entitled to a legal remedy for any harm she may have endured as a child, whether it is in the form of child sexual abuse, slave labour, or coerced work while still a minor. Providing such remedies is different from setting up a legal regime that treats all women like children".<sup>12</sup>

*The UN Convention with its Trafficking Protocol* and the *US Act*, both products of this new millennium, have apparently not been able to surmount the conceptual impasse of equating disparate categories; trafficking with migration and prostitution. This is indeed unfortunate. Once again, measures to curb trafficking will be mired by the same confusions and lack of focus. This in turn implies that data on trafficking might continue to churn up figures of 'victims' of trafficking which are either astronomical since all migrants will be counted as trafficked persons, or unreliable on account of merely being a function of the fancy of the particular researcher.

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<sup>10</sup> Human Rights Watch, Supra note 7.

<sup>11</sup> Radhika Coomaraswamy: Addendum, Mission to Bangladesh, Nepal and India on the issue of trafficking of women and girls (28 October-15 November 2000), Integration of Human Rights of Women and the Gender Perspective: Violence against Women, Report of the Special Rapporteur on Violence against women, its causes and consequences, in accordance with the Commission on Human Rights resolution 2000/45: GE. 01-10865 (E)

<sup>12</sup> See Jyoti Sanghera and Ratna Kapur, Report on **Trafficking in Nepal: Policy Analysis – An assessment of laws and Policies for the Prevention and control of trafficking in Nepal**, at 24 (Sponsored by the population Council, New Delhi and the Asia Foundation, Nepal)



### **III. At the heart of the Matter...**

If the direction of legal reform to curb the trafficking of women and girls in the international arena while ostensibly appearing to be promising, has failed to root out persisting malaise and confusions, what are the actual ground realities in South Asia? What lies at the heart of the matter in relation to the problem of trafficking in South Asia?

#### **III.1. The New Movers and Shakers**

In the contemporary reality of south Asia, women and increasingly young girls, are the new migrants and the new movers and shakers. Traditional as well as ongoing male out migration for employment, together with increasing insecurity of food and sustainable livelihoods, has pushed women and girls into assuming key roles as income earners for their families. Therefore, increasingly larger numbers of women, girls and young people are migrating in search of gainful employment to labour markets in urban centres of their own or neighbouring countries. Limited access to the public world and safe channels for mobility, as well as the lack of recourse measures and legal and social protection for women and minors intensify their vulnerability to various harms in the process of migration, including trafficking.

In recent years, the emerging profile of a trafficked person is one of a young female migrant. Regular, legal and safe migration possibilities have decreased the world over due to restrictive migration and immigration policies of countries of transit and destination. This has given rise to a growing market for irregular migration services. Trafficking is an outcome of the need for people to migrate on the one hand and the growth of services in the migration market on the other, including exploitative and violative practices.

*"Women move and are moved, with or without their consent, for a variety of reasons. Trafficking in women must be comprehended within the continuum of women's migrations. All persons, including women, have a fundamental right to freedom of movement and mobility, and this right must not be compromised. Trafficking in women however, is a coercive form of movement, which must be prohibited since it involves the use of force, abuse, violence, deception and exploitation. These abuses are not inherent to the migration process".<sup>13</sup>*

In order to understand the interlinkages between migration and trafficking, some fundamental factors need to be grasped<sup>14</sup>. It cannot be overstated that this linkage is critical to any policy, legal or other programmatic intervention on trafficking. It is precisely an erroneous understanding of this connection, which is responsible for ineffective and faulty legislation and programmes.

Until recently, in research and policy interventions on migration there was a virtual absence of gender as an analytical category. This exclusion of "women" was based on the assumption that women are too traditional and culture-bound to migrate or that they migrate only as family followers or associational migrants for family reunification. With the changing face of migration and its gendered contour, women are moving not only as members of families but as independent persons for a variety of reasons. *Acting voluntarily to migrate has been recently recognized as a measure and indicator of women's empowerment by gender and development experts and the*

<sup>13</sup> See Jyoti Sanghera and Ratna Kapur, Supra note 12, at 7.

<sup>14</sup> For a detailed discussion see Jyoti Sanghera, **From Risks to Rights: Migration, trafficking of Women and Girls, and their Vulnerability to HIV/AIDS in South Asia**, A Regional Strategic Framework; at 4, UNDP Regional Project on South and Southwest Asia, New Delhi, 2000



*World Bank*. It is argued that women are traditionally and notionally assigned the sphere of the private and domestic realm and excluded from the public world of travel and trades due to their historical disadvantage arising out of the sexual division of labour. In the context of this notional confinement, when women seek to move to better their existing situation then this is to be viewed as an exercise of agency. It has also been acknowledged that exposure and increased ability to negotiate structures of power in the public world amounts to women's empowerment through enhancing their awareness and negotiating skills.

The conditions under which migration occurs determines whether a woman or girl will feel empowered or victimized at the end of this process. If she migrates consensually within or across borders into a situation of work or personal arrangement of which she had full knowledge, then she has succeeded in exercising her agency and right to freedom of mobility with a positive outcome. If, on the other hand, a woman's need or wish to migrate is facilitated through the use of coercion, abuse or deception and the entire chain of events, from recruitment and transport to the end purpose, is exploitative then the woman has been trafficked. As states elsewhere by the author, "trafficking is the process of transforming an agent into a victim within the context of migration. It is an outcome of migration and one of its most heinous form. The equation between trafficking and migration is such that all trafficked women and girls are migrants as well but all migrants are not trafficked".<sup>15</sup>

### **III. 2. Migrants and Vagrants – How Many of Them?**

There is a persistent panic over the growing menace of trafficking in South Asia which has reportedly claimed hundred of thousands of 'innocent victims' each year; their numbers are supposed to be ever increasing.

*"The root causes of migration and trafficking greatly overlap. The lack of rights afforded to women serves as the primary causative factor at the root of both women's migrations and trafficking in women. While such rights inevitably find expression in constitutions, laws and policies, women nevertheless continue to be denied full citizenship because governments fail to protect and promote the rights of women (...) By failure to protect and promote women's civil political, economic and social rights, governments create situations in which trafficking flourishes".*

**UN Special Rapporteur on Violence against Women, February 2000<sup>16</sup>**

And yet, the statistics doing the rounds for several years have remained unchanged. The figure of 5000-7000 Nepali girls trafficked into India each year, and 150,000-200,000 of them in Indian brothels has remained unaltered over the past 15 years.<sup>17</sup> When trafficking is conflated with migration and prostitution, then it logically follows that the number of women and girls confined to the sex industry or the number of female migrants will also be counted as the 'victims' of trafficking. And considering the fact that due to several structural and socio-economic causes the

<sup>15</sup> See Jyoti Sanghera, Supra note 14, at 5.

<sup>16</sup> Economic and Social Council, Integration of Human Rights of Women and the Gender Perspective: Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms Radhika Coomaraswamy, on trafficking in women, in accordance with Commission on Human Rights resolution 1997/44, E/CN. 4/2000/68, February 2000, at para 50.

<sup>17</sup> The article which first published these statistics was written by Dr. I.S. Gilada of the Indian Health Association in Mumbai, and was presented at a workshop in 1986. Subsequently, a version of this piece was published in the Times of India, January 2, 1989. These figures have since then been recycled by innumerable reports and articles on trafficking in Nepal.



phenomena of migration is growing in South Asia<sup>18</sup>, the inherent logic of equating migration with trafficking and prostitution will automatically lead to the conclusion that trafficking too is on the increase. This fallacious logic continues to impede the development of a sound methodology, which will enable researchers to ascertain the reality of trafficking through rigorous and reliable data. The practice of resorting to and recycling numbers generated by unsound methods or speculation has proved detrimental to the anti-trafficking agenda. It is in this field that indicators and tangible variable are most urgently needed.

#### **IV. Regimes of Disempowerment: When Law is Part of the Problem**

“ Courts, laws and law enforcers cannot and do not protect us from harm – on the contrary, we need to be protected from the law”. This was the response to me, a few years ago, of a trafficked woman who had been detained and held in custody on charges of prostitution and illegal migration. The principal impetus driving anti-trafficking legislation and policies is to identify and assist only the “innocent victim”. A trafficked woman who has been part of the sex trade, albeit under duress, and who has crossed borders of her own volition is not considered as an innocent victim, and therefore, is not worthy of assistance. Her assistance-worthiness will have to be established and the onus to do so is on the trafficked person. Such are the provisions or tendencies contained in a majority of anti-trafficking legislation and acts, including the *US Act* and the *UN Protocol on Trafficking*.

Increased awareness of trafficking, heightened global discourse around it, and indeed, pressure from international and local communities in recent years have led most South Asian governments to consider legislation to address the problem. There is also a regional instrument, *The SAARC Draft Convention on Trafficking*<sup>19</sup>, awaiting finalization at the perpetually postponed SAARC Summit. On a mission in October-November 2000, to Bangladesh, Nepal and India to review the progress on the prevention of trafficking, the UN Special Rapporteur on Violence against Women lauded the political will of the governments to address this problem but was “deeply concerned” that the laws on the anvil were “unduly harsh and violated basic principles of human rights law”.<sup>20</sup>

The UN Special Rapporteur lauded the Plan of Action of the Nepalese government as being a comprehensive policy document on trafficking but came down very heavily on the current draft of the *Traffic in Human Beings (Offences and Penalties)* Act 1999 prepared by the Ministry of Women and Social Welfare. Labeling it “draconian”, the UN Special Rapporteur concluded that, “the bill appears to have been drafted from a law and order perspective without consideration for the human rights either of the perpetrator or of the victim”. Expressing dismay at the criminalization of prostitution in the Draft for “the first time in Nepal”, the UN Special Rapporteur states:

...modern legislations have all advocated that prostitution not be criminalized and that only the exploitation in prostitution should be criminalized. This is because experience has shown that

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<sup>18</sup> There is no serious or rigorous study of the sex industry in any of the South Asian countries. Therefore, the assumption by some activists of the expansion of the sex industry is not supported by any evidence-based analysis. However, activists and advocates in some areas may report a growth in a particular red light area whereas those working in other areas have also reported reduction.

<sup>19</sup> For detailed discussion of the SAARC Convention, see Jyoti Sanghera and Ratna Kapur, *Supra* note 12 at 26, and Ratna Kapur, *Supra* note 6 at 4.

<sup>20</sup> *Supra* note 11 at para 38.



criminalization of prostitution results in the double victimization of the woman concerned, as she, and not the traffickers, becomes the main target of police action. This provision is a major step backwards for Nepal and will create great hardship for the women concerned.<sup>21</sup>

The Nepalese Draft aimed at eradicating trafficking is further flawed because it undermines its own main objective by attempting to address a host of issues in one general law, including rape, child sexual abuse, pornography, prostitution and trafficking. This bill foregrounds a moralistic approach over the protection and promotion of the human rights of trafficked persons by strong emphasis on safeguarding the "interest of general public" and maintaining "good conduct".<sup>22</sup> This new bill also gives special powers to the police to arrest, detain, search and seize. Expressing concern the UN Special Rapporteur holds that given the measure of impunity with which police forces everywhere act, this law would result in the "harassment of innocent people as well as victims" on account of its provisions for preventive detention, shifting the burden of proof on the accused, and the power to arrest without warrants.<sup>23</sup>

Bangladesh too is on the path of legislating "draconian laws" with the application of the death penalty for a range of crimes against women including trafficking, rape, acid throwing, burning and dowry violence. These provisions are contained in the *Suppression of Violence against Women and Children Act 2000*. Other laws such as the *Suppression of Immoral Trafficking Act of 1993*, which provides severe penalties for forcing women and children into prostitution, and the *Women and Children Oppression Act of 1995*, are relevant for our purposes. However, all of these laws club women and children together, grant immense powers to the police, and advocate very stiff penalties. The positive fall-out of these stringent measures is that, according to government reports, there are fewer delays in trying cases related to women due to the provisions for special tribunals. The tribunals also provide for safe custody of the women during the trial period. However, since the introduction of the new laws with their drastic penalty of death, there have been very few convictions. The US report on trafficking found that only three traffickers were convicted in Bangladesh in the year 2000 under all the combined laws.<sup>24</sup> Under the Oppression Act of 1995, 7,000 cases were registered and only 21 convictions obtained. On account of the severe penalties prescribed, judges are hesitant to convict on grounds of inconclusive evidence and traffickers are usually charged for lesser crimes such as illegal border crossing.

The major legal framework addressing trafficking in India is the *Immoral Traffic Prevention Act of 1986 (ITPA)*. This Act is based on the 1949 UN Convention wherein prostitution is not illegal in India but soliciting and exploiting prostitution are considered offences. ITPA was recently amended to shift the presumption of guilt onto the accused for minors in brothels found to be sexually abused after medical examination. The government is further seeking to amend or replace ITPA in order to increase penalties for traffickers and extend victim assistance. ITPA is supplemented by provisions of the Indian Penal Code, 1860, which includes offences such as, abduction, wrongful confinement, slavery and forced labour, and sexual offences. In addition, the Juvenile Justice Act of 1986 is also relevant to the issue of trafficking. ITPA provides for the appointment of a special police officer of a high rank to oversee and take forward anti-

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<sup>21</sup> Supra note 11, at para 39.

<sup>22</sup> For a detailed analysis of this draft bill as well as all other relevant legislation and policies in Nepal, see Jyoti Sanghera and Ratna Kapur, Supra note 12.

<sup>23</sup> Supra note 11, at para 40.

<sup>24</sup> Supra note 5, at 30.



trafficking initiatives on the part of the government, nationwide. However, until the end of last year no such officer had been appointed.

The National Commission on Women (NCW) has been spearheading several efforts to replace ITPA with a more comprehensive and effective anti-trafficking legislation in India.<sup>25</sup> An analysis reveals that the same trends which characterize the anti-trafficking laws and policies in Nepal and Bangladesh are dominant in the main legislative drafts under consideration by the NCW in India including, criminalization of prostitution, alteration of evidentiary procedures, allocation of sweeping powers to the police to search and arrest, and stringent mandatory punishments for traffickers. The only creative and affirming draft amongst those under consideration is the one prepared by the National Law School in Bangalore in 1993, which aims at empowering sex workers and strengthening their rights in order to protect them from harm.<sup>26</sup>

In her recent review of anti-trafficking legislation in India, the UN Special Rapporteur on Violence Against Women found the human rights implications of these laws “very disturbing” since most of the drafts, according to her, contain the “same negative features”. Advocating the adoption of the National Law School draft which focuses on the human rights empowerment of sex workers and makes a clear distinction between voluntary and forced prostitution, the UN Special Rapporteur maintains that, “unless something like this can be adopted, PITA, with some amendments, should remain as the principal legal framework for combating trafficking”.<sup>27</sup> In addition to the legislative measures already in place or potential ones, the Department of Women and Child Development within the Ministry of Human Resource Development of the Government of India commissioned a *Committee on Prostitution, Child Prostitutes and Children of Prostitutes* to prepare a Plan of Action. This Plan of Action, 1996, contained some innovative and comprehensive recommendations on reintegration, education of children of prostitutes, housing, health and skills training. However, it also advocated the removal of children from their mothers to “more healthy” environments, leading thus to a clear violation of the right to family.

#### **IV.1. Common Trends: Indicators of Disempowerment**

There are several common trends, which mark anti-trafficking legislation and policies in Nepal, Bangladesh and India; the three key South Asian countries discussed in this paper. These trends are characterized by a laudable spirit of zealotry to root-out the problem of trafficking as a social evil. They are also characterized however, by an ostensible disregard for the basic human rights of the very ‘victims’ of trafficking they purport to protect and assist. In order to fully comprehend this contradiction and tension, it is useful to highlight the common trends and briefly discuss their implications.

1. **Draconian measures:** There is a general and unmistakable move to draft increasingly more draconian laws on trafficking with stiffer penalties. The 21 convictions in Bangladesh in the year 2000 for crimes against women, and the 55 percent acquittal rate in Nepal for trafficking offences<sup>28</sup> despite enthusiastic anti-trafficking measures to curb the reportedly escalating crime of trafficking proves that more punitive laws may not be the solution. More stringent laws in fact, are a deterrent to registering cases against traffickers and may lead to acquittal due to a reservation on the part of judges to hand out stringent punishments such as life

<sup>25</sup> For a discussion of some of the main drafts see Jagori, *Voices: Debates, Positions and Laws*, 2001, New Delhi, Section D.

<sup>26</sup> Supra note 25, at section D3.

<sup>27</sup> Supra note 11, at para 117.

<sup>28</sup> Supra note 5, at 30 and 61; Supra note 11, at para 23.



imprisonment or death penalty, given the imperfect investigation and evidentiary procedures. These low conviction rates leave the perpetrators of the crime at large sending out a message that traffickers can "get away with the crime".

2. **Empowerment of the police:** The new anti-trafficking legislation in South Asian countries places far greater power in the hands of law enforcement authorities, including the police, to search, apprehend, seize, prosecute and penalize. This is a dangerous trend. For any one with some experience with anti-trafficking activities in the region, police and border security personnel, barring exceptions, are more often than not partners in the crime. They are also fairly notorious for their corruption. Therefore, greater powers to law enforcers combined with their disposition for corruption, does not make for an empowering strategy for human rights promotion of the 'victims'. Existing high-handed practices on the part of border security forces and local police personnel have not endeared them to the common people, especially disadvantaged groups. Women, particularly those associated with the sex industry, are especially wary of approaching police authorities on account of the harassment and victimization suffered by them at the hands of the former. Therefore, making the police more powerful and placing increasingly arbitrary and punitive instruments at its behest is not read as an empowering sign by the women affected by trafficking since law enforcement authorities are seen more as a hostile rather than a friendly entity.
3. **Guilty until proven innocent:** Even though Nepal, Bangladesh and India are signatories to the International Covenant on Civil and Political Rights (ICCPR) which provides that anyone "charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law", the current legal initiatives either in place or under discussion in the three countries contravene this basic human right. The proposed or existing anti-trafficking laws shift the burden of proof onto the defendant to prove his/her innocence. This has even more severe implications for women who seek to escape the sex industry, given the new shift to criminalize prostitution in all these anti-trafficking laws. Women who have been forced into prostitution will be deemed guilty of the crime of prostitution until they can prove that they were trafficked and are hence 'innocent victims'. This is an extremely disturbing and disempowering trend.
4. **A mixed bag of offences:** an analysis of the recent legal initiatives demonstrates an effort to club several offences, especially sexual offences, under one general anti-trafficking law. In India IPC 1860, the new anti-trafficking draft bill in Nepal as well as the various relevant legal instruments in Bangladesh deal simultaneously with issues of rape, pornography, child sexual abuse, prostitution, abduction, wrongful confinement, battering and trafficking. This clubbing together of several disparate offences under one general anti-trafficking legislation using the force of criminal law, dilutes the very purpose for which these new laws are being redrafted. There is also no move in these drafts to adhere to a minimum human rights standard either for the defendant or the victim. In fact, trafficking must primarily be considered and treated as a human rights violation and redress measures must be formulated from the perspective of human rights rather than being clubbed together with a number of other crimes.
5. **Disempowerment through restriction of mobility:** Anti-trafficking legal measures place the onus of protection from harm on the women by advocating and promulgating provisions to curtail their mobility. The operating principle underlying such efforts is the patriarchal belief that women can only be safe if they stay confined within familiar and protected environments. In both Nepal and



Bangladesh, abuse of women domestic maids especially in the Middle East is sought to be addressed by banning women and girls from seeking employment overseas. In Nepal, the *Foreign Employment Act of 1985*, the *Foreign Employment Order* issued by the Ministry of Labour, and the *Passport Order*, which is arbitrarily implemented, all restrict the mobility of single women seeking to move and work across the border<sup>29</sup>. Nepali women require permission from their male guardians or sanction from village councils to exercise their right to mobility. These measures violate women's freedom to movement and reinforce their dependence on male relatives. Commenting on these measures the UN Special Rapporteur states, "to force women to remain against their will in communities where they were unhappy is a violation of their basic rights." Such measures "cannot be the answer to trafficking.... What are not needed are draconian attempts to block natural migration routes and social mobility".<sup>30</sup>

6. **Criminalizing and infantilizing women:** The most striking, disturbing and unacceptable move to disempower women emerges from provisions contained within all the anti-trafficking laws to firstly, treat women and children alike and secondly, to equate trafficking with prostitution and then to criminalize prostitution. What are the human rights implications of these two distinct moves?

If trafficking is equal to prostitution and no distinction is made between forced and voluntary prostitution, then all trafficked women and girls are confined only to the prostitution trade. It follows then that all trafficked women are also prostitutes. By criminalizing prostitution anti-trafficking laws in Nepal, Bangladesh and India will, by the inherent logic of the argument, end up criminalizing the prostitute as well for engaging in a criminal activity. A trafficked woman's criminal status will overshadow her victim status and the onus to prove her innocence and victimhood will be entirely on her. This is already evident for instance in India from the manner in which ITPA is implemented. Clearly, only those sections, which relate to soliciting for prostitution, are invoked and therefore only women are picked up by the police on charges of prostitution. The proposed Nepal bill criminalizes prostitution in Nepal for the first time. The definition of prostitution under this bill is very broad and includes the use of the human body to "engage in sexual acts in return for anything". Such a definition would logically and ironically also include sex for marriage.<sup>31</sup> Deemed a criminal by law and law enforcers, a woman trafficked into prostitution will find it difficult to come forward to seek redress from violence and abuse; nor will she assist the state to apprehend traffickers by testifying against them for fear of being punished for engaging in prostitution. Under normal circumstances, women trafficked into the sex industry need strong confidence-building measures to come out and report their abuse. Now that there is a move to criminalize prostitution, those very victims who need the most assistance will recede still farther away from the law. Criminalization of prostitution in an anti-trafficking legislation is unmistakably the most distinct indicator of disempowerment of trafficked women.

Why are women and children clubbed together in anti-trafficking legislation when in all other instances including labour laws, great care is being taken to separate child labour from adults? The Convention on the Right of the Child is a clear statement on the ideological, strategic, and operational need to make distinctions between children and adults. This distinction is based on the

<sup>29</sup> For a more detailed discussion of these measures see Supra note 12, at 24.

<sup>30</sup> Supra note 11, at para 26.

<sup>31</sup> For more details see Supra note 12, at 22.



principle that the development of children as human beings is a process and is not complete so long as they are minors. Children are deemed 'innocent' of the 'wile ways' of the world and can be preyed upon as 'victims' with relatively greater ease. They need special protection and assistance in making decisions. Therefore, it is believed that minors cannot be expected to act in their own best interest, as their ability to exercise full agency is not yet entirely developed.

But women are adults with a full right to all their freedoms, including the freedom to exercise their agency and to seek a livelihood. Why then are they treated as children in anti-trafficking laws? The fact that a woman may have been trafficked as a minor in the past does not justify her continued treatment as a child past the age of majority, just as a child-bride ceases to be a child-bride at age twenty-five.

#### **IV.2. Criminalizing Agency and Autonomy to Construct the Innocent Victim**

This paper argues that in the arena of dominant anti-trafficking legal trends and interventions there is an ideological imperative to infantilize adult women so that they may be more easily cast into the mould of the 'innocent victim' worthy of being saved, rescued and assisted. It is true that even adults could be 'innocent' and 'victims', and indeed are in many arenas but when it comes to trafficking the logic appears to be somewhat different. According to the dominant thinking of law and policy makers as well as some other stakeholders, when trafficking is nothing more than prostitution then a woman who has 'fallen' into prostitution, albeit under coercion, ceases to be 'innocent'. And if she happened to practice the trade then she is no more a 'pure victim'. According to this dominant thinking, the only way a trafficked woman's 'innocence' and 'pure victim' status has some possibility of being restored so that she may become worthy of assistance, is to treat her like a child. This effectively means that she is denied the right to exercise her autonomy and agency, and she is considered unfit to act in her own best interest. Therefore, if under whatever circumstances, she did exercise the 'autonomy' to practice sex work then it is assumed that she did not know what her best interest was. Her autonomy to have engaged in sex work is criminalized along with criminalization of prostitution. And hence, the construction of an "innocent victim" of trafficking according to the dominant protection model adopted by law and policy makers in South Asia necessarily entails the criminalization of autonomy and agency because trafficking is conceptually seen as co-terminus with prostitution. The construction of this innocent victim implies simultaneously the construction of a disempowered subject.

#### **V. Conclusion**

*"Legislation to combat trafficking should be considered, but only if it complies with international human rights standards and does not violate the rights of women. Nothing should be done to prevent the freedom of movement of adult women. No law or regulation should place them at the mercy of the men in their families or in the villages. Their autonomy must be respected".*

**UN Special Rapporteur on Violence Against Women, November 2000<sup>32</sup>**

According to the current template upon which anti-trafficking legal interventions and initiatives are based, persons affected by trafficking, especially women and girls are not only disempowered but often criminalized and further victimized. While certain positive welfare measures for care and support are included in some of the action plans, yet at the very heart of the matter what is visible is not an empowering or rights-

<sup>32</sup> Supra note 11, at para 157

protective approach. In part, this problem arises from a genuine lack of clarity and confusion on the issue; but at the very deep core there lies a moralistic bias which obfuscates the issue and prevents the formulation of strategies which will genuinely place the interest of the persons affected by trafficking at the center, and promote their right to mobility, to livelihood and to their autonomy. So persistent and singular is the conflation of trafficking with prostitution that measures for the prevention of trafficking to all other sites and for all other purposes are more or less ignored in most of the anti-trafficking laws in the region. This conflation stems again, it seems, from a moralistic preoccupation with prostitution. In the recent past, anti-trafficking advocates in the region have been repeatedly drawing the attention of agencies of the governments to the need to address trafficking for other purposes as well but thus far, little concrete measures have been considered.

It seems clear that there needs to be a paradigm shift in the approach to trafficking of women and girls. The paradigm must shift from a moralistic or traditional protection model under the umbrella of criminal law to a genuine human rights model. The new thinking must include at its heart a commitment to create empowered subjects for only then will the victims of trafficking cease to multiply and move from victim hood to being acknowledged as autonomous human beings capable of acting in their own best interest.

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## Questions and Answers which come to mind regarding the HIV theory of AIDS

**Q = Question A = Answer**

**Q 1. How is infection with HIV diagnosed?**

**A 1.** By an antibody test. Several proteins, claimed to HIV proteins by HIV experts, are positioned on a narrow cellulose strip, which then is reacted with the patient's blood. If there is a reaction, the reacting proteins appear as a series of horizontal bands. The number and combination of bands necessary to proclaim the patient is infected varies from country to country and even from laboratory to laboratory (see attached Table 1).

**Q 2. What is the proof that the proteins claimed to be HIV are indeed HIV?**

**A 2.** None. In 1983 Luc Montagnier and his team<sup>1</sup>, and in 1984 Robert Gallo and his team<sup>2</sup>, claimed to have proven the existence of HIV proteins by purifying the virus particles. That is, by obtaining the particles separated/isolated from everything else. In 1997 Montagnier admitted that he had not purified (isolated) HIV and in his view neither did Gallo<sup>3</sup>. By this time there was ample evidence that HIV proteins were proteins of normal cells. The fact that these proteins are cellular proteins found in all of us was proven beyond reasonable doubt in 1997 by some of the best HIV experts<sup>4</sup>.

**Q 3. Why do these cellular proteins react with antibodies, which are present in patient sera? (Blood)**

**A 3.** Because people who are in the AIDS risk groups such as gay men, haemophiliacs, drug users as well as people who are infected with different non-HIV agents including mycobacteria have antibodies to their own proteins, that is, auto-antibodies<sup>5, 6, 7</sup>. Even if they were unquestionably HIV proteins it doesn't follow the reacting antibodies are also HIV. That's because antibodies meant for one thing regularly latch on to proteins belonging to other things. Sometimes they latch on even harder to other things. So these reacting antibodies could be antibodies that appeared in response to something else. For example, it's been proven that antibodies which appear in response to mycobacterial (such as leprosy and TB) infection and fungal organisms, which between them infect 90% of AIDS patients, react with the proteins in the HIV antibody test<sup>8</sup>. In fact AIDS patients are full of antibodies and react with just about anything you can think of, even laboratory chemicals<sup>5</sup>. But no one says AIDS patients are infected with laboratory chemicals.

**Q 4. Does this mean that a positive antibody test does not prove HIV infection?**

**A 4.** Yes. In fact the manufacturers of the antibody test are telling us exactly this. For example, Abbott Laboratories in their packet inserts state: "At present there is no recognized standard for establishing the presence or absence of HIV-1 antibody in human blood".<sup>9,10</sup>

**Q 5. Why then is everybody with a positive antibody test told that they are infected with HIV, especially when such news is so devastating for both patient and his or her family?**

**A 5.** The HIV experts have never given a valid reason. Perhaps they are so focussed in explaining everything in terms of HIV they cannot see the alternatives.

**Q 6. Is there a way to determine if anyone who has a positive antibody test is indeed infected with HIV?**

**A 6.** Yes. It can be done by determining what relationship exists between a positive antibody and the presence of HIV itself. That is, by simultaneously performing an HIV antibody test and HIV isolation/



purification. This has never been done and could not be done so far because HIV isolation/purification has not been achieved.<sup>11</sup> Although many claims have been made for HIV isolation the correct procedure has never been followed. What the experts call HIV isolation is not distinct from the HIV antibody test. In fact it's an HIV antibody test "done backwards". The difference is that instead of the patient supplying the antibodies (in their blood), and the test manufacturers the proteins (in the test kit); in the "HIV isolation" procedure the protein are present in the cell culture and the test manufacturers supply the antibodies.<sup>12,13</sup> Or rather just one commercially manufactured antibody. So all that's different is the source of the reagents. The purported HIV isolation is still a reaction between a protein and an antibody. And that's an antibody test.

**Q 7. If HIV has not been isolated then what is the proof for its existence?**

A 7. There is no proof. It may or may not exist.

**Q 8. What are the pictures purporting to show HIV particles?**

A 8. The vast majority of these pictures originate from cell cultures which have been exposed to numerous chemicals.<sup>1, 2</sup> In such cultures these types of particles are commonplace and the HIV experts are fully aware of this.<sup>11</sup> As far as the pictures taken from fresh human tissue are concerned, it is sufficient to mention that particles identical to that called HIV are found as frequently in people who don't have AIDS and are not at risk of getting AIDS as in those who have AIDS.<sup>14</sup> HIV is said to be a specific kind of virus, a retrovirus. Yet all the pictures published so far of "HIV" particles, no particle has both main characteristics of retroviruses, that is, a diameter of 100 to 120 nm and spikes on their surface.<sup>15</sup>

**Q 9. If there is no proof for the existence of HIV, then what are mothers transmitting to their babies?**

A 9. Mothers with "HIV" antibodies have babies that also are found to have "HIV" antibodies. In fact, at birth all their babies have "HIV" antibodies but these are the mother's, not the baby's antibodies. They get into the baby by crossing the placenta not long before birth. By approximately 2 years of age, only about 15% are left with such antibodies and these are said to be babies who have been infected. That's what the experts lead us to believe and they say those 15% now have their own antibodies, which they made because HIV took hold in that proportion of babies. They're not the mother's antibodies because by then they've all disappeared. But their conclusion creates a very large problem. And it's this: Sure it's true that in the babies the mothers antibodies gradually disappear. That's because the babies metabolise them. Not just the "HIV" variety of antibodies but all the different varieties of antibodies mothers pass to their children before they are born. In fact the disappearance of mother's antibodies is why babies are most susceptible to infections around 3-4 months of age because by this time nearly all the mother's antibodies have gone but the baby still hasn't built up enough of its own. Before the AIDS era it was known that all of the mother's antibodies disappear by nine months of age. And we mean all. At nine months they're zero.<sup>16</sup> And there's no way the body can selectively get rid of the "HIV" variety. The biochemical machinery can't say "You're a measles antibody, I'll get rid of you but you're an HIV antibody, I'll keep you twice as long". To the body an antibody molecule is just another protein (antibodies are all proteins by the way). But the way the "HIV" variety is lost after birth reveals something that doesn't fit. And it's this: If you follow the disappearance of the "HIV" antibodies from birth, it drops from 100% at birth to 75% at 9 months. Then to about 15% at 22 months, which the experts say, is the proof that 15% of babies are infected by their mothers. This means that 60% of children lose the "HIV" antibodies and test negative in an antibody test between 9 and 22 months. So what are the antibodies, which have been lost? Where did they come from? They can't be the mother's because they've all been metabolised by 9 months. They can't be caused by HIV infecting the babies because, according to the experts, if that happens, the antibodies remain for life. So how do you explain it? You can only explain it by saying they're not HIV antibodies at all but other antibodies that reacted in the test. But if that's true for 60% it could be true for all the babies including the 15% left with antibodies at 22 months. And if the tests are false in the babies they are also false in their mothers. And their fathers.<sup>17</sup>



**Q 10. Since the HIV experts admit that the antibody test cannot be used in babies what methods do they use to prove mother-to-child transmission of HIV?**

**A 10.** Two methods are used, namely death and a test that detects "HIV RNA" or "HIV DNA" known as the PCR. When a baby is born to an HIV positive mother, if that baby dies before they can use an antibody test, the baby is said to have died from AIDS caused by HIV transmitted from the mother. PCR is used in many of the studies, which attempt to prove mother-to-child transmission. This test has at least as many drawbacks as the antibody test. For example, a PCR test can revert from a positive to a negative for which the HIV experts have no explanation. Also the specificity of the PCR has never been determined accurately. Even the DNA-PCR, which is said to be more specific than the RNA-PCR, varies from 0 to 100%.<sup>18</sup> For babies, the RNA-PCR is used in an attempt to prove mother-to-child transmission of HIV. However, according to the manufacturer (Roche) of this test, "The Amplicor HIV-1 [RNA] Monitor test is not intended to be used as a screening test for HIV-1 or as a diagnostic test to confirm the presence of HIV-1 infection".<sup>19</sup> And that means in anyone. According to the latest CDC AIDS definition, "In adults, adolescents, and children infected by other than perinatal exposure, plasma viral RNA nucleic acid tests [PCR] should **NOT** be used in lieu of licensed HIV screening tests (e.g., repeatedly reactive enzyme immunoassay)".<sup>20</sup> But surely a test that can NOT be used to prove infection of adults, adolescents and even children (for example, by blood transfusion) will also be invalid to prove mother-to-child transmission of HIV. After all, the experts tell us it's all the same virus.

**Q 11. But doesn't AZT and nevirapine reduce mother-to-child transmission of HIV?**

**A 11.** There is no proof for this. Most of the studies which claim proof that AZT reduce transmission are not randomised, or double-blind and do not have controls.<sup>17</sup> Even the best of them, the ACTG076 has so many drawbacks that no valid conclusions can be drawn.<sup>21</sup> As far as nevirapine is concerned, so far there has been only one study, HIVNET012.<sup>22</sup> Given its design, execution and analysis, it is impossible to draw any valid conclusions.<sup>23</sup> Since all the HIV experts claim that AZT and nevirapine reduce mother-to-child transmission of HIV by reducing viral load, and since neither AZT nor nevirapine have any effect on viral load, then it follows these drugs cannot decrease mother-to-child transmission of HIV.<sup>17, 23</sup> No matter what the reported findings from these studies are, no physician or government can make decisions regarding the use of these drugs for reducing mother-to-child transmission of HIV unless and until the tests used to prove infection are guaranteed to be HIV specific. Including by the manufacturers.

**Q 12. Is HIV sexually transmitted?**

**A 12.** No. Regarding AIDS since 1982, and regarding "HIV" since 1984, evidence existed from studies in gay men that a positive test and AIDS is limited to the passive partner. The active partner does not get "HIV" or AIDS.<sup>24, 25, 26</sup> Not from sex. So we have the spectacle of an infectious disease going one way. From active to passive partner. Like pregnancy. But that's impossible because microbes rely on person-to-person contact to spread. If they don't spread they're dead.

**Q 13. What about heterosexual transmission of HIV?**

**A 13.** The heterosexual transmission of HIV was one of the main predictions of the HIV theory of AIDS. Now, in the 3<sup>rd</sup> decade of AIDS, data from the largest, longest based design and executed prospective study in heterosexuals clearly proves there is no heterosexual transmission in North America, Europe and Australia.<sup>27</sup>

**Q 14. Then how is it possible for HIV be transmitted heterosexually in Africa?**

**A 14.** Unless HIV discriminates between people on the basis of race or colour, it is not possible. In fact, the best available data proves that "HIV" is no more heterosexually transmitted in Africa than in either North America, Europe or Australia. In table 2 the evidence from the best two non-prospective studies performed in the USA and in Africa are presented.<sup>27, 28</sup> Take a look at this table. See how long it takes for an "infected" man or woman, having sex every three days, no holidays, to "infect" their partner. Contrast this with gonorrhoea where you'd be infected in a week.



**Q 15. Why then do such a high percentage of Africans (for example, 10% of South Africans) test positive but this is not seen in the rest of the world?**

**A 15.** Firstly, there is no proof that 10% of South Africans test positive for HIV. This figure has been derived as follows: Pregnant women are tested with the ELISA antibody test. (HIV experts accept that the ELISA antibody test is non-specific in all individuals especially pregnant women). The findings for pregnant women are then extrapolated to the general population.<sup>29</sup> That is, it is assumed that since 10% of pregnant women test positive, then 10% of the whole population test positive. This high percentage of positive tests is not even found in the crowded South African prisons where the reported "HIV infection" is approximately 2.3%.<sup>29</sup> Secondly, due to poverty, South Africans frequently suffer from infectious diseases, which lead to the appearance of antibodies that will give a positive "HIV" antibody test.

**Q 16. But how can AIDS in Africa be explained? Isn't AIDS a new disease?**

**A 16.** AIDS stands for Acquired Immune Deficiency (AID) Syndrome (S). AID is nothing new, nor is it caused by a single factor such as HIV. Some of the best experts of "HIV/AIDS" in Africa such as Piot, Clumeck, Essex, Quinn were aware of this and admit that immune deficiency in Africa has existed for a considerable time and this has not been due to HIV. "Tuberculosis, protein calorie malnutrition, and various parasitic diseases can all be associated with depression of cellular immunity".<sup>30</sup> "A wide range of prevalent [in Africa] protozoal and helminthic infections have been reported to induce immunodeficiency".<sup>31</sup> "Africans are frequently exposed, due to hygienic conditions and other factors, to a wide variety of viruses, including CMV, EBV, hepatitis B virus, and HSV, all of which are known to modulate the immune system...Furthermore, the Africans in the present study are at an additional risk for immunologic alterations since they are frequently afflicted with a wide variety of diseases, such as malaria, trypanosomiasis, and filariasis, that are also known to have a major effect on the immune system" [CMV=cytomegalovirus; EBV=Epstein-Barr virus; HSV=herpes simplex virus].<sup>32</sup>

If AIDS in Africa is the same condition with the same cause as anywhere else in the world then AIDS in Africa and AIDS in the West should be identical. This is not the case and what is called AIDS in Africa is almost unrecognisably different from AIDS in the West, so much so that if African patients suddenly switched continents, very few Africans would remain AIDS cases. This is due to the existence of multiple AIDS definitions, one for Africa (the Bangui definition which separately lists adults and children), one for adults in North America, Europe and Australia, one for children in these countries and one for Latin America. None of the definitions of AIDS includes a new disease. All the diseases existed long before the AIDS era. In fact, the African definition (the Bangui definition) does not require a specific disease diagnosis but consists largely of symptoms such as weight loss, diarrhoea, cough and fever.<sup>33</sup> For example, an African with diarrhoea, fever and persistent cough for longer than one month is, by definition, an AIDS case. The symptoms listed in the Bangui definition are common and non-specific manifestations of many diseases, which are endemic in Africa and were so long before the AIDS era. This is accepted by some of the best-known experts on AIDS in Africa such as Mann, Fauci, Essex. For example, "...recognition of paediatric AIDS is particularly difficult in Kinshasha [Zaire], since many children have severe infant and childhood diseases with similar manifestations (eg, weight loss, chronic diarrhoea)".<sup>34</sup> "Well, of course it [the Bangui definition of AIDS] will be less reliable (than that used in non-Third-World countries). One typical example is what we call 'slim disease'. It's a wasting syndrome seen in Africa. Now that wouldn't fall under any categorization of AIDS by the standard empiric definition, but nevertheless, (slim disease) is being considered AIDS in Africa".<sup>35</sup> Also "malnutrition and general lack of medical services contributed to diarrhoea, tuberculosis, and other common African diseases that signify AIDS".<sup>36</sup> The diseases most frequently reported as signifying AIDS in Africa are Kaposi's sarcoma and TB. In fact, 90% of AIDS cases in developing countries are TB cases.<sup>37</sup> Kaposi's sarcoma existed in Africa in high frequency long before the AIDS era. Its cause was proven to be not an infectious agent.<sup>38</sup> At the beginning of the AIDS era Kaposi's sarcoma was one of the main reasons for the introduction of the HIV theory of AIDS. The overwhelming evidence which accumulated forced all the HIV experts to admit that HIV is not the cause of this disease.<sup>38</sup> Yet even today an African with Kaposi's sarcoma is an AIDS patient even if not tested for



HIV.<sup>33</sup> Up to 1987 TB was not considered to be an AIDS indicator disease. The 1987 CDC definition of AIDS considered extra-pulmonary TB but not pulmonary TB as indicating AIDS.<sup>39</sup> Thus, from 1987 to 1993 there were two causes of TB. One for extra-pulmonary TB (HIV) and another for pulmonary TB. According to the 1993 definition of AIDS, both pulmonary and extra-pulmonary TB are AIDS indicator diseases.<sup>40</sup> Since 1993, if an African patient (Australian TB patients are not tested for HIV) has TB and a negative antibody test, then the patient has TB and is treated accordingly. A patient with TB and a positive antibody test is not a TB patient but an AIDS patient and is treated accordingly. Although ample evidence exists which shows:

- (i) that the antibodies which appear as a result of infection with the mycobacterial organism which causes TB react with the proteins in the "HIV" antibody test. That is a patient with TB would test positive for HIV even if not infected with such a virus;<sup>7</sup>
- (ii) other things being equal, "AIDS" patients get better with anti-TB drugs just as fast as "non-AIDS" TB patients;<sup>41</sup>
- (iii) TB is not a new disease and existed in Africa long before the AIDS era. The only thing, which is new, is an antibody test, which, so far nobody has shown to prove HIV infection. The notion that since 1993 a high percentage of TB cases in Africa are caused by HIV implies that all the traditional causes of TB in Africa vanished overnight in 1993 to make a way for a new cause, "HIV".

In other words, although the best known researchers of African AIDS clearly accepted that both AID and the AID syndrome (S) existed in Africa long before the AIDS era, and that they were caused by agents other than HIV, the same researchers expect the world to accept that in Africa there is a new disease, AIDS, caused by a new virus, HIV.

**Q.17 With AIDS representing over 35 diseases all traceable to a single HIV, what treatment must be given?**

**A.17** Modern medicine never had had any genuine antiretroviral drug, or antiviral drug for that matter. Modern medicine's "treatment" of heart attack, high blood pressure, diabetes, cancer, stroke for arthritis is always been symptom-oriented, without in any way understanding the cause / course / cure of any of the foregoing maladies. Granting that there is HIV and that it causes AIDS, all that the five star health care should do is to treat whatsoever the manifest illness, without wanting to attack the alleged root cause, namely, the HIV, for any treatment of HIV itself is illogical, counter productive, and even lethal.

**Q.18 What is the real nature of antiviral drugs?**

**A.18** In reality, there is no antiviral drug. AZT was synthesized as a hope against cancer, but its sheer toxicity forced its withdrawal. Now it is the same cell poison wearing the new ART garb. A thorn by any other name pricks as deep. AZT and all other ART drugs are indiscriminate cell poisons that devastate the body and the galaxy of side effects get ascribed to HIV AIDS. A flash back in to the history of syphilis is relevant here. In the 16<sup>th</sup> century, mercury therapy of syphilis came to the fore with much the same bravado as ART against HIV today. And it was Jean Fernel who pointed out in 1579 that "nearly all the late symptoms of syphilis were really due to mercury poisoning." HIV is no problem. ART/HAART are big problems however.

**Q.19 What is the epistemology of HIV AIDS?**

**A.19** Epistemology is recently recognised science that evaluates any knowledge to scientifically declare its scope & limitations. It is of interest to note that whereas medical men know an oceanic lot on cancer cell, coronary artery or the carotid, they can do nothing to control these entities.

The summary intellectual bankruptcy of the HIV AIDS establishment on the virus itself, the sheer unreliability of all the tests and the blindly toxic nature of all therapies allows one to epistemologically declare that HIV AIDS is a dogma but no science.

Joseph Hixson has written an account of the greatest scientific scandal of the 20<sup>th</sup> century perpetrated at the famous SKI. Newyork. (Hixson, J; The Patchwork Mouse, Anchor press, Newyork, 1976). Two statements from his book are relevant here.

- a) "The American Public known to the rest of the world as the originator of fads and fetishes, suffers from time to time with a preoccupation over a single disease. "
- b) "I have some advice for young researchers in biology. Stay out of cancer reasearch because it's full of money and just about out of science."

HIV –AIDS is an enemy that the USA has invented. The establishment now find it hard to dismount the tiger it has created. HIV AIDS is an obsession, a lot of money but no science nor sense.

## **Q.20 How would you reread HIV AIDS?**

**A.20** Highly Imagined Virus and Allopathy Induced Deficiency Syndromes.

## **Q.21 Can HIV AIDS be prevented?**

**A.21** When the virus itself is in the realm of imagination, how do we avoid it? Harvey Cushing, the famed American neurosurgeon, complained in the early part of the 20<sup>th</sup> century that prevention is an over work ed term. In the current medical scene, prevention is the predictable refuge of the therapeutically impotent, intellectually bankrupt and epistemologically arrogant modern medicine. HIV AIDS prevention is no exception.

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Table 1 Criteria defining a positive HIV Western blot

HIV WESTERN BLOT STRIP*		AFR	AUS	FDA	RCX	CDC 1	CDC 2	CON	GER	UK	FRA	MAC
ENI	p160											
	p120	ANY 2	ANY 1	ANY 1	ANY 1	p160/ p120 AND p41	p160/ p120 OR p41	p160/ p120 OR p41	ANY 1	ANY 1	ALL 3	
	p41											
POL	p68											
	p53			p32	ANY 1			p32		p32	ANY 1	
	p32			AND	AND		AND	OR		AND	OR	
GAG	p55											
	p39			p24	ANY 1		p24	p24		p24	ANY 1	
	p24											
	p18											
3 WEAK BANDS OR ANY STRONG BAND												

AFR=AFRICA;<sup>1</sup> AUS=AUSTRALIA;<sup>2</sup> FDA=US FOOD AND DRUG ADMINISTRATION;<sup>3</sup> RCX=US RED CROSS;<sup>3</sup> CDC=US CENTER FOR DISEASE CONTROL;<sup>3</sup> CON=US CONSORTIUM FOR RETROVIRUS SEROLOGY STANDARDIZATION;<sup>3</sup> GER=GERMANY; UK=UNITED KINGDOM; FRA=FRANCE; MACS= US MULTICENTER AIDS COHORT STUDY 1983-1992. \* Bands not in electrophoretic order

## NOTES:

- I. "The Association of Public Health Laboratories now recommends that patients who have minimal positive results on the WB, eg p24 and gp160 only, or gp41 and gp160 only, be told that these patterns have been seen in persons who are not infected with HIV and that follow-up testing is required to determine actual infective status".<sup>4</sup>
  - II. In February 1993 the US Food and Drug Administration relaxed their criteria in order to "reduce the number of HIV-1 seroindeterminate Western blot interpretations", that is, to increase the number of HIV positive individuals.<sup>5</sup>
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this paper reveal that when the FDA criteria are used to interpret the HIV Western blot less than 50% of US AIDS patients are HIV positive whereas 10% of persons not at risk of AIDS are also positive).

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Table 2. Number of years to attain 50% and 95% probabilities transmission of HIV assuming sexual contact once every three days

STUDY	DIRECTION OF TRANSMISSION	Per contact PROBABILITY	Years for 50% PROBABILITY	Years for 95% PROBABILITY
USA	M to F	0.0009	6.3	27.4
	F to M	0.0001125	51	222
Uganda	M to F	0.0009	6.3	27.4
	F to M	0.0013	4.4	19.5

## Introduction

Jagori has been working on the issues of trafficking, migration and rights of sex workers for over six years. In our work so far, we have consistently come across serious problems in the availability and reliability of data on the above issues, which render intervention either impossible or ineffective, and uninformed. In an effort to begin addressing this gap, Jagori, with the support of UNIFEM, initiated an action-research project on *Migration, Trafficking and Sites of Work: Rights and Vulnerabilities* to be carried out over the next two years (2002-2003).

A preliminary pilot study was conducted over the last five months in the selected districts of Rajasthan and Gujarat. The pilot study involved State-level consultations, a series of **informal meetings** in the states with NGOs and other stakeholders, and **field visits** to areas of concern, in order to understand the dominant trends and key issues and share the concerns of the project with NGOs working in the region. (See Appendix I for details)

The meetings and field visits were crucial in understanding how to best go about the study in a way that is insightful, accurate and useful to all of us. It was critical that we identify existing gaps in data, understand the issues of concern and exchange ideas and strategies that would optimize the scope and utility of the study with the active involvement of groups and experts working in the area. Through this process, **partner groups** and **resource persons** for the project were also identified.

In addition, an extensive **survey of literature** was undertaken to gauge the gaps and missing links in migration research, particularly with reference to women and migration, to enhance our own understanding of the issues and to contextualize the study in existing debates. A working bibliography has been developed to this effect.

Following this, to share our findings of the pilot study and to invite inputs from research scholars and experts in the field in evolving a concrete and relevant research design, Jagori held a **Research Methodology Workshop** in Delhi. The workshop provided keen insights into various issues related to migration, trafficking, feminist research methodology, and possible interventions through the project, and helped the Jagori team fine-tune and critically reflect on its own research objectives and methods. On the basis of the findings and these inputs, the team held a series of reflective and strategic discussions and the main **research design** for the project has been developed.

Our initial consultations and forays into the field were conducted within the conceptual framework of trafficking. However, increasingly we found that such a framework was too limiting for us to understand, analyze and engage fully with all the emerging issues. The NGOs and field sites visited threw open entirely new areas and ideas to explore, which hinted at possible intersections with the discourse on trafficking. Discussions with them as well as within our team helped us reflect on the debates surrounding the trafficking discourse.



Over the pilot study we felt that it was critical as a first step to focus on movement *per se*, that is, migration in itself, and explore its causes and implications for women in particular. Only through such a 'lens' would we be able to locate the elements of trafficking in the process – such as coercion, deceit, abuse and slavery-like practices. Using this approach enabled a more acute awareness of the needs for women to move in search of work, and the concomitant vulnerabilities inherent in the process of their movement. In the context of human rights, while the notion of illegal migration is redundant in the case of internal migration, the issue of violations of rights of migrant workers is increasingly relevant. The concept of rights as citizens needs to be invoked and used as a tool to address these violations. This also needs to be built into the trafficking discourse, in the context of trafficking within borders.

As the UN Special Rapporteur on Violence against Women Radhika Coomaraswamy's notes in her Report of her Mission to Bangladesh, Nepal and India: "Trafficking of girls and women often follow the same route as legitimate migration... '*traffickers fish in the stream of migration*'...". The focus of inquiry and the report itself has been on unraveling and understanding these very streams of migration.

Following the pilot study, we are further convinced of the relevance of the project, the gaps in migration research it has the potential to fill and the links it builds, and the need to address the issues the project raises. The pilot study has been a learning experience for the Jagori team. We thank UNIFEM for enabling the pilot study and our colleagues and friends working in the two states, and the communities we had the opportunity to interact with for sharing their work and their lives with us.

# Looking Ahead

## *Some Concerns*

The pilot study has been an initial, exploratory foray into the issues of migration, women and trafficking, and rather than having provided us with the answers, has churned up more questions. In the course of the study we have often noted a feeling of entering new theoretical spaces and ideas making our scope more and more vast. At the same time it has given us a direction in which to take the project, a sense of the areas and issues already well-researched, those in need of attention and the links which need to be made. It has also made us reflect on and re-evaluate certain preliminary assumptions and concepts we were working with and using as primary tools of analysis, as well as re-examine our own positions as a feminist group on ongoing debates.

### *1. The Trafficking Discourse: A Limiting Framework*

Our initial consultations and field visits were conducted within the conceptual framework of trafficking. However, increasingly we found such a framework *too limiting* for us to understand, analyze and engage fully with the emerging issues. The NGOs and communities visited threw open new areas and ideas to explore, which hinted at possible intersections with the discourse on trafficking, as well as exposing the limitations of the discourse.

First, the concept of trafficking encapsulates a variety of violations over a time period. In most cases, this is difficult to practically pin down until the entire (unknown) time period is over. We found in different cases, various elements of trafficking – abuse, coercion, deceit, slavery like conditions – to be operational, but rarely all in the combined and integrated way that we understand trafficking. So actually one would know that trafficking has occurred only when it is over! This is not as useful as understanding and addressing the series of vulnerabilities or violations prior to this ‘completed state’.

Second, the context within which trafficking has been conceptualized is across borders and thus gets enmeshed in issues of illegal migration. The trafficking discourse therefore is more useful in the context of movement across borders; this is not applicable in the case of trafficking within borders, from one State to the other or between districts. The applicability of this concept therefore is immediately reduced. We find that the concept of trafficking cannot be effectively applied to the context of internal migration or trafficking within borders without breaking the concept down into the *elements of trafficking* and understanding them as a continuum of violations.

Finally the focus on sex work as the ultimate site of work of a trafficked woman has left out a large number of other sites to which women get trafficked, or to which women migrate and then face elements of trafficking – abuse, coercion, sexual exploitation, forced, slavery-like practices and so on. The latter may be a more useful way at looking



at the phenomenon, and may enable effective intervention, than trying to identify something as a case of trafficking or not.

These concerns have led us to re-examine our understanding of trafficking. We are in the process of 1) elaborating a more useful concept of the 'elements of trafficking', and 2) exploring the continuum of violations and circumstances between voluntary migration on one end and trafficking at another extreme.

## *2. Rights and Vulnerabilities: A Critical Perspective*

As much as trafficking as a framework proved limiting, the rights and vulnerabilities approach proved to be an enabling and highly incisive perspective and tool of analysis. This approach needs to be the dominant perspective in the project, as it includes the redressal of violations within trafficking and aims at addressing the circumstances which precede elements of trafficking. Moreover, it is neither judgemental nor implicated in a moral discourse and most importantly, it enables a woman-centred approach.

## *3. Changing Focus: Women and Movement*

It is a fact that women are moving today, on their own and with their families, for the sake of livelihood. There is indeed a feminization of poverty and of migration; women's migration has increasingly become a prominent feature of globalization. The debate in the South Asian context on women and migration has however limited itself to trafficking for sexual exploitation. This has meant that the wide spectrum of sites of work to which and circumstances in which women are migrating are left out. Also the State looks at the women as victims who must be protected from trafficking; such protection often becomes a tool for the violation of women's rights. In particular, the right of women to move in search of livelihood options or for any other reason has increasingly been targeted as countries have seen the stopping or regulating of women's movement as a means of eradicating trafficking. The voices of women migrating out of choice in the region, however debated the notion may be, must be heard in order to ensure that this women's right to move is not violated.

## *4. Specific Concerns: Rajasthan and Gujarat*

We needed to understand the economic, social and political structures of the two States of Rajasthan and Gujarat. Our experience has raised some concerns on the following issues in particular.

Caste hierarchies are still very important in Rajasthan; with a limited amount of reshuffling, the structure remains intact and operational. It also plays an important role in identity formation and occupational determination. Rajasthan has a strong feudal history which has retained its hold over communities. The sanctity of traditional male/ female roles and notions of shame and honour, particularly related to manhood, Rajput valour and so on are very strong. Poverty and rural breakdown along with factors like little industrialization and infrastructural neglect has meant that Rajasthan's economy is particularly vulnerable. All this has led to a palpable environment of conflict, in which communities are competing for the little resources available, particularly water and work.

Gujarat, on the other hand is a highly industrialized State which is faced with a different set of problems. It is a site of tremendous in-migration, but still has insidious notions of the insider/outsider which mean that often migrants rights are easily violated. The vulnerability of tribal communities in Gujarat is a key concern, and the resulting regional disparities between tribal and non tribal areas. Industrialization and simultaneous closure of small and big textile mills is also a dominant problem. Finally the issue of displacement due to large dams has shown specific repercussions in Gujarat which need to be linked to the project.

## ***Recommendations***

### ***1. Conceptual reevaluation of the trafficking discourse***

Conceptual breakthroughs need to be made in the existing trafficking discourse, which has stagnated and tended to revolve around legalization of sex work, repatriation and rehabilitation.

- Reevaluate the usefulness of the existing definition of trafficking in this context; in case of internal migration.
- Redefine trafficking to focus on the *elements of trafficking*
- Separate trafficking and migration, and initiate a new discourse on women and movement in South Asia to expand the existing discourse which limits this aspect in South Asia to trafficking
- Understand and explore the continuum of violations and circumstances between voluntary migration and trafficking, in which the majority of the cases fall.

### ***2. Prioritize the case of the informal sector***

The unorganized or informal sector has to be better understood and addressed, as much of migration and even trafficking takes place within the informal sector. This sector poses specific vulnerabilities in terms of being a non regulated site of work and therefore increases vulnerability to exploitation.

- Engage in issues of labour rights and look at ways of organizing this sector with a strong gender component and focus on women's issues.
- Find ways of addressing sexual harassment at the work place in this context- within this explore how to include (migrant) women workers in the process as another specific situation.
- Look at the private sphere of work in the informal sector – domestic work and the rights of domestic workers, as another particular vulnerability, being in the private space as well as being a woman-centred site of work.

### ***3. Understand networks of recruitment, movement and support***

Our pilot study shows that women rarely move alone; women do need agents/ networks to move, which makes them more vulnerable to abuse, coercion and deceit.

- Identify structures of support and reference, particularly agents and their influence, outreach and contacts when people migrate.
- Understand, map and follow networks of recruitment, agents, and movement.
- Examine support structures and networks that migrant women/ families create in the absence of traditional kin and community structures.



#### *4. Engage with and involve local structures of authority*

Women's agency is directly related to the structures of authority, which are usually rigid in most communities, and have not been seen as having a role in the issues of migration and trafficking. The role of the Gram panchayat, for example, is very critical and must be engaged with if any interventions are to be thought of.

#### *5. Evolve indicators of empowerment related to women's movement*

Women's migration is not always a negative step. We must look at women and their movement with an understanding that it opens up spaces for mobility and change and subversion of existing social structures. To accommodate and explore this notion, it is important to link movement with empowerment and disempowerment.

- Evolve relevant indicators of empowerment in the process of movement; link movement for work, vulnerabilities and violation and so on with empowerment and disempowerment along a continuum, and at different levels.
- Look at ways in which women experience movement, particularly in positive ways, and the impact this has on the way they look at themselves and their work.
- Locate women's role in migration decision making, and factors influencing this

#### *6. Invoke citizenship, and democratic rights to address migrants' problems*

In the case of internal migration and displacement, often a migrant is seen as an 'outsider' and constitutes the marginalized in the urban area. Democratic rights - rights of access to health, sanitation, water, education are all violated - these are every citizen's rights. The notion of citizenship is a double-edged sword, and where it can implicate some in one situation, it can be invoked to address these violations.

- In the context of human rights, while the notion of illegal migration is redundant in the case of internal migration, the issue of violations of rights of migrant workers is increasingly relevant. The concept of rights as citizens needs to be invoked and used as a tool to address these violations.
- This also needs to be built into the trafficking discourse, in the context of trafficking within borders.

#### *7. Address missing links in migration research*

There needs to be more contributions to migration research from a feminist perspective, and making links between various issues. Efforts should be made to refocus on issues of women and migration, particularly on women, sites of work and vulnerabilities.

#### *8. Build linkages between movements and issues*

Noting the integrated and complex nature of the issues and the fact that it needs an equally integrated response, it is critical to create linkages and alliances between women's movements and sex workers movements, right to information movement, right to food security movement. Much greater mobilization and explicit linkages and alliances between these peoples' movements need to be made.

### ***The Future of the Migration Project***

The project will aim at implementing some of the key recommendations mentioned above, which will be covered in the research design for the coming two years. The project will have to work towards understanding and mapping out the broad trends in migration and livelihoods and document case studies and village/area profiles. We need to understand the broad macro factors – economic/social/political that are leading to new trends and patterns of migration and changes in livelihood patterns. What livelihood opportunities are closing down and what are the new sites of work that are opening up for women?

Clearly there are several different kinds of migration and different dimensions that we need to delineate and focus on. The effects of macro factors such as globalisation, marketisation and continuous drought need to be analysed. At the same time we need to get detailed information on changes at the micro level, and specifically how it is affecting women's lives. What are the new challenges people, particularly women, are facing and how are they negotiating these? Has there been any reconstruction or recasting of notions – of migration, work, self?

What are the different kinds of vulnerabilities that women face in the process of movement? What elements of trafficking can we identify in this and what can we define as trafficking? There are certainly elements of coercion, deception, violence, abuse in many of the movements that women undertake, whether in families, groups or individually. How do women negotiate these and how can their rights be protected. It will be necessary to link up with groups and work in collaboration with them on the field. It is also imperative to see how this project can fit into the agenda of groups and broad based movements working on issues



# THE NEXUS OF VULNERABILITY

Prevention of Trafficking of Women and Girls  
and HIV/AIDS in South Asia



UNDP HIV & Development Programme  
South & South West Asia



UNDP

## FOREWORD

The changing global economic scenario and its implications for South Asia are creating situations that impact people in this region in ways that are not

always empowering. People are increasingly migrating from one country to another and also within countries in search of better livelihoods in the so-called economic hubs but there are few services or structures providing information on safe mobility to these people. As a result many find themselves in situations that are exploitative and violate their human rights. The most vulnerable in such conditions are women and young girls, particularly those who are trafficked. Poverty and the lower social status of women in our societies make them more vulnerable and susceptible to such exploitation, and also heighten their vulnerability to HIV/AIDS. Girls and women who are trafficked are amongst the most vulnerable to HIV/AIDS, living with physical violence and sexual abuse with very limited channels for redress. Those who become HIV positive as a result find themselves

Efforts are being made by civil society organisations and governments together with the UN system to reduce the vulnerability of young girls and women to being trafficked and to HIV/AIDS and to help rehabilitate those who are caught in circumstances beyond their control. It is important to create viable livelihood options for them and to create an environment conducive for their reintegration into society. The facts and figures merely give us an overview of the situation, but there is a larger reality beyond these numbers... a reality that we all have to contend with and find solutions for a better and more secure future. It is hoped that this paper will serve as a tool for programme planners, governments and those actively working for the cause of trafficked children and women and for the rights of migrant workers.

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October 2001



## THE NEXUS OF VULNERABILITY

### Prevention of Trafficking of Women and Girls and HIV/AIDS in South Asia

#### WHY LINK HIV/AIDS, TRAFFICKING AND GENDER?

Gender, age and transmission via sex are key elements in the recent dramatic increase of the HIV epidemic in South Asia. Increasingly, a majority of the HIV infected people are women in their prime reproductive age with many below 18 years of age, and the key route of transmission of the infection is predominantly through unprotected, unsafe sexual intercourse. In South Asia, women are now reported to constitute up to 35 percent of new HIV infections (UNAIDS 2000). A complex web of socio-cultural and macro-economic factors affect women's vulnerability to HIV, including poverty, migration, urbanisation, gender inequalities compounded by women's lack of autonomy, abuse within and outside families, insufficient access to health care services, violence and ethnicity. (UNIFEM 1998a). Significantly, these

factors also influence women's vulnerability to trafficking (STOP, Maiti Nepal, BNWLA).

The phenomenon of human trafficking has increased significantly globally and in the South Asian countries

over the past decade though the illegal and clandestine nature of trafficking makes it exceedingly difficult to establish accurate figures of the numbers of people trafficked. Globalisation, professionalisation of traffickers' syndicates, modern transportation, sex tourism, feminisation of poverty, trade of human organs and the changing

nature of prostitution, have all worked towards increased demand and supply of people, especially young women. These women are especially vulnerable to HIV/AIDS as a sizeable number find themselves in brothels and other situations of physical abuse.

"Women of all ages are more likely than men to become infected with HIV during unprotected vaginal intercourse. This vulnerability is especially marked in girls whose genital tract is still not fully mature. Compounding their biological vulnerability, women often have a lower status in society at large and in sexual relations in particular. This gender vulnerability, again, is particularly acute for young girls".

**Report on the Global HIV/AIDS Epidemic, UNAIDS, June 2000**

- ❖ South Asia is the region in the world where women's life expectancy is least favourable compared to that of men. It is less than men in two countries and almost the same in several others, in contrast to most regions of the world, where women's life expectancy exceeds that of men. (Sivard, 1995).
- ❖ Compared to demographic expectations, there are an estimated 60 million "missing women" in South Asia, primarily due to discriminatory child care practices, which kill by neglect, linked to lack of access to health care and education for girls. (UNICEF, 2000).
- ❖ The Census of India 2001 recorded 933 females per 1000 males in India. In the 0 to 6 age group there is an alarming decline from 945 girls per 1000 boys in 1991 to 927 girls per 1000 boys in 2001. (Registrar General and Census Commissioner of India, Census 2001 Report). This decline reveals marked preference for sons leading to neglect of the girl child and practices of female foeticide and infanticide.
- ❖ India, Nepal and Bangladesh's Gender Empowerment Measure (GEM) which reflects women's access to political, economic and social opportunities is among the lowest in the developing world.



Not all women are trafficked for prostitution. Many are trafficked into domestic labour, agricultural and factory work but are also vulnerable to sexual and physical exploitation and abuse. The majority of trafficked women, however, find themselves in brothels where they have little or no control over their bodies and lives. They are stripped of every right to negotiate safe sex. Coercion, alien environment, fear of deportation and other factors keep them from seeking any kind of help. These conditions make them increasingly vulnerable to HIV/AIDS.

They are not only severely limited in their ability to make their own decisions about sexual relations and practices but, according to a wide range of statistics, discrimination in general, and sexual violence against women in specific, are endemic and growing in South Asia, as shown in the box.

Moving beyond the narrow epidemiological profile of the HIV/AIDS epidemic within the subcontinent and examining the broader socio-economic and development causes, an integral connection is evident between HIV/AIDS, gender and trafficking through the nexus of vulnerability and sexual violence. Trafficked women and girls represent the most vulnerable category as far as sexual violence is

concerned. HIV/AIDS, trafficking and gender are thus linked in the following ways:-

- Factors such as women's labour, sexuality and sexual behaviour and social disadvantage, which determine the context of sexual violence and trafficking of women and girls are also the factors which are associated with the increased vulnerability of women and girls to HIV/AIDS. Specifically, these relate to gender-related social and economic disempowerment, and unequal access to all the indicators of development including health and education.
- Trafficking is part of a pattern of migration within and across countries, which removes migrants from the protection of their communities and severs them from their systems of social support. These factors are recognised as heightening vulnerability to HIV/AIDS.
- Caught in the web of trafficking and sexual abuse, those affected face an increased risk of HIV/AIDS on account of lack of control over their working and living conditions, including sexual relations.

- ❖ According to the National Crime Records Board of India, a total of 1,31,338 crimes against women were reported in the year 1998. These crimes include reported cases of rape, abduction, dowry deaths, tortures, molestation and trafficking. It is widely accepted that these crimes are significantly under-reported, and on the increase.
- ❖ The UNFPA State of the World Population, 2000 Report declared Bangladesh second highest in the world in incidence of violence against women.
- ❖ A women's group in Bangladesh has publicised data showing that more women die of burns, suicide, and injury than from pregnancy and child birth. (N. Huq, 1997).
- ❖ One study from Nepal reports that more than 50% of all victims of rape are girls under the age of 16, most of whom are raped by relatives. (Pradhan, 1996, cited in Sheikh, 1997). A survey in domestic violence found that 13% of the respondents knew about at least one case of child sexual abuse. (Saathi, 1997a, pp. 9-10).
- ❖ In Sri Lanka 60% of women interviewed in a sample survey responded that they have been subjected to domestic violence during the period of co-habitation. (Coomaraswamy, 1994b, p.21)



- Common societal responses to those affected by HIV/AIDS as well trafficking are strongly impacted by stigmatisation, discrimination and further marginalisation. These responses in turn undermine the basic rights and freedoms of the affected individuals, including the right to mobility and residence, the right to essential services, right to confidentiality, right to free association, and sexual and reproductive rights.

### **One crucial form of violence is trafficking**

Trafficking is by and large a gendered phenomenon, although it is true that trafficking of men and certainly boys is also taking place within and from the region. Evidence from major government and NGO sources indicates that the incidence of trafficking of women and girls over the past decade has escalated considerably; that the majority of trafficking in India, both trans-border and in-country, happens for the purpose of prostitution and over 60 percent of those trafficked into prostitution are adolescent girls in the age-group of 12-16 years.

These sources also indicate that victims of trafficking, particularly adolescent girls are extremely vulnerable to HIV/AIDS on account of their powerlessness to control their working conditions, sexual relations and sexual health. The following data attest to the vulnerability of particularly young trafficked girls to sexual exploitation and abuse:

- Of the 2 million women in commercial sex work in India, 25-30 percent are below the age of 18 years.(National Commission of Women, India).
- 5,000 to 10,000 girls and women are trafficked to India every year. (STOP-India, Maiti Nepal-Nepal, NNGAT, Nepal).
- There was an average drop in the age of girls trafficked from Nepal to India from

between 14 and 16 in the 1980s to between 10 and 14 in 1994. (Human Rights Watch, 1995).

- Incidence of HIV prevalence among sex workers in Kamathipura, the largest red light district in Mumbai, India ranges from 65-70 percent, and more than 50 percent of the sex workers suffer from more than 2 STDs.
- Large numbers of young Nepalese girls are trafficked to work as Female Sex Workers (FSW) in Indian cities, and large numbers of young Nepalese males working in India frequent FSW there and within Nepal. Thus, in addition to the increasing number of HIV infections occurring among persons with high HIV-risk behaviours in Nepal, there are also increasing numbers of Nepalese FSW and young male Nepalese workers who have been infected with HIV in India, and who have or will be returning to Nepal. (WHO Regional Office for South-East Asia, 2001).

### **Definitions of Trafficking**

#### **Trafficking has been defined by the UN General Assembly statement of 1994 as:**

"The illicit and clandestine movements of persons across national borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for profit of recruiters, traffickers, and crime syndicates as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption".

#### **The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000 defines trafficking as:**

"the recruitment, transportation, transfer, harbouring or receipt of persons, by means of a 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 giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation."



- In one study in Sri Lanka 45% of female sex workers had experienced multiple STDs, and 70% of male patients at STD clinics had reported frequenting sex workers. (UNGASS 2000). The prevalence of STD makes them more vulnerable to HIV/AIDS.
- Under-age sex workers are at an infinitely higher risk of contracting HIV/AIDS on account of; (1) male fear of AIDS which is erroneously leading to a greater demand from clients for younger sexual partners, (2) common currency of the myth that sex with virgins serves as an antidote and cure to men afflicted by STDs and HIV, and (3) young girls have a biological vulnerability due to their immature genital tract. The possibility of HIV transmission may be facilitated by damage to the genital area.
- Available evidence shows that sexual exploitation and abuse of trafficked women and girls is resulting in life threatening conditions such as pregnancy at very young age, maternal mortality, STDs and HIV/AIDS.

The proportion of HIV infections, which is attributable, directly or indirectly, to sexual violence, is unknown. Nonetheless existing evidence on gender and sexual inequality, together with data on the distribution of HIV among specific groups and locations, and available information on the nature and scale of sexual violence (particularly against women and girls), suggests that it is likely to be significant.

**Peter Gordon and Kate Crehan, "Dying of Sadness: Gender, Sexual Violence and the HIV Epidemic", UNDP/SEPED Conference Paper Series**

Sanghera (1998) points to the trans-national nature of the prostitution industry, which since the advent of globalisation, has begun to rival the \$7 billion arms industry in monetary worth. Trafficking in women and children has become as lucrative as the narcotics trade, with its attendant demeaning consequences for women. "The human cash crop is unique in that it offers a double-featured advantage," says Sanghera, adding, "women's bodies are both goods and services at the same time." This new resource, she says, is often exploited in unacceptable ways through forced labour and slavery-like practices.

## EXPLORING FACTORS UNDERLYING VULNERABILITY

Poverty and lack of livelihood options, exacerbated by other socio-economic variables such as gender discrimination, ethnicity and caste and cultural sanctions, underlie vulnerability to both trafficking and HIV/AIDS.

### Social and economic conditions

Vulnerability to trafficking and HIV/AIDS is rooted in structural social and economic inequalities, including poverty and lack of livelihood options exacerbated by socio-economic variables such as



### Selected Indices for South Asia Nations

Countries	HDI as percent of highest value in region		Gender-related Development index (GDI)		Gender Empowerment Measure (GEM)		Human Poverty Index (HP percent)	
	1995	1998	1995	1998	1995	1998	1995	1998
<b>Sri Lanka</b>	94	100	0.700	0.727	0.286	0.309	20.6	20.3
<b>India</b>	90	99	0.668	0.720	0.341	-	-	25.4
<b>Nepal</b>	47	75	0.327	0.449	-	-	-	51.3
<b>Bangladesh</b>	49	63	0.342	0.441	0.305	0.305	46.5	43.6

Source: Human Development Report - 2000

ethnicity and caste, and unequal gender relations that limit the ability of young women to protect themselves. Women from impoverished families are generally less educated than their male counterparts, lack economic opportunities and access to productive resource and have limited access to sexual and reproductive health information. A woman's biological vulnerability to HIV is compounded by these social and gender-related inequities.

Discrimination within the family is also closely related to composition of the household, the number of earning members, the liabilities that the household has and consumption patterns. A review made by Lloyd in 1994 suggests close correlation between sizes of household and importance given to child's education, especially the girl child's education. Studies in Tamil Nadu and Maharashtra in India have shown that poor families with a large number of children discriminate against girls in order to send boys to school. The socio-economic trends which severely limit the access of women and children to education, proper nutrition, and health care, etc. heighten their vulnerability to being trafficked

(STOP, 2001), while their vulnerability to HIV infection is compounded under such circumstances of impoverishment (Salvi 1995, Friedman 1995).

Women's powerlessness finds further expression within the gender divisions of labour. Existing power asymmetries are visible when examining women's labour-market roles that have tended to be limited to unskilled, manual and ancillary work. This intensifies towards their low social status. The table demonstrates that following the implementation of structural adjustment programmes (SAPs) in India in 1991 (Singh 1998) rural women were recorded as being *less* economically active than before. Women workers formed buffers for the changing labour market situation and were thus given unskilled work and low wages. Moreover, studies have shown that women put in many more hours of physical labour than men (Acharya, Bennet, 1991; Asia Foundation 2001). Of the 1,269 respondents in an Asia Foundation study, 87 percent reported being engaged in agricultural work, yet their role was perceived as pertaining to the household and as having little economic value.

### Work Participation Rates and Indices of Underemployment in India (in percent)

Status	Males		Females	
	1987-88	1993-94	1987-88	1993-94
Rural Participation rate	51.7	53.8	24.5	23.4
Index of Underemployment	0.6	5.1	5.9	18.0
Urban Participation rate	49.6	51.3	11.8	12.1
Index of Underemployment	3.0	2.9	7.6	13.7

Source: National Sample Survey Organisation, 1997; Tables 6.1, 6.8, 7.2



According to members of the DMSC in India, some women admitted that they “preferred” coming into sex work rather than having to live like “slaves” in their own villages (DMSC 2001).

Ghosh (1999) argues that the emphasis on market relationships has tended to “undervalue everything which is not calculable, unpaid housework for example.” Indeed, the impact of liberalisation in a patriarchal region has had startling gender-specific consequences, such as: a) reduced access to basic needs (food, clothing and shelter); b) to education and skill formation (which would have otherwise allowed women to move out of low-skill, low-productivity jobs); c) to requirements for reproduction, such as health care and child care; d) to productive employment outside the home and recognition of household work, and significantly, e) reduced access to control over the allocation of resources, both socially and within the household (Ghosh, 1999).

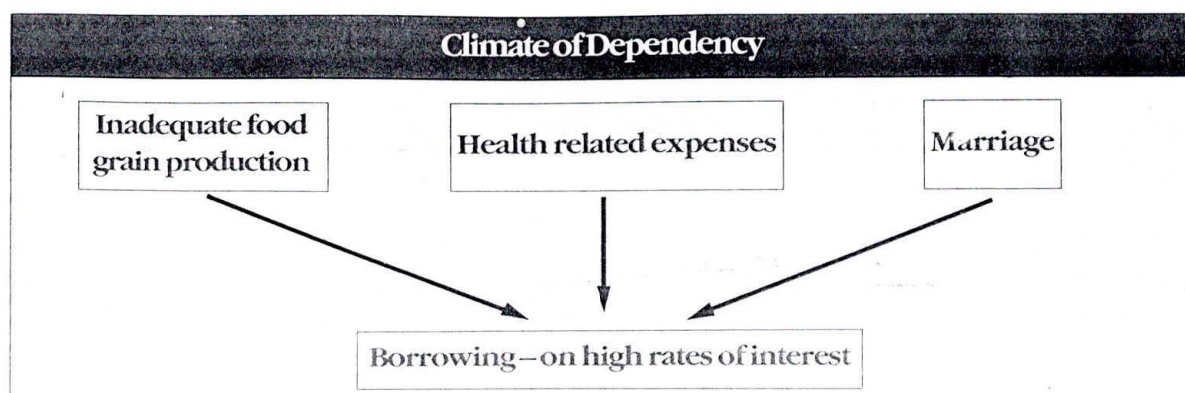
In India changes in economic policy and conditions have resulted in increased urbanisation and fewer job opportunities for women in the formal sector (Upadhyay 2000). Such conditions increase poverty for women in particular and forces them into the informal sector. Newer technologies of production have failed to ‘trickle-down’ to rural households. This is because the new technologies required complementary conditions like skill training, a reliable power supply, etc. for their effective implementation, but studies indicate that there appeared to be little effort by the state to create such circumstances (Singh 1998).

Thus agriculture remains the mainstay for survival in much of the region, with a cyclical pattern between poverty and landlessness. NGOs have found 90 percent of children and women who have been trafficked to be from families which are either landless

or have marginal land holdings. The vast majority of the population living in and around trafficking prone areas like Sindhupalchowk district of Nepal, Jessore district of Bangladesh, Nayagarh district of Orissa in India or the urban slums of Delhi and Calcutta in India do not possess land ownership titles and live a hand to mouth existence. About 7 percent of these households still do not have access to two square meals. The approximate monthly family income is Rs. 400-500 (\$ 9-11). A majority of the adults are illiterate with the rate of female illiteracy being higher than male. There is ample evidence that poor families in the above mentioned regions in India, Bangladesh and Nepal, send children to work in order to augment household income and also as a safeguard against the uncertainties they face such as the loss of job, the occurrence of a natural calamity like flood, cyclone, drought, famine, failed harvest or prolonged ill health etc. The death of a family member, family breakdown and such other problems can be disrupting for poor households with low income and no savings and who are not in a position to borrow for want of collateral, or have become caught in a debt trap.

CARE-Bangladesh has studied the linkages between debt and the sexual vulnerability of women. Borrowing is largely controlled by micro-credit schemes of banks. The banks offer loans to most of the villagers on compound interest rates ranging from 12-20 percent. Loans are recovered through agents employed by the banks. Agents who are granted commissions on loan recovery will go to any extent to get this commission. These can be highly exploitative situations and for most families, taking loans is a vicious cycle. When families are unable to pay back loans, they borrow again from a different source in order to repay the previous loan. Studies have indicated that this deficit-induced debt gives rise to mortgaging and sale of assets, and that the servicing of debt is increasingly linked to sexual exploitation faced by women ( CARE-Bangladesh 2001).





Such dependencies set off complex socio-economic dynamics at the community level. For instance, in Nepal, in the *terai* region, the *Besi*, or the moneylender wields considerable power. The '*Besi*' is also known to demand sexual favours from the young daughters of his clients as a part of debt servicing, while being fully aware that their economic deprivation prevents them from refusing him. Studies also find that it is not uncommon for *Besis* to be involved in trafficking nexuses. (WOREC 2001, Shakti Samuha, 2001).

### Migration

Often migration of one or more family members in search of livelihood is the only recourse. Particularly for the poorest groups of people with little or no choice in life, and with little or no land holdings, migration can be essential for survival. In a study conducted in 714 households across two districts (Doti and Achcham) in Nepal, 94 percent of the households perceived poverty and lack of employment opportunities as important reasons to go to India for work. The study showed that at least 49 percent of the families in Doti district had one member in India. Another study in Nepal, found that as much as 25 per cent of the rural population

sourced a quarter of the household income from remittances (NNGAT, 1999).

In a situational analysis conducted by WOREC to understand the context of trafficking, a majority of families studied indicated that migration was clearly linked to "landlessness or near landlessness". Of the families from the *terai* region with at least one migrating member, 61 percent had only upto 1 *bigha*<sup>1</sup> of land and 17 percent were landless. Amongst the hill population, 62 percent reported "10 *ropani*<sup>2</sup> or less" of land (WOREC 2001). With a decline in agricultural production many families have migrated from the hills and mountains and settled in the plains despite a decline in agricultural production most families in the WOREC analysis define their primary occupation to be agriculture. 82 percent of respondents in the study (n= 1846) reported agriculture to be the primary occupation followed by wage labour at 7 percent.

However, WOREC's findings across 5 districts in Nepal suggest that although the primary reason stated is economic the factors contributing to the decision to migrate are complex.

<sup>1</sup> 1 Bigha is approximately 0.67 Hectare

<sup>2</sup> 10 Ropani = 0.5 Hectare

Perceived reasons for migration as tabulated by WOREC (2001) are:-

Reasons	No. of Families (in percent) N=1796
In search of a better life	48
Insufficient Food	37
Lack of employment in the village	28
Lack of land for cultivation	19
Gender Discrimination	16
Social Discrimination	02

Family pressures play a significant role in women's migration decisions. At the same time for some women migration can provide an escape route from limitations imposed by traditional societies and abuse and violence at home.

False promises of marriage and a better life in the city, fuelled by the impact of media, particularly television and popular films, and abuse by other family members, are important pull and push factors that influence decisions to "run away" from home. In the post liberalisation scenario, more and more girls and women are moving out of their homes in search of better opportunities in South Asia. South Asia's traditional and cultural fabric has undergone a rapid change due to modern consumerism. Now every thing has a price and the marketplace can determine this price, including the price of women and girls. (STOP 2001).

The freedom to move for personal safety or fulfilment, including livelihood opportunities, is an important freedom and can be a survival strategy. But the key consideration here is how safe the mobility is and whether the migrants, particularly the women, are aware of the need for ensuring this safety. Consultations across the region have shown clearly that the expectations of migrants are generally mismatched with the realities of the experiences they face in their place of destination. (UNDP 2001). A climate in which migrant labourers are viewed as

economic tools with little regard to the conditions in which they live and work, their health, safety and, indeed, humanity, creates conditions in which women migrant workers become particularly vulnerable to sexual exploitation and abuse from employers, middlemen or even other migrants and can be trafficked.

In WOREC's study, at least 50 percent of the migrants did not know either the nature of job they were getting into or the address in the destination. At least 48 percent reported not being paid the wages due to them, 19 percent reported heavy physical labour and 17 percent reported physical abuse and 13 percent sexual harassment. While the study does not specify how many of these respondents were women it is definitely an indication of the nature of problems which migrants face. These issues need particular attention given that there is increasing evidence that women do get trafficked from the sites where they migrate for work (Asia Foundation, 1999). The risk is compounded by the fact that majority of the female migrants go unrecorded as they work largely in the informal sector.

Many of the women who migrate from Bangladesh or Nepal to India are duped by traffickers who lure them with the promise of good jobs and then sell them to brothels. If these women seek redressal or protection from the authorities, they may be subjected to an insensitive pushback policy<sup>3</sup>. Cultural and linguistic barrier also heighten their lack of access to

<sup>3</sup> Unofficial 'deportation' in which these women are pushed back into their country of origin at the border.



the services that exist. This ensures their silence and their increased powerlessness over their bodies and their lives. Analysis by CARE-Bangladesh of trafficking in Shatkhira and Jessore districts of Bangladesh has also shown that most of the women who migrate to India without valid documents or are trafficked end up in sex work, and that those who work in households as domestic labour or in factories in Kolkata or Mumbai in India are often sexually abused (CARE- Bangladesh 2001).

Mobility and migration do not necessarily lead to trafficking or HIV infection but they can create conditions which makes migrating women and

children more vulnerable. Women who start out as hopeful migrants without sufficient information, guidance or protective systems can thus find themselves trafficked into different kinds of bonded labour including sex work within or outside the region. Even women who start out as legitimate migrants with documents and promises of jobs can find themselves cheated or sold along the way where effective and powerful traffickers operate. What happens to these women does not remove the legitimacy of their desire to exercise the freedom of mobility in search of livelihood opportunities, but only illustrates the urgent need for measures guaranteeing their safer migration (UNDP 2001).

### Factors Influencing Trafficking

	Factor	Aspects	Themes
1.	Individual	Motivation, attitude, Knowledge, Practices, Occupation, Family, Sense of Control.	Lack of self-esteem, Patriarchal order of family, low level of literacy and awareness, absolutely no sense of control.
2.	Socio-Cultural	Social support, gender ethnicity, culture, religion, advertising, historical events.	Gender discrimination, favouring the male child, religious & cultural sanctions to such practices.
3.	Economic	Income levels, cost of service, Pressure to work, commercial pressures.	No right to property, low productivity of land, basic survival pressure, feminisation of poverty and feminisation of migration.
4.	Environmental	Hazards, distances, food availability, transport, water.	Alienation and isolation due to migration.
5.	Political	Sources of power and influence, advocacy groups and vested interests.	Trafficking is part of an organised network backed by police, politicians and other influential sections of society.
6.	Policy	Health promoting policies, legislations, incentives or punishments, taxation and implementation.	Although policies exist, it is at the level of implementation that there are a lot of limitations.
7.	Existing Services	Access, scope, appropriateness, quality.	Existing services are rudimentary and have limited accessibility and scope for the victims.

adapted from Hawe et.al

plains. However this situation is changing considerably and what the NGOs refer to as the "spill over" is becoming evident. Ongoing research suggests demand for women in the sex industry and lastly, and importantly, due to the fact that as community awareness grows traffickers are moving to new areas where communities are not yet suspicious of them.

In the sociological profile of 500 households in the source areas of Nepal, Bangladesh and India compiled by STOP (2001), it was found that scheduled caste/tribes' households outnumbered most houses in the trafficking prone areas in India. They constituted 46 percent of the sample households. Other communities in which prostitution had perceived cultural sanction (especially in Nepal) constituted eight to ten percent. In 17% of these households girls were described as 'missing' following the footsteps of an elder sister. It was also found that in such cases earlier generations of aunts and grandmothers had also been in prostitution.

The pattern of linkage between marginalisation of communities and higher incidence of trafficking was found by the study all over South Asia. The women and girls bear the triple burden of exploitation - they are poor, they are from a marginalised group, and they are female (STOP 2001). The combination of these factors has led to devastating results. A case-study which explains this is given in the box.

Ironically the patterns of cultural sanction seem to work in the favour of girls who return from sex work. Both WORREC and Maliti in Nepal, and STOP in India, working towards repatriating women, suggest that the reactions of communities to women and children who return from trafficking vary. It has been observed that women from the so called low caste communities are accepted more comfortably than, say, women from Brahmin or Chhetri families. STOP's

Although the gendered impact of vulnerability is clearly visible across the region, there are many sub-ramifications, which affect the extent of the impact. Caste, ethnicity and social status are closely linked to seeming cultural sanctions. Women from certain castes and communities have comparatively greater freedom of movement and fewer of the rigid restrictions imposed by concepts of women's purity, chastity and virginity prevalent amongst mainstream society in countries of South Asia. Popular perceptions of women from certain castes and communities also affect their chances of being trafficked. In Nepal, for example, there is an assumption that women from the hill ethnic groups have liberty of movement, greater freedom in relationships with men and a greater role in personal decision-making as compared to the more conservative Hindu-Brahmin families in the plains. When this relative freedom is coupled with poverty, weak social position, illiteracy and lack of information it can be manipulated by traffickers and the managers of the sex industry (STOP 2001).

Perceptions of cultural sanction affect the vulnerability of women and young girls on two counts:

- The notion that they can be trafficked more easily as their families are not against the mobility of women.
- The acceptance of sex work within certain communities in India and Nepal as possible livelihood options for women can result in young girls prepared for and introduced into this profession without being given the right to make an informed choice at an appropriate age.

Given these vulnerabilities it has been seen that women from the hill areas in Nepal have been trafficked more commonly than women from the

Traditionally Hindu society was organised around four castes with the lowest caste sometimes described as 'untouchables'. The uplift of this extremely poor and deprived section of the population was the subject of affirmative action by the Government of India soon after independence in 1947 and incorporated in a 'schedule' or section of the Constitution, from which it got its name. Similarly, tribal populations which have not had access to education and health care and other fundamental rights, were also identified in another 'schedule' of the Indian Constitution.



“My name is Rupa. My family is very very poor. We come from a very backward village in 24 Pargana District. Every one in our village looks down upon us because we are low caste. My mother and my two brothers and sisters work in the landlord's field. When I was about 12–13 years old I was working in the field one day when the landlord's son and his four friends accosted me and dragged me to a dilapidated building and raped me. When I looked for justice, the village panchayat<sup>5</sup> said that I was concocting stories to malign the landlord's son. I was ordered to leave the village. One of our neighbours' sons who lived in Calcutta agreed to help me. He offered a job in a lawyer's house. My mother agreed to send me with him. He brought me to Delhi instead and sold me to a brothel. My mother still thinks I work as a domestic help. Many girls in the brothel are from my caste and belong to my district and have the same stories to tell.”

*(As documented by STOP, 2001)*

experience with reintegration processes shows that a Lambada (low caste) girl from Andhra Pradesh or a Nolia (fisherman community) or a Haddi (sweeper community) girl from Orissa in India may be more easily accepted back and her trafficked status does not necessarily lead to her stigmatisation or rejection. However, if she is a Brahmin or a Kshatriya girl, chances of her reintegration to her family is almost impossible. Most women and girls from high caste who have been rescued from brothel-based prostitution by STOP are usually rejected by their families.

### **The HIV Vulnerability of Trafficked Children and Women**

The nexus between being trafficked for prostitution and vulnerability to HIV infection is a particularly strong one. According to Hannum (1997) some 100,000 to 200,000 Nepali girls and women work in brothels in India, many in Mumbai. HIV infection is as high as 72 per cent in the brothels of Mumbai, the

majority in girls under 18 years of age (Salunke, et al, 1998). Of the 331 HIV positive cases documented in Nepal by October 1995, 134 of them were returned sex workers (Hannum, 1997). A study of sex workers in Nepal's plains, the 'terai,' found 4 per cent of sex workers with HIV, of which 17 per cent had worked in India. Informal surveys across the region have also found that sex workers are highest at risk to HIV in the first six months of their work - probably because customers perceive new sex workers to be low risk as well as due to their relative lack of experience and skill to negotiate condom use. One common myth in South Asia that remains is that sex with a virgin girl serves as a cure to HIV infection and STDs. Consequently, the demand for young girls in the brothels of Mumbai is high.

A trafficked child or woman has greater chances of contracting HIV/AIDS because she is placed in the most vulnerable of situations with absolutely no control over her 'choices'. STOP in a focus group discussion with 57 rescued trafficked children and women found that 98 percent of the participants had never initiated condom use although they had some awareness about safe sex measures. It is unrealistic to expect these women and children to bargain and negotiate condom use. In fact their health was the last item in their list of priorities.

Knowledge or awareness of the disease alone does nothing to change the basic power structure in the trade. The trafficked woman or child has no control over her body or life. That is precisely why she is there and why she is in demand. 90 percent of the women and children who have been rescued by STOP report having about 4-5 customers on a weekday and 12-18 customers per day on the weekends, with condom use almost unheard of. Access to much needed healthcare is almost non-existent. A very high percentage of women and children suffer from STDs which make them more vulnerable to contracting HIV/AIDS. Children who are preferred by the client to 'cure' HIV/AIDS and STDs are ironically more vulnerable to contracting it.

<sup>5</sup> Council



“The clients don’t like condoms and the gharwali (madam) tells me to do what he says. If I refuse, the client can choose any other girl and the gharwali will beat me with rods, so I always do what he says.”

*An account of a rescued Nepali child about safe sex practices  
(from STOP’s focus group meeting)*



Girls rescued from red light areas of Delhi by STOP

Prostitution is often driven into the shadows making it hard to reach vulnerable people with HIV/AIDS prevention resources and healthcare. Health services that they can access fall into 3 categories viz. private medical practitioners, unregistered and unqualified medical practitioners<sup>6</sup> and government hospitals and ancillary health care.

Ironically, the second category is preferred to doctors and paramedical staff, whose attitude towards these women and

AIDS presents these women with another dilemma in their sexual relationships. Safe sex, in particular the use of condoms, is incompatible with pregnancy. Most of the women believe that survival in later life depends on bearing children. Balancing fertility against HIV prevention presents a quandary for these women.

Kohinoor of village Mohammadpur, Bangladesh was sold by one of her relatives to a Mumbai brothel. She was tortured by the brothel owner (Malkin) and on an average had to entertain 6 to 7 customers daily. Although there was availability of condoms at the brothel, the rate of use of condom was very low. Kohinoor’s perception was that only 5% of the customers used them. She said that there was no health care for the girls when they fell ill. (As documented by CARE- Bangladesh 2001).

children is experienced as demeaning. In addition to the weak overall infrastructure, the health system is largely insensitive or at best indifferent to the needs of sex workers. Government mobile medical units often refuse to even step into the brothel. STOP’s research has shown that almost 40 percent of women and children who have been rescued from the brothels have tested positive for HIV, with the possibility that others may be in the window period. In the regions of the world hardest hit by HIV/AIDS, where public health care budgets are severely stretched, HIV positive women have less access to health care than men, less free time to access what is available and fewer resources to spend on it. The situation is even worse for women and children in brothels.

Describing the situation in a red light area in Delhi, India, STOP reports that women do not have access to the money they earn. After paying off their “dues”

<sup>6</sup> These are local community “Doctors” usually unqualified and unregistered, who by virtue of their social standing and accessibility rather than medical expertise and experience become popular with the people. Health programs are now being designed to build the capacities of these “Doctors” owing to their popularity in the communities where they operate.



to the madams and the pimps, the sex workers are given their share of the income in the form of "tokens" with the amount due to them written down. The amount is accumulated and given to the girls after a period of "three years" on the excuse that they will be free to go back home after that if they have earned enough to pay all their dues. They are thus in no position to pay for health care.

This ostracism and rejection of women and girls who return to their communities is compounded if they are found to be HIV positive. Even in communities which are more tolerant to trafficked returnees, when it comes to HIV status the reaction is more or less similar. It is immediately labelled as a "whore's disease".

This perception creates a complex situation for trafficking prevention programmes, and has resulted in a hesitancy to address the increased risk of HIV infection as a result of trafficking at the community intervention levels, from fear of increasing the stigma associated both with returned victims as well as other migrant labour. Over the last few years, Nepali girls and women returning from India have almost invariably been characterised as "carriers of AIDS", whether or not they actually are. (Rajbhandari, WOREC, Kathmandu, 1998).

Low literacy rates, low awareness and patriarchal notions perpetuate these attitudes. If the HIV status of a trafficked returnee comes to the notice of the police they may be subjected to physical torture, enforced medical examinations, public exposure often in media which results in their being stigmatised for the rest of their life. The lack of sensitivity is also prevalent among medical practitioners. The hype

about AIDS being spread through sex workers is so strong that they are denied proper medical aid and are also segregated when placed in rescue/welfare homes/jails. Immediately after being picked up in a raid they are sometime forcibly or without consent tested for HIV/AIDS as was the case in Hyderabad and Allahabad in India in 1997. Women were dumped in jails and later in protective homes in sub-human

"I come from a tribal village of coastal Orissa. I had eloped with a boy who brought me here and sold me to a brothel. After 2 years, I was rescued and sent back to my village. My family readily accepted me. However, when it was discovered that I had AIDS they turned against me. I knew very little about AIDS and my parents knew even less. I moved away from my family and now live in a AIDS hospice in Andhra Pradesh."

*(As documented by STOP 2001).*

conditions only to be tested and later shunned when they tested positive. Some women escaped, others were pushed into the streets only to look for new red light areas because other means of survival was not open to them (JWP 2000).

Even if trafficked returnees can avoid such treatment, they have very little options for survival. There is very little support from developmental policy or practice, whether governmental or non-governmental. Few rehabilitation centres exist which can provide them with food, shelter, psychological treatment, legal support and training in basic literacy and skilled development. Many young HIV positive girls and women, lacking adequate support structures, return to making money through sex work thereby facilitating the continuing transmission of HIV infection.

Sahana, 19 year old Nepali woman, earned her family the equivalent of 50 pounds when she was sold at age 12 to a brothel in India. It also earned her 10 customers a day and HIV. She no longer works as a prostitute. This is not because she has been rescued from prostitution or because she has found a happier livelihood, but because she is going to die. She was ejected from her caged brothel in Mumbai because she had become too thin to attract the clients, and the brothel owner thought she was a bad advertisement for business. (Louise Brown, 2000).

## South Asia Court of Women on the Violence of Trafficking and HIV/AIDS

*August 11-13, 2003*

*Dhaka, Bangladesh*

### **An Overview**

Asian Women's Human Rights Council (AWHRC) in partnership with UNDP Regional HIV and Development Programme for South and North East Asia and UBINIG, Bangladesh is organising the South Asia Court of Women on the Violence of Trafficking and HIV/AIDS from August 11-13, 2003 in Dhaka, Bangladesh. The Court is being organised in association with Oxfam GB, in Nepal and AATWIN, Nepal; IMADR, Sri Lanka; LHRLA, Pakistan and Vimochana, Bangalore.

The South Asia Court of Women, through personal testimonies of violence and of resistance, analyses of expert witnesses and inspiring vision statements of a jury of women and men of wisdom, will seek to understand the increasing violence and vulnerability associated with trafficking in women and children and HIV/AIDS in the context of the current patterns of globalisation and governance that are leading to the destruction, and devaluation of livelihoods and life systems of entire communities of people in the global south; the increasing restriction on mobility due to concerns of national security; the absolute erosion of all notions of rights or dignity for the survivors of the violence of trafficking and HIV/AIDS. In this context therefore it is important to relook at the issue of trafficking not merely as a cross border law and order problem linked to women and morality, citizenship concerns, repatriation and rehabilitation but draw out its critical linkages with issues related to gender, migration and poverty, asylum and refugee seekers, conflict and the contemporary discourse on terrorism - in fact the new global world order.

Through the holding of the Court we would attempt to:

1. Provide a forum for women from different countries of South Asia to share, reflect and have a deeper understanding of roots of the violence and vulnerability faced by women affected by trafficking in women and children and HIV/AIDS.
2. Recognise and build upon the strengths and survival strategies of affected women towards challenging and transforming discriminatory social and legal policies and evolving a notion of rights rooted in their realities.
3. Evaluate and assess the policy frameworks that are being evolved to address the issues at national, regional and international levels.
4. Strengthen regional and national networking among individuals and groups on this issue in order to work for more effective action and advocacy at various levels.

### ***AWHRC: It's Concerns Related to Trafficking***

Trafficking of women and children in Asia has been one of the earliest and primary concerns of AWHRC ever since we had the first Asian Conference on Traffic in Women in December 1991 in



Seoul, Korea. Several programme including workshops, Courts of Women, Fact Finding Missions, publications, lobbying and advocacy have been held in different parts of Asia in collaboration with groups like Gabriela, Philippines; Foundation for Women, Thailand; Global Alliance Against Trafficking in Women (GAATW); Migrante International; Oxfam (Nepal); Sangram, SANLAAP (India) and RESISTANCE, UBINIG (Bangladesh). We have, over the years, lobbied at various fora including SAARC, the UN Working Group on Contemporary Forms of Slavery and the UN Crime Commission.

The attempt has been to broaden the scope, notion and definition for trafficking, thereby separating it not only from prostitution but also migration. Any move to combat trafficking must not criminalise either woman's right to mobility or her reality of adopting prostitution as a livelihood option. What should be of greater concern are the lack of consent, forms of coercion, abuse and deception and consequently therefore it is the trafficker and trafficking networks that should be the focus of penalisation. The other major area of concern is that the interests of trafficked women and the need to provide them support and security must take precedence over the citizenship concerns of member states regarding the legal identity of the women.

AWHRC, while working on the issue of trafficking, has also been attempting to relook at the issue of prostitution through the life experiences and realities of women in prostitution - at issues related to self worth and dignity, at their right to life a life free of violence, abuse and stigmatisation.

It is in this context that AWHRC has been emphasising a human rights approach as far as both women in prostitution and victims of trafficking are concerned. Therefore, the attempt to evolve and lobby for a Human Rights Standard in the policies related to prostitution and trafficking.

While this we feel is important in terms of strategies and addressing State agencies, we also feel the need to look more critically at the conceptual limitations of the Rights framework that fails to contextualise the larger contemporary realities within which trafficking and prostitution are totally located. A universal and therefore a decultured, impersonal, amoral framework that anaesthetises the pain of poverty in those developing worlds where not only has the violence of trafficking been in fact legitimised but which are also witnessing the increasing brutalisation of prostitution. This increasing brutalisation cannot be separated from the New Economic Order that seeks to industrialise, transnationalise and commercialise the phenomenon on an unprecedented scale. The violence of trafficking can not be separated from the total impoverishment of the entire societies that constitute either the resources base for wealthier nations or end up as waste by products of a highly industrialised or corporate world; a world in which the disparities between the rich and the poor are horrifyingly stark; a world in which human relationships have gained a cold contractual, impersonal quality and the complex fabric of human impulses have been reduced to the unidimensional desire of an individual-*rootless* and *ruthless* in his desire for self fulfillment

It is in this nebulous terrain that we seek a framework of dignity and self worth while evolving a language of rights, justice and empowerment for women- be it those who are victims of trafficking or those who choose prostitution as a livelihood- a way of life.

It is these concerns that we seek to bring forward through the South Asia Court of Women against Trafficking in Women; a Court that is part of a process initiated by AWHRC and El Taller International a sister organisation located in Tunis; a process that not only seeks to create a new space and a new politics for women but also one that offers a valuable input into local, national and international campaigns against different forms of violence against women.

## *The Courts of Women: An Alternative Political Space*

AWHRC and El Taller in partnership with organisations in different regions with Corinne Kumar as the International Coordinator have been organizing several Courts of Women focusing on issues specific to the regions. Apart from seven Courts of Women held in Asia, the others include Mahkammet El Nissa, the Arab Courts of Women, organised in collaboration with networks and organisations in the region focusing on violence against women in the Arab world, Nga Wahine Pacifica, (Pacific Court of Women) organised along with the Maori Women's Network focusing on issues related to the nuclearisation of the Pacific and land rights; the Mahakama Wa Mama Wa Africa (Africa Court of Women), the World Court of Women Against War, For Peace and the World Court of Women Against Racism, all organised in Africa in collaboration with several groups and networks like the Institute for Black Research, University of Natal, the University of Western Cape, Women's support Network, Cape Town; the Durban social Forum; The International Court of Women on Violence of the Economic Blockade and its effects on women and children organised by El Taller with the Federation of Cuban Women and the Institute of Philosophy in Cuba; The Indigenous and Refugee Women's Human Rights Court organised in Sydney, Australia with the Centre for Refugee Research, ANCORW and the Aboriginal Research and Resource Centre

While the Courts are deeply symbolic and an attempt to define a new space for women; a new politics, as a forum for human rights education they have been an extremely sensitive and powerful media to reveal the interconnections between the various forms of personal and public violence against women in different societies. Violence that has been increasing and escalating; a violence that has become brutal.

The Courts of Women challenging the dominant ways to knowledge seek to weave together the objective reality (through analyses of the issue) with the subjective testimonies of the women; the personal with the political; the logical with the lyrical (through video testimonies, artistic images and poetry) urging us to discern fresh insights, to find a new political imagination.

The Courts of Women attempt to write counter hegemonic histories by creating a space where we can listen with care to the voices of the women speaking in their own centre. And in re-writing history the Courts of Women not only hear of the need to extend the dominant human rights discourse from the experience and perspectives of women; they speak too of a new generation of women's human rights.

As part of this process of the Courts and our ongoing involvements with the issue, the South Asia Court of Women on Trafficking and HIV/AIDS will seek to deepen our understanding of the issues in the context of the new violent global order and while holding them accountable, will call upon the states and governments to make appropriate economic, social and legal provisions to protect the rights of the women victimised by trafficking and those affected by HIV / AIDS.

### **The South Asia Court of Women on the Violence of Trafficking and HIV/AIDS**

This Court that is being held from 11-13 August 2003 in Dhaka, Bangladesh will comprise of three events:

- a. A one-day series of roundtable discussions on the day preceding the court, on August 11, 2003, on critical, cutting edge issues related to the core themes that will provide the context for receiving the text and testimonies of the Court.
- b. The Court itself on August 12, 2003, that will hear the testimonies of women survivors and resisters to the violence of trafficking and HIV AIDS; that will view a deeper nuanced



understanding of the issues through a series of poetic visuals; that will listen to the voices of wisdom spoken by a jury of women and men chosen for their experience and sensitivity to the issues involved.

- c. The follow up meeting following the court on August 13, 2003 the third day, which will discuss the concrete way to go forward taking the primary issues that emerge both from the roundtables and the Court.

The Court will seek to involve a wide range of participants, including women who are survivors of trafficking, activists, and networks working on the issue, trade union representatives, media representatives, students, academia, policy makers and representatives from various government agencies from the region. Leading human rights activists and other influential people from the region have been invited to be part of the jury.

### ***Issues Before the Court***

Specifically, the personal and analytical testimonies from the different countries of South Asia including Bangladesh, Nepal, Pakistan, Sri Lanka, Afghanistan, and India will be heard in five sessions.

1. ***Redefining Issues: The different faces of trafficking:*** As of now since most national and regional legislations and conventions fail to provide a clear definition of trafficking, its scope, notion and definition need to be broadened. The existing unclarity results in the application of such laws only to women trafficked into prostitution and this too most often framed within a moralistic framework. The Immoral Trafficking Prevention Act in India for instance under which women trafficked into prostitution are criminalised while the traffickers themselves are allowed to go free. The testimonies during this session will attempt not only to draw out the different faces of trafficking like forced marriage, camel jockeying, forced adoption, forced labour, domestic work and prostitution but will also attempt to define the differences even while redrawing its links with prostitution, migration and HIV/AIDS.
2. ***Migration and Movement: Globalisation and Human Insecurity:*** The impact of globalisation is being felt at various levels including the realm of economics, culture, economics, governance models and even knowledge systems. What is clear is that this new global world order is creating new institutional frameworks for marginalisation and exploitation like poverty, migration, the tourism industry, within which is the violence of trafficking being legitimised. It is clear that trafficking of women and children is directly related to the disintegration of the rural communities and extreme insecurity of livelihoods that leads to displacement, migration and the vulnerability of those who are forced to migrate in search of livelihood options. The testimonies in this session highlighting the thin line between trafficking and migration will reveal the links between trafficking and the garment industry, tourism, child labour and commercialisation of the Devadasi system, in the backdrop of migration and impoverishment. It will also look at the implications of the U.S. Trafficking Victims Act 2000 that is using the issue of trafficking like that of human rights and child labour, as a way of controlling trade and migration and refusing redress and assistance to trafficked women, further adding to the victimisation of the trafficked/migrant/refugee woman.
3. ***Borders and Boundaries: Wars and Inhuman Security:*** Wars and conflict situations engender situations of extreme vulnerability and insecurity in which women are directly used and abused, forced to migrate and in the process trafficked. What have also been observed



are also phenomena like the trafficking of refugees at borders or setting up of brothels around military camps. Post September 11 developments have further complicated the issue by not only conflating trafficking with migration but also by bringing it within the global nets cast in pursuit of the *war against terror*. The recent legal responses to cross border movements that are sought to be controlled in the name of trafficking are informed by this hostile antagonistic fear of the *other* who is threatening the security/economy of the nation. In this context the Court will hear testimonies from Sri Lanka, Kashmir, Bangladesh, Burma and the North East, each a site of much violence engendered both by the State and from within *civil society*.

4. ***Victimising the Victim: Human Rights Abuse:*** Institutions of the State like the police, judiciary and health system, that are supposed to ensure the rights of the citizens to justice, redress or care, are in fact the greatest violators of the rights of the people, particularly the poor and the vulnerable. Incarceration of illegal immigrants most of who fall prey to traffickers who lure them to foreign lands through false promises; prosecution of the trafficked by discriminatory national legislations; exploitation and abuse of women in prostitution by the police in police stations; forced testing of trafficked women or women in prostitution for HIV / AIDS at detention centres on the borders; forced repatriation of the trafficked women to homes where they may be facing conditions of violence, discrimination or stigmatization; irrelevant rehabilitation policies for survivors of trafficking ... Apart, therefore, from looking at the larger context within which violence is escalating, the Court will also attempt to evaluate policy frameworks and legal mechanisms that are violating the human rights of the trafficked.
  
5. ***Recrafting Destinies: Voices of Resistance:*** This session will listen to testimonies from women and groups of women who have been trafficked and have learnt to assert themselves beyond their victimhood carving out their life choices. For it is these women who in the dailiness of their lives have seen much violence, exploitation, marginalisation and stigmatisation, in whom suffering has forged the strength to be survivors with the sharpest insights - be it on the double standards of morality in society, the violent underpinnings of trafficking networks or even the hollowness of state sponsored rights. It will also hear voices that are attempting to respond to trafficking not so much through challenging only laws and policies but by recrafting societies that affirm human dignity and survival modes evolved from the most marginalised communities.

### ***Roundtables***

On the day preceding the Court will be organised a series of roundtable discussions around the basic themes listed above. The discussions will however attempt to also take up more critical edge issues as for instance redrawing the framework for understanding the different approaches to trafficking and prostitution; the alternative thinking that is there on the HIV/AIDS issue that explores how the AIDS paradigm has been constructed, with particular reference to the medical establishment and pharmaceutical companies which have had an overwhelming control over the scientific information produced and disseminated publicly about AIDS; an assessment of the legal and policy frameworks that have been evolved at the national, regional and international levels and an evaluation of the possibilities and limitations of the human rights framework that has been adopted to address the issues; drawing out the implications of the far reaching transformations in the macro context and the dominant discourse of politics and knowledge systems that is creating conditions of extreme vulnerability at various levels for a majority of the peoples and communities the world over. Specifically the Roundtables will be organised around the following themes:



1. *Beyond the Borders: Globalisation, Militarisation and Human Vulnerabilities*
2. *Human Rights and Inhuman Wrongs: Legal Regulation of Trafficking and Transborder Issues*
3. *Refocusing Issues: Media Representation of Trafficking and HIV /AIDS*
4. *Integrating Trafficking, Human Rights and HIV/AIDS: Some Debates and Dilemmas*
5. *A Burst of Light: Celebrating Survival and Resistance*

Some of the resource persons who have been invited for the roundtable discussions include Martin Khor, Malaysia; Kalpana Sharma, Times of India; Secretaries of Women and Child from Bangladesh, Nepal and India; Shah Hussain Imam, Daily Dawn Bangladesh; Kinley Dorji, Bhutan; Bishaka Dutta, Point of View, Bombay; Meena Ghosh, NACO; Lawyer's Collective, India; Asma Bokhari, Pakistan AIDS Programme; Anwar Fazal Malaysia; Renu Rajbhandari, National Human Rights Commission, Nepal; Khadija Haq, Pakistan; Nimalka Fernando, IMADR, Srilanka; Rukmini Rao, Deccan Development Society, India Dr. Manu Kothari, surgeon, anatomist critical thinker, KEM, Bombay; and Joan Shenton, Meditel Productions, author of "Positively False", UK.

### **Jury and Special Guests**

The Jury who has been invited include Ms. Zanele Mbeki social activist, first lady South Africa; Gayatri Spivak, Academic and Cultural Studies, USA; Justice Sujata Manohar, NHRC, India; Dr. Pam Rajput, Women's Studies, India; Salma Sobhan Lawyer and Human Rights Activist, Nepal; Farial Gauhar, actress and Human Rights Activist, Pakistan; Abdoullah Janeh, Ghana; Gopal Siwakoti Chintan, Lawyer and Human Rights Activist, Nepal; Mary Robinson, UN Commissioner for Human Rights.

The Special guests who have been invited for the Court include the SAARC Secretary General, Ms. Nane Annan and the Queen of Bhutan.

### **Participants from India**

The participating organisations from India who will be presenting testimonies and be resource at the roundtable discussions include Sangram, VAMP, Sangli Maharashtra; DMSC, Sanlaap, Calcutta; Deccan Development Society, Gramya Hyderabad; Samraksha, Sangama, DISC, Vimochana Bangalore; Lawyers Collective, Point of View, Dr. Manu Kothari, Bombay.

Testimonies from Kashmir have been gathered on video by Sonia Jabbar, journalist and filmmaker, New Delhi.

### **National Preparatory Workshops**

National preparatory workshops are being organised in different countries towards the South Asia Court of Women in Pakistan, Sri Lanka, Bangladesh, Nepal and India. Through these preparatory workshops, we would attempt to share and reflect on the central concerns of the Court with a wide range of groups within the region working on these issues, including those who are not participating in the Court, towards enriching the deliberations in Dhaka.

The National Preparatory workshop in India is being organised in collaboration with Vimochana in Bangalore on 19-20 July, 2003; in Colombo by International Movement against Discrimination and Racism, IMADR on 26-27 July, 2003; by Lawyers for Human Rights and Legal Aid, LHRLA, on August 1-2, 2003 in Karachi and by AATWIN and Oxfam GB Nepal in Kathmandu on August 3, 2003.

Ms. Bharati Silawal-Giri, Assistant Resident Representative (Programme), Gender Equality and Social Development Unit, UNDP  
Ms. Tania Karpatschhof, Gender Programme Officer, UNDP  
Mr. Michel Dupoizat, Representative, UNHCR  
Mr. J. Musoke, UNFPA Representative

#### **Rupandehi district**

Mr. Gupta Bahadur Shrestha, Deputy Superintendent of Police  
District officials  
Maiti Nepal transit home

### **INDIA**

#### **New Delhi**

Mr. Lalit Mansingh, Foreign Secretary, Ministry of External Affairs (MEA)  
Mr. A. Gopinathan, Joint Secretary (UNE), Ministry of External Affairs  
**Mr. Suru Lai, Director (UNE), Ministry of External Affairs**  
Dr. Neeru Chadha, Legal Officer, Ministry of External Affairs  
Mr. B.K. Chaturvedi, Secretary, Department for Women and Child Development (DWCD), Ministry of Human Resource Development  
Mr. Rajmal Banger, Deputy Secretary (GC), Department for Women and Child Development  
Ms. Vibha Parthasarathi, Chairperson, National Commission for Women  
Mr. Kamal Pande, Home Secretary  
Mr. Arun Jaitley, Minister of Law and Justice and Company Affairs  
Mr. Soli J. Sorabjee, Attorney-General of India  
Ms. Sumitra Mahajan, Minister of State for Human Resource Development  
Mr. Justice J.S. Verma, Chairman, National Human Rights Commission  
**Mr. Ajai Raj Sharma, Commissioner of Police, Delhi**  
Smt. Sunita Sabharwal, Superintendent, Central Jail, Tihar

#### **Mahila Dakshata Samiti**

Ms. Vimla Vohra, Member-in-charge, BAPNU GHAR, All India Women's Conference (AIWC)  
Satya Ravi Shakti Shalini  
**Ms. Madha Joshi, Joint Women's Programme**  
Ms. Ranjana Kumari  
Ms. Sushila Kanshik  
Dr. Syeda Sitmad  
Ms. Akida Sivadasa, Media Advocacy Group  
Dr. Jyoti Sanghera  
Mr. Nair

Ms. Brenda Gael McSweeney, United Nations Resident Representative  
Mr. Richard Conroy, Senior Deputy Resident Representative, UNDP  
Ms. Sonam Yangchen Rana, UNDP  
Ms. Padwa Seth, Consultant, UNICEF  
UNIFEM



**Mumbai**

Hon. Chief Minister, Maharashtra State  
Chief Secretary, Maharashtra State  
Adv. Nirmala Samant Prabhavalkar, Chairperson, Maharashtra State Commission for Women  
Smt. T.F. Thekkekara, Hon. Member Secretary, Maharashtra State Commission for Women  
Shri. A.N. Borade, Officer, Maharashtra State Commission for Women  
MAVIM, the corporation for economic development of women  
Ms. S. Sridevi Goel, Deputy Inspector-General of Police, Maharashtra  
Police Station, Kamathipura  
St. Catherine's Home, Andheri  
Asha Sadan, Umarchadi  
Prerana Trust, Kamathipura  
Mr. Ratnakar Khaire, NGO Adviser, Mumbai District AIDS Control Society  
Mr. B. Vijay, Hon. Secretary, Shape Up India  
Government Observation/Remand Home, Umarchadi  
Ms. Jyoti Mhapsekar, President, Stree Mukti Sanghatana  
Mr. Jhilam Roy Chowdury, Research Assistant, Committed Communities Development Trust  
Ms. Vipula Kadri, Save the Children India

**Calcutta**

Ms. Rinchen Tempo, Director of Social Welfare, Department for Women and Child Development, West Bengal  
Ms. Manjula Gupta, Principal Secretary, Department for Women and Child Development, West Bengal  
ICDS Project  
Liluah Government Home  
Ms. Indrani Sinha, Secretary, SANLAP  
Durbar Mahila Samanwaya Committee

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COMMISSION ON HUMAN RIGHTS  
Fifty-seventh session  
Item 12 (a) of the provisional agenda

**INTEGRATION OF THE HUMAN RIGHTS OF WOMEN  
AND THE GENDER PERSPECTIVE**

**VIOLENCE AGAINST WOMEN**

**Report of the Special Rapporteur on violence against women, its causes  
and consequences, Ms. Radhika Coomaraswamy, in accordance with  
Commission on Human Rights resolution 2000/45**

**Addendum**

**Mission to Bangladesh, Nepal and India on the issue of trafficking  
of women and girls (28 October-15 November 2000)\***

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\* The executive summary of this mission report is being circulated in all official languages. The report itself is contained in the annex to the executive summary and is being circulated in the language of submission only.



there should be legal and psychological counselling and help for the women to plan their future. Proven NGOs should manage such homes with government monitoring and supervision.

Governments of the region must work towards facilitating the voluntary return, if that is appropriate, of trafficking victims who are foreign nationals rather than detaining them for long periods in government homes.

All the countries of the region should have training for their police forces on how to combat violence against women in general as well as trafficking in particular. The training should consist of awareness raising on the issue as well as development of investigative skills so that crimes of violence against women are investigated and prosecuted with proper evidence. The Special Rapporteur suggests that the countries of the region draw on international expertise present at the Office of the High Commissioner for Human Rights and the United Nations Office for Drug Control and Crime Prevention/Centre for International Crime Prevention in Vienna.

Corruption in the police seems to be a significant problem in all the countries of the region, especially in the area of trafficking. There should be a clear directive from the top of the ~~police hierarchy that such behaviour will not be tolerated and police officers who engage in such~~ activity should face severe consequences.

There should be seminars and workshops with judges in the region to increase their awareness on issues relating to violence against women as well as to issues related to trafficking. There are a number of such programmes already in existence and they should be encouraged.

The human rights commissions in all the countries of the region should make trafficking a special focus of their work.

Witness protection schemes should be set up for women victims so that they will testify against their traffickers. Such schemes should assist the police in presenting evidence before the courts ~~and would help to achieve a higher rate of conviction.~~

There should be a concerted effort to deal with the problem of HIV/AIDS in the region. Sufficient resources should be allocated to deal with the problem. Special centres should be set up in the red light districts to assist sex workers. International standards on "voluntariness" with regard to testing and confidentiality should guide the campaign on AIDS. Gender training for the medical profession should be provided to ensure that women receive non-judgemental, confidential treatment.

Prevention programmes should exist in all three of the countries visited. Prevention should take the form of awareness raising through the media, through the education system and through social mobilizers in the villages. Prevention should not rely on social surveillance and neighbour spying on neighbour as such surveillance can be subject to a great deal of abuse.

Extensive support should be given to NGOs working in this field. The NGOs working with the children of the sex workers should be given special encouragement along with those who work with the victims of trafficking. A partnership between Government and NGOs working in this field is essential if the problem of trafficking is to be dealt with in the South Asian region.

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST  
WOMEN, ITS CAUSES AND CONSEQUENCES, ON HER MISSION TO  
BANGLADESH, NEPAL AND INDIA ON THE ISSUE OF TRAFFICKING  
OF WOMEN AND GIRLS (28 OCTOBER-15 NOVEMBER 2000)**

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Appendix: List of selected persons/organizations with whom the Special Rapporteur met during her mission.



### Introduction

1. At the invitation of the Governments of Bangladesh, Nepal and India, the Special Rapporteur on violence against women, its causes and consequences visited Dhaka, Kathmandu, Bhairahwa in Rupandehi district, Delhi, Bombay and Calcutta from 28 October to 15 November 2000 to study the issue of trafficking in women and girls in the region.
2. The present report is intended as a case study to complement the Special Rapporteur's previous report on trafficking in women, women's migration and violence against women, submitted to the Commission on Human Rights at its fifty-fifth session (E/CN.4/2000/68).
3. The Special Rapporteur chose South Asia because of the number of reports of trafficking in the region which she has received over the years, and also because of several existing programmes and initiatives to tackle the problem, both at the national and regional levels, by Governments, non-governmental and United Nations organizations and the South Asia Association for Regional Cooperation (SAARC), which is preparing to adopt a Convention for Preventing and Combating Trafficking in Women and Children for Prostitution.
4. The Special Rapporteur would like to express her sincere appreciation for the cooperation and assistance extended to her by all three Governments, which enabled her to meet with representatives of all relevant sectors of society and to obtain the necessary information and documentation to be able to report to the Commission on Human Rights in an objective and impartial manner. The Special Rapporteur wishes to thank State authorities in all three countries for their availability, particularly during the weekends, and cooperation with the visit. In this context, the Special Rapporteur would like to acknowledge the willingness of all the Governments to undertake efforts to combat trafficking in the region. Although the problem has been recognized, practical action is still in its initial stages.
5. During her visit to Dhaka she met with high-level government representatives at several ministries; the Acting Inspector General of Police; non-governmental organizations; academics; and United Nations and international agencies.
6. During her visit to Kathmandu the Special Rapporteur met with high-level government representatives at several ministries; district officials in Bhairahwa, Rupandehi district, on the border with India; the Parliamentary Human Rights Committee; the Attorney-General; the Acting Inspector General of Police; the Secretary-General of the SAARC secretariat; non-governmental organizations; academics; and United Nations and international agencies.
7. During her visit to India the Special Rapporteur met with high-level government representatives at relevant ministries; the National Commission for Women; the National Human Rights Commission and the Attorney General. She also met with state authorities in Maharashtra State and West Bengal State; with non-governmental organizations and women's groups, as well as academics.
8. The Special Rapporteur heard testimonies from victims of trafficking in all three countries and sex workers in Bombay. The Special Rapporteur would like to thank the many young girls and women who individually gave their testimonies to her. She recognizes that the

retelling of their stories is a painful experience and that they had to overcome many obstacles to communicate with her. The Special Rapporteur appreciates their courage and their candour and would like to express her gratitude for the trust and confidence they displayed in a mechanism of the United Nations Commission on Human Rights.

9. The Special Rapporteur would also like to express her gratitude for the efficient cooperation and support provided by the United Nations Development Programme Resident Representative in Bangladesh, Mr. Shamim Hamid; in Nepal, Mr. Henning Karcher; and in India, Ms. Brenda Gael McSweeney, as well as their staff, in ensuring a substantively and logistically successful visit.

10. A list of selected persons is annexed to the present report.

### **I. CONCEPTUAL CLARITY: DEFINITION OF TRAFFICKING**

11. Throughout the visit the Special Rapporteur noted the need for conceptual clarity and would like to recall at the outset of this report that she uses the following definition of trafficking:

Trafficking in persons means:

(1) The recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons: by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage

for the purpose of:

(2) Placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such persons lived at the time of the original act described in (1).<sup>a</sup>

### **II. GENERAL BACKGROUND TO THE PROBLEM OF TRAFFICKING IN SOUTH ASIA**

12. Chamoli lived near the birthplace of the Buddha in Nepal. When she was 16, she met a young man and fell in love with him. He promised to marry her but insisted that she come away with him to India. So one day she ran away with the boyfriend and crossed the border to India on foot. From there she and her boyfriend took a train to the Indian city of Poona. Once they had reached Poona, Chamoli was taken to a house where there was an older Nepali lady and many young girls. The lady gave her boyfriend some money and then he told her that he was going for a moment. He never came back. Chamoli suddenly realized that she had been sold into prostitution. She refused to accept her new trade. She was repeatedly beaten. She was not given any food. When she screamed in defiance, knives and chilli powder were held to her genital area. Finally exhausted and worn down, she agreed to provide sexual services. After a few weeks, she was sold to a larger brothel in Bombay. There she was given a cubicle that consisted of one small wooden bed surrounded by a curtain. She lived and worked from this space. She served about 10 clients every night of the week, even when she was menstruating.



Often the police raided the place but she was hidden below floorboards. Once she hid behind a curtain and watched as the police began their raid. The Madame of the house took out some money and paid the police and they immediately went away. Finally, the police raided the brothel with some Nepalese NGO activists and Chamoli was rescued. Chamoli was taken to a government home near Bombay. She was kept in a large room with 40 other women. The sanitary conditions and the food were worse than in the brothel. She did absolutely nothing for seven months and was kept in confinement within the home "for her own protection". She was not allowed to leave the home or engage in any trade or vocation. After seven months she was flown to Nepal by an NGO called Maiti Nepal. She was treated well by the NGO who reunited her with her family. By that time she began to have dizzy spells, diarrhoea and constant vomiting. The doctors of the NGO diagnosed her as having AIDS and they began treating her accordingly. When the Special Rapporteur met her she was extremely thin and very ill. She pleaded with the Rapporteur to help other Nepalese girls avoid this fate that had befallen her. She was 18 years old.

13. In an industrial suburb near Bombay, NGO activists took the Special Rapporteur to meet some sex workers during the day when they had to time to speak to her. Many of these women were from traditional devadasi families. Their families had given them to the village temple for sex work but after a while they left the temple and went to work in the city. A group of women met with the Special Rapporteur at her request. She spoke to them of the possibility of setting up a rehabilitation centre near the suburb so that the women could get medical check-ups and learn another trade and find alternative avenues of employment. The women were visibly upset by the Special Rapporteur's suggestion. They informed the Special Rapporteur that they were very happy in their work and that they earned and saved enough money to keep their children and their parents back in the village. They had no intention of changing their trade. They informed the Special Rapporteur that she and other middle class women were safe and comfortable because of the sex workers and their trade. If the Special Rapporteur wanted to assist them, she could help them with programmes to prevent AIDS or programmes to educate their children. However, they felt that they were not in need of rehabilitation.

14. Trafficking of girls and women appears to have become a thriving industry in the countries of South Asia. However, hard data are not available with regard to the actual numbers involved in sex work or being trafficked across borders. NGO activists in Bangladesh estimate that 10,000-15,000 girls and women are trafficked across the border to India per year. Nepalese NGOs estimate that between 5,000 and 10,000 girls a year are trafficked from Nepal to India every year. No survey has been done in any of these countries to ascertain their actual numbers. They are trafficked for a variety of purposes: the primary purpose of trafficking in the region is for forced prostitution, but girls, boys and women are also trafficked for domestic service, organ harvesting, forced begging, forced labour in sweatshops, work as camel jockeys or for forced marriage. Traffickers use deception, fraud, intimidation, drugs and violence to take vulnerable people across borders and are reimbursed for their services. They work alone, in small gangs, or as part of an organized crime syndicate.

15. Trafficking of girls and women often follows the same routes as legitimate migration. As one commentator told the Special Rapporteur, "traffickers fish in the stream of migration". This makes trafficking a difficult crime to detect. Given the large movements of populations across open borders such as exist between India and Nepal, traffickers often merge with the general



population. In addition, traffickers often exploit the desire on the part of girls and women to migrate to escape poverty and discrimination at home. Therefore, without understanding the causes and patterns of migration, any strategy to eradicate trafficking is bound to fail.

16. Forced prostitution remains the primary goal of traffickers in women and girls into India. The actual number of women in sex work in India is difficult to assess. A survey sponsored by the Central Social Welfare Board of India in 1991 in six metropolitan cities indicated that the population of women and children in sex work is between 70,000 and 1 million. Thirty per cent of them are below 18 years old. Nearly 40 per cent began sex work when they were under 18. Seventy per cent of them are illiterate. Strangely, only 43 per cent wanted to be rescued; the majority did not mind remaining as sex workers as they saw few other options.<sup>b</sup>

17. NGO estimates of sex work are, however, much greater. The Indian Association for the Rescue of Fallen Women estimated in 1992 that there are 8 million brothel workers in India and another 7.5 million call girls.<sup>c</sup> The average age of recruitment in the 1990s was between 10 and 14<sup>d</sup> years old. Half of this population may be infected with HIV/Aids<sup>e</sup> (other commentators estimate the rate of HIV infection at 70 per cent).<sup>f</sup>

18. The traffickers are usually young men and middle-aged women who travel back and forth from home countries to receiving countries. They are often referred to in the Nepali trade as "dalals" or "didis". They sell girls to brothels for 15,000-40,000 Indian rupees (US\$ 500-1,333). Tragically, many of the traffickers are older women, themselves in forced prostitution, trying to escape abuse and bondage. In some parts of Nepal and Bangladesh family members sell young girls to traffickers. In the past, in Nepal, it was the districts around Kathmandu that traditionally gave their daughters for concubinage or sex work. Today, however, the sale of children takes place in all parts of Nepal and Bangladesh. Sometimes a child can be bought for as little as Rs 200 (US\$ 4.00).<sup>g</sup>

19. All commentators agree that there has been a recent growth in trafficking. This has paralleled an increase in undocumented migration within the region. Women and girls are trafficked both within South Asia and from South Asia to other regions. They also agree that in the present context of globalization and migration, fewer victims are being kidnapped or abducted. In fact, an overwhelming majority are being trafficked through deception and false promises and are therefore "active participants" in their own trafficking, at least at the beginning of the process which includes recruitment and transportation. This dimension adds to the difficulty of detecting or controlling trafficking.<sup>h</sup>

20. The causes of trafficking are manifold and remain of great concern for the sending countries of the region. In her discussions with the women as well as with activists, the Special Rapporteur noted that poverty was a major factor and that many of these women were either sold into prostitution or left their homes to escape poverty. However, it was also pointed out that the poorest areas of Nepal were not the areas from which women are being trafficked. Other factors contributing to trafficking were traditional practices in certain villages and among certain castes whereby young girls were sold into concubinage for feudal lords or into prostitution. Social discrimination against women was also responsible for women leaving home. Lack of access to inheritance, land and employment and the practice of polygamy made women easy prey for traffickers who exploit their desire to migrate. Child marriage and unilateral divorce also make



women extremely vulnerable to the whims of male partners. This discrimination was often given as the reason why women did not wish to return to their homes once they had been rescued. They were afraid of the stigma, but they also did not want to return to the same lives that they had sought to escape. In addition, all commentators point to the fact that members of lower castes and ethnic minorities appear to be disproportionately represented in the sex worker population.

21. The conditions of prostitution in some of the brothels in Bombay and Calcutta appeared to resemble slavery-like practices. Most of the young girls the Special Rapporteur spoke to were being held against their will, were tortured, degraded, beaten severely, and were repeatedly assaulted on the lower half of their bodies. They were deprived of food and water until they submitted. Once they agreed to provide sexual services the stories diverge. Some women from more well-to-do brothels spoke about a collegial atmosphere, good food and good clothes and enough earnings to feed their loved ones. The majority, however, told of servicing more than 10 clients a night, of unsanitary and slavery-like conditions, of being afraid to move around freely because of the fear of violence from the Madame and young male bouncers who kept them in check. The Special Rapporteur herself witnessed the truth of this when she made an unannounced visit to the red light district in Bombay. One of the girls from the brothels ran towards the Special Rapporteur's entourage. Immediately, very tough looking young men surrounded the entourage in an extremely threatening manner. The girl extricated herself from the group and went back into the brothel.

### **III. GENERAL FINDINGS**

22. Throughout her mission to Bangladesh, Nepal and India, the Special Rapporteur was satisfied to note that the Governments appeared to be seriously committed to the eradication of the trafficking of women and children across national borders. However, despite a formal commitment, effective institutions, laws and policies aimed at eradicating trafficking were still not in place. In addition, effective implementation of existing provisions and policies that are directed at combating trafficking was also lacking. The Special Rapporteur found that many of the campaigns and programmes were donor driven or under NGO leadership. The Governments of the region had not been aggressive or proactive in their commitment to eradicate trafficking in the past. However, owing to a greater awareness of the problem, government programmes to combat trafficking have gathered a certain momentum in the last few years.

23. The lack of effective implementation of laws and policies aimed at ending trafficking is reflected in the low conviction rates for perpetrators of crimes of violence against women. In Bangladesh, according to figures provided by the police, of about 7,000 cases of violence against women registered during the past year there were only 21 convictions, while 2,000 cases were being processed. The perpetrators on the rest - the vast majority - of the cases were set free. The same was true of Nepal: the police figures show that of about 150 cases of trafficking offences during the past year, 55 per cent resulted in acquittals.

24. The most urgent need in terms of the trafficking of women and girls from Nepal and Bangladesh to India is the collection of data so as to ascertain the true scope of the problem. Estimates of the number of women trafficked vary from 10,000 a year to 25,000. The estimated number of sex workers varies from 1 million to 8 million. The Government of India informed



the Special Rapporteur that it will conduct a comprehensive national survey on trafficking and prostitution in the coming year. The Special Rapporteur welcomes such an effort and calls on the Governments of Nepal and Bangladesh to do the same. Unless we know the numbers, trafficking patterns and trafficking routes, it will be impossible to deal with the problem of trafficking in the South Asian region.

25. In discussing trafficking in the South Asian region, it is important to retain a measure of conceptual clarity so that there can be a targeted response to the problem. The Special Rapporteur is particularly concerned with the lack of conceptual clarity reflected in the draft SAARC convention, especially in light of the international negotiations on the definition of trafficking. In this context, it is important to recognize the conceptual difference between trafficking and prostitution. Trafficking of people across boundaries is for a variety of purposes and not only for prostitution. The Special Rapporteur is aware of women, boys and girls being trafficked for forced labour, forced marriage and to work as camel jockeys to various parts of South Asia as well as to other regions. In addition, it is important to maintain conceptual clarity in separating the regimes that operate for women and those that operate for children. Women are adults and should be treated as such in laws, policies and programmes. Children may need additional special measures to prevent them from being victims of trafficking. Finally, trafficking must be conceptually separated from migration. For many countries trafficking is considered an immigration problem and the campaign against trafficking is linked to the desire to close borders to people from other countries. Trafficking should be dealt with not as an immigration problem requiring exclusionary laws and practices, but as a human rights issue. The struggle to prevent trafficking should not be made an excuse for racist or exclusionary immigration practices anywhere in the world.

26. Conceptual clarity with regard to trafficking is the only way we can prevent the enactment of laws and programmes to prevent trafficking that violate other human rights of women. While the Special Rapporteur welcomed the enthusiasm to fight trafficking she found in South Asia, she was disturbed by the fact that many of the laws and policies appeared draconian and seemed to violate other human rights of women. For example, Nepal and Bangladesh have reacted to the abuse of women domestic servants working in the Middle East by banning women and girls from going to the Middle East for domestic service. In Nepal, measures are being taken to require all unmarried girls to receive the permission of their father or brother to get a passport, or that the village councils sanction the decision of women to leave their communities. These measures violate women's freedom of movement and make them completely dependent on the men in their family and in the village. Many of the victims interviewed by the Special Rapporteur were very clear - they had left home because of poverty and discrimination. To force these women to remain against their will in communities where they are unhappy is a violation of their basic rights. For example, some of the women told the Special Rapporteur that they had left their communities because their husbands took other wives. To force these women to remain in their communities cannot be the answer to the problem of trafficking. What is needed is a targeted effort to capture the trafficker and prevent trafficking so that the vulnerability of the women is not exploited. What are not needed are draconian attempts to block the natural migration routes and social mobility.

27. The discrimination against women that is prevalent in South Asia runs parallel to an ideology that asserts that women are vulnerable, like children, and need protection. The Special



Rapporteur was told that some of the more drastic measures taken to curtail women's freedom of movement are in their interest and for their "protection". The notion of protection is perhaps most problematic when it comes to the practice of "protective custody". In India, when women victims of trafficking are rescued they are often sent to a government home for protective custody until their cases are heard or until they are sent back home. In many cases they languish for many years in these homes, forgotten by everyone. Protective custody is only marginally better than being in prison. Women are confined to the vicinity of the homes. The conditions in the home the Special Rapporteur visited were substandard, and the women there seemed deeply unhappy. Protective custody as practised in South Asia is a serious violation of women's rights and it is important that Governments of the region re-examine this concept, as well as the conditions in the government homes where women are kept.

28. The Special Rapporteur's visit to Bangladesh, Nepal and India took place at a time when the SAARC countries were debating how to tackle the trafficking issue. One of the aims of the Special Rapporteur's visit was to suggest new strategies for anti-trafficking work in the region, to recommend possible partnerships among players and the mechanisms for coordination of regional activities and, furthermore, to encourage States to develop an effective regional convention on trafficking, in line with current international legal developments and in particular the protocol to the United Nations Convention against Transnational Organized Crime which was agreed this year and opened for signature in December 2000.

29. Regional cooperation among SAARC countries is absolutely essential if trafficking in women and girls is to be eradicated in the South Asian region. The countries of the region have accepted this and the Special Rapporteur recognizes and welcomes the fact that the first regional treaty to be concluded under the auspices of SAARC is a regional convention on trafficking. Prior to the tenth SAARC summit, held in July 1998, the Foreign Ministers of the SAARC countries had adopted a draft SAARC convention for preventing and combating trafficking in women and children for prostitution. For political reasons a subsequent summit could not be held and the convention has therefore not been formally adopted. The Special Rapporteur was pleased to note that all the Ministers for Foreign Affairs of the region were absolutely committed to ensuring that the SAARC convention is adopted as soon as possible. The Secretary-General of SAARC has also played a pioneering role in this regard.

30. Though the Special Rapporteur, along with many others, welcomes the SAARC convention as a sign of regional commitment to the eradication of trafficking, she has some reservations with regard to the content of the convention. She has communicated with all the Ministers for Foreign Affairs and the Secretary-General of SAARC on this subject. In August 1999 the Special Rapporteur wrote to all the Heads of State of the SAARC countries to congratulate them for having taken the initiative to develop a regional instrument to address the urgent problem of trafficking in women and children. She drew their attention to efforts to develop new international law on trafficking in persons. The Special Rapporteur has reviewed the SAARC convention closely and proposed a number of observations and recommendations which she sent to all SAARC Heads of State.

31. The Special Rapporteur is especially concerned that the convention lacks conceptual clarity on important issues and is not in conformity with the new international legal standard on trafficking in persons as set out in the protocol to the new United Nations Convention on



Transnational Organized Crime. She encouraged SAARC Heads of State to ensure that the provisions of the SAARC convention do not conflict with existing international human rights law and the provisions of the protocol in particular so that there is one standard for international action. The SAARC convention does not distinguish between women and children. The legal regime surrounding women should be based on a framework of rights and the concept of coercion when it comes to trafficking. The legal regime with regard to children must be completely different. The draft convention also does not explicitly recognize that trafficking could be for other purposes than for prostitution. By concentrating on the end result and not on the process of trafficking and abuse, for whatever purpose, the convention does not recognize trafficking as a distinct and unique crime regardless of a nexus with prostitution. In not recognizing this distinction it is not in keeping with current international standards as set out in recent international conventions and instruments. In addition, the convention does not distinguish between movements and migrations that are legitimate and consensual and those that are coerced. This will result in a great deal of abuse and the violation of women's freedom of movement in a context of constant movement of people across national and local borders. In addition, the convention brings into play the concept of "protective custody" after rescue and rehabilitation without stipulating that any stay in a government home should be voluntary. The need to ensure women's economic and social rights within this context is also not examined.

32. During her visit to Nepal, the Secretary-General of SAARC told the Special Rapporteur that the convention had in theory been agreed upon by all States parties and that there would be a meeting early in 2001 to sign it. He conveyed the importance of regional cooperation on the trafficking issue and concern that if the current text were to be reopened for discussion, given the current political tensions an agreement would probably not be reached. He stated for the record that there would be an amendment conference in one year's time when the definition and other parts of the convention could be brought into line with recent international legal developments.

33. In discussions on the SAARC convention with all three Governments all indicated that they were not opposed to looking at the provisions of the new protocol to see what could be included in the SAARC convention. They agreed that they should not have a convention which is weaker than the new international standard, but nonetheless did raise concerns that if the convention were reopened it might not be possible to get a new consensus, as the initial text had been a compromise.

34. The Special Rapporteur hopes that her concerns, and the concerns of many others who have been involved in these issues, including the United Nations High Commissioner for Human Rights, will be taken into consideration by the States parties to the SAARC convention. The Special Rapporteur welcomes this initiative and the candour with which the issue of eradicating trafficking has been broached by the member Governments.

35. A regional convention in and of itself cannot solve the problem of trafficking in South Asia. It must be supplemented with a regional monitoring mechanism as well as regional cooperation among law enforcement officials. Among the mechanisms of cooperation that should be considered is a regional task force involving high-level officials from all the SAARC countries. In addition, there should be national and state-level nodal agencies that closely network with one another, and focal points in ministries of women, children, home, law and health that also network with one another. In addition to coordination among the executive



branches in the different Governments, many felt that the human rights commissions in these countries should also appoint special rapporteurs who would look into the specific problem of trafficking.

36. At the national level, it must be realized that ad hoc, piecemeal efforts will not result in effective action against trafficking. In this regard, the Nepalese Plan of Action with regard to trafficking is a useful model for other countries in the region. The Plan of Action envisions action being taken in the field of legal reform, awareness raising, rescue and rehabilitation as well as health. This coordinated effort is, at least in theory, a very laudable step; however, the Special Rapporteur feels that it is important to go beyond the words on paper. Implementing the Plan will require concerted, proactive programmes and mechanisms on the part of Governments. Unless such action is taken the Plan will not have any real effect on efforts to eradicate trafficking.

37. The struggle to eradicate trafficking in the South Asian region has two components. The first concern the efforts of the criminal justice system to prevent, prosecute and punish traffickers; the second involves social welfare for the women who want to be rescued and provided with alternative avenues of making a living. The social welfare component also includes health policies and activities around the problem of HIV/AIDS among women who have been trafficked for prostitution.

38. In recent times, because of increased awareness, most of the countries of the region are contemplating legislation to combat trafficking. It is extremely laudable that political will is now being translated into legislation. However, the Special Rapporteur, as a mechanism of the Commission on Human Rights, is deeply concerned that the legislation is unduly harsh and violates basic principles of human rights law.

39. An example of draconian legislation that presents serious human rights problems is the current draft Traffic in Human Beings (Offences and Penalties) Act 1999 prepared by the Nepalese Ministry of Women and Social Welfare. The bill appears to have been drafted from a law and order perspective without consideration for the human rights either of the perpetrator or of the victim. First of all, the draft criminalizes prostitution for the first time in Nepal. International standards as set by the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others as well as more modern legislation have all advocated that prostitution not be criminalized and that only the exploitation the prostitution should be criminalized. This is because experience has shown that criminalization of prostitution results in the double victimization of the woman concerned as she, and not the traffickers, becomes the main target of police action. This provision is a major step backwards for Nepal and will create great hardship for the women concerned.

40. In addition, the new legislation gives special powers to the police to arrest, detain, search and seize. Many of these provisions are direct violations of the International Covenant on Civil and Political Rights. The power to arrest and search without warrants, preventive detention and, most troubling, the shifting of the burden of proof so that the accused has to prove that he is innocent are all violations of international standards of human rights. This law will result in a great deal of harassment of innocent people as well as of the victims. Police forces anywhere in the world can act with a certain measure of impunity. The purpose of human rights standards is



to ensure that this impunity does not result in the harassment of innocent individuals. A law that allows so much scope for abuse is extremely problematic for those who wish to fight violence against women as a human rights issue. It is also a dangerous precedent for any criminal justice system.

41. Other countries of the region are also contemplating new anti-trafficking legislation. The Special Rapporteur sincerely hopes that any new legislation will be enacted from a human rights perspective and not purely as a law and order issue. In this context, experience from around the world may prove to be informative. Such experience seems to suggest that anti-trafficking legislation should be targeted; it should focus on trafficking and the punishment of traffickers, and not on the victims. It should concentrate on the problem of trafficking of minors and it should contain a comprehensive social welfare component based on respect for the economic and social rights of the trafficked woman. Such assistance should be voluntary, it should involve a significant health component and involve the empowerment of the women through skills training.

42. The police forces of the respective countries of the SAARC region are the most important institutions in the struggle to eradicate trafficking. At the moment there are ad hoc, informal attempts at cooperation among them. A more formal long-term arrangement for sharing information and joint operations against trafficking may prove to be essential in the present context. A joint task force of all the police departments of the SAARC countries may be a step in this direction.

43. Empowering the police to deal with trafficking may not be very successful unless there are appropriate guidelines and training procedures in place. The police response to the question of trafficking varied in the Special Rapporteur's interviews. Some police officers were very enthusiastic; others were pioneers in the field. However, some were indifferent and uninterested in new procedures or processes. The Special Rapporteur was concerned that even the enthusiastic police officers would in their zeal to fight trafficking infringe on the rights of women victims. For this reason, it was suggested that a handbook be prepared for the police forces of the region, in regional languages, to raise their awareness about the problem and to give them detailed instructions on how to handle cases involving traffickers. It would include procedures on how to deal with traffickers, brothel owners, pimps and, of course, the victims themselves. If such a handbook were prepared in consultation with the women's groups of the region, it might be a major step forward in making the police forces of the region more responsive to the problems of trafficking.

44. Police corruption in the trafficking process was an issue that was constantly raised by women's groups and women victims of trafficking. One of the victims described how, having escaped from a brothel in Calcutta, she went to complain to the police. The police called the brothel owner, who paid the police a substantial sum in front of the girl. She was taken back to the brothel and beaten till she was nearly senseless. She still suffers from injuries resulting from that episode. Other victims said that many policemen were clients of the brothels and on good terms with the traffickers, owners and pimps. Victims and women's groups in all three countries recounted many cases of police corruption and many felt it was endemic, something that was taken for granted. Unless direction comes from the top that such behaviour will not be tolerated,



and unless there are punitive sanctions against policemen who indulge in such behaviour, it is unlikely that the police will play the proactive role that is expected of them.

45. Even if the police in the region act with fortitude, if the judiciary is insensitive to the problems of women, effective action against trafficking cannot be taken. The 21 convictions for violence against women in Bangladesh and the 55 per cent acquittal rate in Nepal with regard to trafficking cases raise serious questions about how the rule of law operates in South Asia with regard to trafficking. The police and some women's groups blame the judiciary for this state of affairs, saying that judges are very lenient because they are insensitive to gender issues. The judiciary and other women's groups put the blame on the police, saying that the investigation of crime is so weak and the evidence produced so minimal that judges have no other option but to acquit the suspects. Training in investigation of trafficking crimes for all the police forces of the region is essential and may be possible with international technical assistance. In addition, it is extremely important that the judiciaries in the region be involved in workshops and programmes that raise their awareness about the problem of gender and violence against women in their societies. A gender-sensitive judiciary is absolutely essential if victims of sexual violence are to receive justice in South Asia.

46. In her discussions with women victims and NGOs as well as officials, the Special Rapporteur received a mixed picture about the judiciary's role in fighting trafficking, especially in India as a receiving country. The apex court of India, the Supreme Court, has been a pioneer both nationally and internationally in vindicating the rights of women. Its judgements in cases of sexual harassment and trafficking have been far-reaching, requiring maximum accountability on the part of State and non-State actors who violate the human rights of women. However, at the magistrate level the situation is far more mixed. Some judges are extremely sensitive and try to make the best possible judgement for the victims. Some are less caring and have sent women and girls to jail or for prolonged periods of protective custody. As a general rule, the Indian courts send rescued girls back to Nepal or Bangladesh, through NGOs like Maiti Nepal and the Bangladesh National Women Lawyers Association (BNWLA), or they send them to government homes. Beyond that there is very little activism or inquiry. Very little action is taken by the police or the judiciary against the traffickers and those who are initially responsible for the violation of the rights of these women.

47. With regard to the evidentiary procedures involved in trafficking cases, the women and girls who are victims of the trafficking are the primary witnesses against the perpetrators. In cases involving organized crime, they are extremely vulnerable and in fear for their lives. In addition, in Nepal, once they leave the police station after filing their complaint, they are often untraceable. As a result, the new trafficking bill allows as evidence their statement before the judge during the initial trial stages: the victims do not have to be present in court. In some countries in Europe, the witnesses must be present in court but they are kept incognito with written questions sent to them to answer. The defendant, however, does not see the witnesses. In other countries fighting organized crime, there are elaborate witness protection schemes paid by the State and the witnesses often change their identity and move to a different location. In adopting such procedures, the need to get hard evidence in trafficking cases must be balanced by procedures that ensure the defendant a fair trial. In this sense, the witness protection programme, even if it is the most expensive, is also the most fair. The countries of the region should inquire into this possibility and, with the help of women's groups and NGOs, counsel and provide



protection for women and girl victims so that they can appear in the witness box without fear. The Special Rapporteur wishes to emphasize that the provision of witness protection should be voluntary and at the request of the individual concerned.

48. The problem of trafficking has a social welfare component that is integral to the understanding of the phenomenon. The socio-economic factors contributing to trafficking require that the problem be understood within the context of the socio-economic rights of women. If one adopts this perspective different issues emerge that require the attention of the State.

49. The Special Rapporteur found that women and girls leave Nepal and Bangladesh in such large numbers because of a lack of economic opportunities at home and because they suffer from a great deal of social discrimination. Many of these women belong to lower caste groups or ethnic minorities. In addition, the inheritance laws, land laws and employment regimes in these countries appear to discriminate against women. Many women and girls leave home because husbands have taken second and third wives. Girls often run away from home because of stepmothers or because they feel they are not wanted or because there is abuse. The need to alleviate poverty is recognized as an important way to fight all forms of human exploitation, including trafficking. However, in addition, States must feel compelled to take measures that give dignity and equality to women and girls. Inheritance laws, personal laws and socially discriminatory attitudes should be reformed in order to give women an equal chance in their society and prevent them from becoming easy prey to traffickers. Their desperation to leave their home countries, recounted in one testimony after another, often makes women complicit in their own trafficking, at least in the initial stages. The Special Rapporteur recorded only a very few cases that involved abduction. Most of the cases involved young girls and women who wanted to leave in search of a better life than the one they had at home. Providing women with income-earning opportunities and avenues for economic independence is one strategy that should be adopted to prevent trafficking. The removal of discriminatory legislation and discriminatory practices is also essential if the root causes of trafficking are to be tackled. Unless the sending countries understand that most of the women leave because of unhappy conditions in the home, they will not take the measures that are necessary to prevent trafficking while respecting the human rights of the individual women.

50. The social welfare component is also an important factor in the main receiving country in the region, India. While the young girls and women remain sex workers they are in danger of contracting HIV/AIDS and other sexually transmitted disease. Though many recent initiatives have begun with regard to AIDS in Indian cities, a greater effort is needed to seriously combat the problem. According to unofficial estimates, between 60 per cent and 70 per cent of sex workers contract HIV/AIDS. In all the countries there were very few medical facilities available for AIDS patients. AIDS education among the sex workers is also minimal owing to the ambiguous legal position of these women. Unless more attention is focused on the health of the sex worker, her basic rights to life and to health will be greatly undermined.

51. Even if the sex worker is rescued, she is faced with innumerable problems. She is often kept in a government home while she waits to be released. Though she has done nothing wrong and is seen by the law as a victim, her stay in the home is by court order and is not voluntary. This "protective custody" is a serious infringement of the human rights of the women concerned.



In one case, a woman, her sister and daughter who had been trafficked to Calcutta from Bangladesh remained in a government home for four years, despite interventions by the Bangladeshi Consulate and NGOs. Meanwhile, the trafficker who was accused in the case was out on bail with full freedom of movement. For this reason many women and girls do not want to be rescued. On 16 February 2000 a Bombay High Court judge, acting on information received, ordered a round-up of young girls working in prostitution; 469 girls were rounded up. Most of them did not want to go home, nor did they want to stay in government homes. This created serious difficulties for the officials concerned. Unless the social welfare facilities exist for rescue, young girls and women will be reluctant to leave oppressive conditions at a brothel for what they see as a very uncertain future.

52. The Special Rapporteur visited a government home in Liluah in Calcutta where many of the women who had been rescued were kept. The conditions in the home resembled a prison. Surrounded by factories and an outdated drainage system, the health conditions at the home were very unsatisfactory. The living conditions were not only sparse but extremely gloomy. The trafficked women were kept with mentally ill patients, deaf and dumb women and destitute women. Records with regard to the women in the home were not properly kept and information on the women was scanty and not properly taken. All the women the Special Rapporteur spoke to were deeply unhappy and wanted to be released. There were very few activities and many victims we interviewed said they did nothing for the whole day. They had done nothing wrong and therefore their "protective custody" seemed particularly cruel. Fortunately, the National Commission of Women in India has recognized this problem and brought a public interest case against the Liluah Home. As a result of this action, there is a court order designating an NGO to intervene, investigate the home, straighten out the records, help release any of the women who wish to go and make recommendations with regard to the management of the home.

53. Women who are rescued should be sent to homes only on a voluntary basis since they are not guilty of any crime. In addition, the government home should be a refuge for the women, not a substitute for jail. The government home should offer programmes to develop the skills and talents of women so that they can become empowered, both economically and psychologically. In contrast to the government home at Liluah, the Special Rapporteur visited many NGO facilities for girls and women. St Catherine's Home in Bombay and Maiti Nepal in Kathmandu are examples of successful facilities. The women seemed well fed, talkative, lively and full of activity. Their talents were being brought out and they were being given counselling so that they could adapt to a new life away from the brothel. Critics argue that these homes are extremely moralistic and authoritarian towards the girls who have been rescued. The Special Rapporteur did not find any evidence of that and the women seemed happy and engaged. Many of them had voluntarily filed cases against their traffickers. Girls rescued by Maiti Nepal assist Maiti Nepal with its work at the borders and in their programmes. All NGOs are not as committed or as effective as these NGOs with regard to taking care of rescued women. However, a government home with NGO management subject to supervision by government health and social welfare bodies would be an effective way of moving forward in a context where resources for such homes are limited.



#### IV. BANGLADESH

54. Bangladesh is one of the poorest countries in the world; a large percentage of the vast population is young and lives below the poverty line. The slow economic growth of the country coupled with periodic natural disasters have put serious constraints on the ability of the Government to provide adequate resources for women's programmes and projects. The United Nations Family Planning Association State of the World Population 2000 report declared Bangladesh second highest in the world in incidence of violence against women. Violence takes many forms and includes wife murder for non-payment of dowry, custodial rape, attacking with acid and trafficking.

55. For the most part, women remain in a subordinate position in society. They are often ignorant of their rights because of continued high illiteracy rates and unequal educational opportunities, strong social stigmas and lack of economic means to obtain legal assistance. NGOs operate programmes to raise women's awareness of their rights and to encourage and assist them in exercising those rights. Yet, prevailing stereotyped attitudes and practices justified on social grounds create an environment for the acceptance of violence against women, especially in the area of trafficking.

56. There is extensive trafficking from Bangladesh, primarily to India, Pakistan and destinations within the country, largely for purposes of forced prostitution, although in some cases for labour servitude. Some children have reportedly been trafficked to the Middle East to work as camel jockeys. The exact number of women and children trafficked is unknown. NGOs estimate that several thousand women and children are victims of trafficking each year. Most trafficked persons, eager to escape the cycle of poverty, are lured by promises of a good job or marriage. Orphans, runaways and others outside the normal family support system are also susceptible. The border between Bangladesh and India is porous, especially around Jessore and Benapole, making illegal border crossings easy.

#### Legal framework

57. Bangladesh is a party to the Convention on the Elimination of All Forms of Discrimination against Women and has recently signed the Optional Protocol. In the concluding comments of the Committee on the Elimination of Discrimination against Women (CEDAW) adopted, following the consideration of the third and fourth periodic reports submitted by Bangladesh (A/52/38/Rev.1, paras. 409-464) the Committee, *inter alia*, expressed its concern about the Government's reservation to article 2 and article 16, paragraph 1 (a) of the Convention. Article 2 is regarded as a core provision as it concerns implementation of the Convention, while article 16 is critical for the full enjoyment by women of their rights.

58. The Special Rapporteur met with representatives of the Ministry of Women and Children's Affairs (MOWCA), who described the multisectoral action programme being undertaken to address violence against women, including trafficking in women and girls. The Law Commission was established by the Government to review existing laws and enact new ones to safeguard women's rights and to prevent violence against women. The Special Rapporteur was informed that the Law Commission had been mandated to look into the implementation of international obligations and may consider lifting the reservation to article 2.



59. The Government of Bangladesh in seeking to address the problem of violence against women generally, and trafficking in particular, has promulgated laws that have had negative repercussions for the victim. The Suppression of Immoral Trafficking Act of 1993 provides for stringent penalties for women and children forced into prostitution. The Women and Children Oppression Act of 1995 (Special Provision), a revision of the 1983 Cruelty to Women Ordinance, presents many of the problems discussed in the previous section. It treats women and children together and introduces the death penalty for those who involve children in trafficking. New legislation grants even more draconian powers to the police and provides for special tribunals and evidentiary procedures, and stiffer penalties.

60. The Suppression of Violence against Women and Children Act came into force in February 2000. It is intended to address the need for more effective prosecution of perpetrators of violence against women and children than existed previously and provides redress for victims of various manifestations of violence including trafficking and acid throwing. The Act makes provision for compensation for the victim from the guilty person/persons. It also contains provisions for remedial measures for negligence or wilful faults committed by an investigating officer and for a child born as a result of rape to be maintained by the father.

61. The Government reports that since the introduction of the new law the delay in investigating and trying cases relating to violence against women have greatly decreased. Punishments for trafficking and other offences have been made stiffer. Ten special tribunals have been set up to expedite the processing of cases. The tribunals can arrange for safe custody during the trial period. Previously, prisons were often used to provide safe custody for women victims of violence. One study conducted by the Bangladesh National Women Lawyers Association found that nearly half of the women in Dhaka's central jail were crime victims being held in safe custody, rather than criminals. While women may initially consent to this arrangement, it is difficult for them later to obtain their release, or to gain access to their family and lawyers. However, under the new Act, women will reportedly be given the choice of going to a government rehabilitation home or staying with relatives or other private persons.

62. While recognizing efforts to improve the situation, including the enactment of laws specifically prohibiting certain forms of discrimination against women, and although pleased that the Government is taking firm action to protect women from violence, the Special Rapporteur is concerned about the introduction of the new draconian laws and the application of the death penalty for a whole range of crimes against women including trafficking, rape, acid throwing/burning and dowry violence under the new Act. The Special Rapporteur is a mechanism of the Commission on Human Rights and she emphasizes that the campaign against trafficking must be undertaken from a human rights perspective. The Special Rapporteur is also worried about the accused's right to due process and a fair trial.

63. Though the law provides severe penalties for trafficking few perpetrators are punished. NGOs report that police and local government officials often either ignore trafficking in women, are easily bribed to look the other way, or may even be involved. Exact numbers of charges against traffickers are difficult to obtain and traffickers are usually charged for lesser crimes, such as crossing the border without the correct documentation.



64. Government statistics provided by the Ministry of Home Affairs indicate that out of 7,000 cases registered under sections 5 and 6 of the Oppression Act of 1995, which carry a maximum sentence of death or life imprisonment, only 21 convictions were obtained. Two thousand cases are said still to be in the trial process. Clearly, more stringent and punitive laws are not the answer. Tougher laws may in fact act as a deterrent to registering cases against traffickers and may lead judges to acquit defendants rather than impose what they feel to be an unfair punishment, especially the death penalty. Studies have shown that the majority of judges say that a lesser sentence would help the courts to convict, especially since trafficking is a very difficult crime to prove and the evidence presented by the police does not always justify stringent punishment.

#### **Programmes and policies to combat trafficking**

65. The Ministry of Women and Children's Affairs is the lead ministry for promoting the equality and development of women. The Ministry has made the campaign against trafficking an important priority and the National Policy for the Advancement of Women, drafted by the Ministry, includes a section on violence against women, including measures to combat trafficking. Furthermore, a comprehensive three-year project to combat trafficking is to be implemented by the Ministry, in association with UNICEF and funded by the Norwegian aid agency NORAD.

66. MOWCA also has a violence against women unit, which monitors incidents of violence and submits reports to the National Committee on Violence against Women.

#### **The criminal justice system**

67. The Special Rapporteur met with representatives from the Bangladeshi police. Although there was awareness of the problem of violence against women, they admitted that there was no police training in handling cases of violence against women in general or trafficking in particular. The police have received some training on reproductive health. The Special Rapporteur recommended gender sensitization and human rights training programmes for the judiciary, the police and health professionals, particularly those relating to violence against women which could be provided by the technical cooperation programme of OHCHR. She encouraged the Government of Bangladesh to request such assistance. OHCHR has informed the Special Rapporteur that since her visit Bangladesh has requested technical assistance and a programme is being developed with the Government.

68. In response to the many cases of trafficking, the Government has recently set up women's police units to look into cases of violence against women. If women want protective custody they can be kept in these units. The unit also follows the individual case, provides legal support to the victim/survivor and shelter for six months to a year. DFID has also funded a project to improve access to justice by women and the poor.

69. A special squad of the Criminal Investigation Department (CID) of the police force has been specially tasked with speedy investigation of cases of violence against women and also deals with the problem of trafficking. However, the statistics reveal that despite this squad, the actual number of cases filed in court is extremely small and the evidence produced before judges



inadequate. Again, the Special Rapporteur suggested that technical assistance be requested from multilateral agencies specializing in human rights protection and combating violence against women.

### **Rescue and social welfare**

70. The Government of Bangladesh has no special programmes relating to the social welfare of trafficked women. The Ministry for Foreign Affairs informed the Special Rapporteur that the Home Minister of Bangladesh had asked the Government of India for a list of all Bangladeshi women being held in Indian shelters and jails, following reports that women are detained and not allowed to return home whilst a case is pending before the courts. However, the Special Rapporteur visiting women in homes and jails in India was informed that the Bangladeshi diplomatic representation in India was not very responsive, often taking years to respond to inquiries and information.

71. Several women's organizations have provided different forms of assistance, including shelters for the protection of victims of violence. These include the Bangladesh Women Lawyers Association and Bangladesh Mahila Porshod.

### **International agencies**

72. At the time of the Special Rapporteur's visit to Bangladesh USAID was planning to start a 13-month anthropological study into the problem of trafficking. This would involve looking at the underlying factors of trafficking, collection of statistical data, setting up of a database, and compiling information about the victim, and a profile of the trafficker. The study will attempt to collect comprehensive data on the problem. Since there are no available data on trafficking in terms of a comprehensive national study, the Special Rapporteur welcomes this initiative.

73. The United Nations agencies are all involved in programmes that include some aspect of the campaign against trafficking. UNICEF and The International Labour Organization have taken the lead in working with government agencies to combat trafficking. However, unlike the agencies in Nepal, the United Nations in Bangladesh does not have a co-ordinated joint effort involving all the multilateral agencies. Such a joint task force may be useful in the long run in Bangladesh.

### **Non-governmental organizations**

74. Most, if not all, the rescue and social welfare work in Bangladesh is carried out by non-governmental organizations, although the Government does support some local NGO initiatives to combat trafficking.

75. The BNWLA was one of the NGOs the Special Rapporteur met with during her visit to Dhaka. It has been very active in addressing the problem of trafficking. BNWLA conducts awareness-raising programmes, aimed at alerting persons to the dangers of trafficking through leaflets, stickers and posters; provides legal assistance to trafficking victims and initiates legal

action against traffickers; works with its counterparts in India to help trafficked girls and women return to Bangladesh. BNWLA also runs a shelter for trafficked women and children that provides health care, counselling and training.

76. The Center for Women and Children (CWCS) has networks to monitor trafficking across the country; it conducts awareness meetings and has a pilot project to make police aware of the rights of women and children. Other organizations working in the field are the Bangladesh Mahila Parisad (BMP) and Ain O Salish, which specialize in advocacy and lobbying for reform.

77. Dhaka Ahsania Mission has undertaken a child and trafficking prevention programme that comprises four components: community awareness, reintegration, rehabilitation and networking. ATSEC is a national anti-trafficking network formed to link NGOs and government initiatives, as well as to conduct awareness-raising programmes.

78. The Special Rapporteur also met the organizations Aparageya Hostel, the Bangladesh Manabdhikar Sangbadik Forum, Naripokkho, Ain-O-Unnyan Sangstha, Banchete Shekha, Rajshahi, UBINIG, Bangladesh Retired Police Officers' Welfare Association, CWFD, ADAB, and Women for Women, all of which are involved in programmes involving trafficking.

## V. NEPAL

79. Trafficking in women and girls remains a serious problem. Nepal is a primary sending country for the South Asia region, with the main destination being India. International agencies estimate that 100,000 to 200,000 women from Nepal are currently engaged in exploitative situations of prostitution in the cities of northern and central India and, increasingly, further afield in South Asia and the Middle East. It is also estimated that an additional 5,000-10,000 women and girl children enter these trafficking networks annually.

80. Landlessness amongst women, unemployment and under employment, intense income poverty, widespread gender discrimination (both *de jure* and *de facto*), religious and cultural sanctions for prostitution amongst certain groups and the growing acceptance of the inevitability of migration have all been identified as contributing factors to the increase of trafficking of women and children from Nepal. Discrimination with regard to inheritance laws and citizenship laws is another factor that makes women victims of trafficking. The Special Rapporteur stressed the need to remove these discriminatory laws and to bring Nepalese law into conformity with international norms and standards.

81. The Government of Nepal has identified trafficking as one of its major priorities. To this effect, supported by donors, the Government adopted in 1999 the National Plan of Action against Trafficking in Children and their Commercial Sexual Exploitation. The ILO played a major role in pushing forward this programme.



### **Legal framework**

82. Nepal is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women. The 1990 Constitution of Nepal prohibits trafficking in human beings, slavery, serfdom and forced labour as do a number of international human rights treaties to which Nepal is party.

83. In Nepal, besides the Constitution, there have been many legal initiatives with regard to trafficking. The Traffic in Humans (Control) Act 1986 is the legislation that currently governs trafficking in Nepal. The most important recent initiative is the Anti-Trafficking Act that is in final draft form and currently before Cabinet. The Government of Nepal hopes to enact it during the course of the year. Though the Act recognizes trafficking as a problem and is full of good intentions, it is deeply problematic from a human rights perspective. The Special Rapporteur has outlined her concerns in the earlier section on general findings. These concerns include the criminalization of prostitution, extraterritorial jurisdiction, shifting of the burden of proof and draconian police search and seizure powers.

84. There is also an initiative to set up special tribunals to try the offence of trafficking with lesser evidentiary standards. Again, the Special Rapporteur reminds the Government of Nepal that it is obligated under international human rights standards to give the defendant a fair trial with the necessary safeguards so that the innocent are not victimized. The Government is also in the process of enacting laws in the field of domestic violence, a law on the rights of children and on a family court. All these will have some bearing on the trafficking issue.

### **Programmes and policies to combat trafficking**

85. The Ministry of Women, Children and Social Welfare (MWCSW) has taken the lead in a number of initiatives, programmes and policies to combat trafficking. Donor agencies are also eager to deal with this problem and have been working with the Government to develop a comprehensive strategy. This partnership led to the National Policy on Trafficking and the National Plan of Action on Trafficking. Together they set out a detailed plan to combat trafficking in Nepal.

86. The National Plan of Action has six areas of implementation. The first is the drafting of appropriate policies and strategies for action in the various sectors to deal with the problem of trafficking. The second is the enactment of appropriate legislation to prevent trafficking and to punish traffickers. The third area is the raising of awareness among the general population and the criminal justice system to help fight trafficking. The fourth area is health, the fifth area is education and the final area deals with rescue and rehabilitation.

87. The Plan is extremely comprehensive and well thought out. However, like so many other initiatives it focuses on the victim, on raising awareness, health and education and rescue and rehabilitation. It is not very concerned with the trafficker, the prosecution of traffickers and the punishment of those who engage in the trade in humans. Given the fact that it is an initiative of the Ministry of Women, Children and Social Welfare, this is understandable. In this regard, the Special Rapporteur found that while the Ministry for Foreign Affairs and the Ministry of Women, Children and Social Welfare were very sensitive to the issue of trafficking, the Ministry



of the Interior was quite ill-informed and seemingly unconcerned with the problem. The Special Rapporteur feels that unless the Ministries of Law and the Interior are actively included in the trafficking initiative, the campaign against trafficking is bound to fail.

88. The Plan is to be implemented through the establishment of a national-level coordination committee under the Ministry of Women, Children and Social Welfare. In addition, a National Task Force on Trafficking consisting of secretaries to all the ministries is to be set up. There is also to be a district-level task force and a village development committee task force responsible for programme formulation, follow-up and monitoring. In all senses the Plan seems comprehensive. The Special Rapporteur was informed that all the committees had been set up during the course of 1999/2000. However, when she inquired about them, she was surprised to learn that they had rarely met or made any decisions. The representatives of the Ministry of Women, Children and Social Welfare said that it was difficult to get the national-level task force to meet. When the Special Rapporteur met a district-level committee she was told that the task force had met twice but that the Chairwoman was too busy to attend. The Special Rapporteur is therefore concerned about the gap between theory and practice and plan and implementation. In Nepal, this gap seems enormous. With every good intention, the Government sets up a policy, a law or a framework but in practice little is done on the ground. The Special Rapporteur feels that if the Government is truly committed to the issue, it will lessen the gap between national policy and national practice and seek to implement its promises.

89. In addition to the above, the Ministry of Labour has established a welfare home for women affected by trafficking and set up a skills development programme within that home. The Central Child Welfare Board as well as the district-level boards are being sensitized to look into the problem of trafficking and the Nepalese Bar Association provides legal support to women who are affected by trafficking.

### **The criminal justice system**

90. The Special Rapporteur was pleased to have a consultation with the Nepalese police and to meet Mr. G. Thapa, a regional specialist on the problem of trafficking. The Government told the Special Rapporteur that some members of the police force had participated in a human rights training/trafficking workshop conducted by UNICEF which, it is reported, will become an integral part of the police training. Non-governmental organizations, human rights lawyers, United Nations agencies, and members of the police force will conduct it.

91. The police have also set up women's units in each police station to investigate women-related crimes, including search, inquiry and investigation. The Special Rapporteur visited a border police post and met with officials. In combating trafficking at the border the police are assisted by the NGO Maiti Nepal, which helps identify potential traffickers and their victims. So far the system of identification does not seem to have been abused and has in fact led to a great deal of assistance. Since some of the Maiti Nepal staff were earlier victims of trafficking, their assistance and knowledge have been invaluable. The Special Rapporteur was encouraged that the police at the border posts seemed very aware of the problem of trafficking and determined to deal with it.



92. The Nepalese judiciary has a mixed record when it comes to the problem of trafficking. The Supreme Court, despite some controversial rulings on women's inheritance rights, has generally held that Nepal is a signatory to the Convention and that international standards apply throughout the country. However, at the level of the lower judiciary, there is a high rate of acquittal for traffickers. Members of the judiciary argue that one of the reasons for these acquittals is that the police do not present enough evidence and the problem lies in the investigative power of the police. For this reason the Special Rapporteur suggested to the Government that it draw on available international expertise and seek technical assistance from international bodies to develop investigative skills.

93. Nepal has a National Human Rights Commission that has recently been set up to deal with human rights issues though it has not directly dealt with the problem of violence against women yet. One of the proposals put forward to involve the Commission has been to create a post of national rapporteur on trafficking within the National Human Rights Commission.

### **Rescue and social welfare**

94. As in Bangladesh, rescue and social welfare for victims of trafficking have been left to NGOs. Several NGOs have rehabilitation and training programmes for victims of trafficking. Maiti Nepal, for example, has gained an international reputation for its work in this field. However, the Ministry of Women, Children and Social Welfare has opened a Women's Self-Reliance and Rehabilitation Centre 45 km from Kathmandu, which is a skills-training centre for women rescued from being trafficked and for women and girls at risk of being trafficked. It is reported that the centre is unfortunately inaccessible for many women, as it does not accept women who have children or women who have HIV/AIDS.

95. One of the major problems facing Nepal is the problem of AIDS resulting from the trafficking industry. Unfortunately, many of the women taken to India return to Nepal to spend their last years in terrible pain and suffering. According to estimates given to the Special Rapporteur, there are 38,000 HIV-positive persons in Nepal. There are worrying reports that even medical staff are unaware of how to treat the problem and have only minimal knowledge about how the disease is transmitted. There also does not seem to be an understanding of confidentiality requirements and voluntary testing practices. Some victims recounted that hospitals had refused to take or treat persons with HIV/AIDS for fear of catching the disease. Cremation of AIDS victims costs more than for people who die of other diseases. Some NGOs like Maiti Nepal and United Nations organizations are working with this problem but far more has to be done if the victims are to be helped.

96. The Special Rapporteur would encourage Governments when tackling the HIV/AIDS problem to avoid focusing on "high-risk groups" which can reinforce stereotypes and increase the stigmatization of victims of trafficking. Focus should instead be on behaviour and all sectors of society must be informed. In this context the new UNDP Project on AIDS in South and South-West Asia will be helpful.

97. With regard to prevention, the Government and donors have trained women from the village district councils as social mobilizers. The Ministry of Labour sponsors job- and



skill-training programmes in several districts thought to be sources of trafficking victims, who are given six months' skill training and special awareness raising with regard to the prevention of trafficking.

### **International agencies**

98. The international agencies working in Nepal have been extremely active on the trafficking issue, particularly UNICEF, ILO, OHCHR and UNDP. There is a United Nations Inter-Agency Task Force on Trafficking that is two years old which deals with the problem of trafficking at the district, national and cross-border levels. There are over 60 programmes and projects run by international agencies on the problem of trafficking.

99. The most important recent initiative to come from the international agencies is the Joint Initiative in the Millennium Against Trafficking of Women and Girls in Nepal (JIT), which will be coordinated by UNDP. The overall objective is to reduce the incidence of trafficking by redressing gender inequities and discriminatory practices that make women and girls vulnerable to trafficking. The strategy uses an umbrella approach that builds on the initiatives of the United Nations Task Force on Trafficking, allowing donors and United Nations agencies to pool resources for the implementation of the components envisaged. The initiative involves a "Policy Advocacy Beacon" which would aim at influencing policy in Nepal at the national level. Among the projects to be inaugurated is one that will look at the problem of structural discrimination against women and girls in Nepal, including the gamut of inheritance and family laws. The project also advocates the setting up of a national rapporteur for trafficking and human rights at the Human Rights Commission, the publication of a human rights manual, the collection of national-level data, advocacy in the media and the establishment of a monitoring mechanism on trafficking.

100. In addition to policy efforts, there will be activity at the district level which will aim at developing leadership skills among women and raise awareness with regard to trafficking, health and legal advocacy. A handbook is being prepared that could be used at the district level. There will also be an attempt at building up cross-border cooperation between police, NGOs and media officials. A comprehensive strategy of rescue, rehabilitation and reintegration will be planned involving the concerned countries in the region.

101. In the context of OHCHR's ongoing project of technical assistance to the Government of Nepal, OHCHR, in cooperation with the United Nations Task Force on Trafficking, is developing a pilot anti-trafficking project in two selected districts of Nepal. The core of the project will be the establishment of special courts (as provided for in the Constitution) to deal with trafficking cases. These courts will be supported by trained police working from special "women's stations". Criminal justice initiatives against trafficking will also be supplemented by a range of activities aimed at increasing public awareness and civic responsibility. Additional activities will be directed towards supporting the reintegration of trafficked women and girls. A separate project component will be dedicated to activities aimed at fostering cooperation between Nepalese and Indian police/border and judicial authorities in order to promote a more effective cross-border response to the trafficking problem. This component should work towards the development of a bilateral treaty on the subject of trafficking.



102. UNICEF has played a key role in advocacy and awareness raising on trafficking. It has developed and conducted training workshops with law enforcement agencies, especially the police, and sponsored legal training, and has set up paralegal committees at the ward, village district council and department district council levels. UNICEF has also provided support for drafting a revised anti-trafficking Act. The United Nations Development Fund for Women (UNIFEM) will also be a partner in JIT through its Regional Programme against Trafficking. The UNIFEM South Asia regional office has also undertaken a wide range of projects in the region on violence against women and trafficking.

#### **Non-governmental organizations**

103. Nepal has a very dynamic NGO sector, both international and local, working to ensure women's rights, and many of these NGOs have specifically addressed the trafficking issue. NGOs provide various kinds of programmes including training, support services, advocacy and awareness raising.

104. In the context of NGOs, the Special Rapporteur would like specially to commend the work of Maiti Nepal, an NGO that has made a major difference in the combating of trafficking, and to pay a special tribute to Anuradha Koirala, the founder and Head of the organization. Critics of Maiti Nepal were of the view that Maiti Nepal did not always respect the will of the women concerned and used drastic measures to deal with the problem. These criticisms may have some validity but they can easily be dealt with by the organization. However, the overall work of the organization in rescuing and providing shelter and training for trafficking victims, in supporting children of sex workers and in pioneering work with AIDS victims has to be admired and appreciated.

105. The Special Rapporteur visited a Maiti Nepal transit home in Bhirahawa. Maiti Nepal staff, some of whom had been trafficked themselves, work on the border in cooperation with the border guards. They monitor the flow of persons across the border from early morning to night. If they see a woman who looks like she may be a potential victim (some 5-16 women a day), they stop and talk to her until they are satisfied that she is clear about her destination and aware of the problem of trafficking in India. If they think there is a problem, they take her to the police station.

106. Maiti Nepal also have prevention centres, where they are providing skill training and awareness raising in the villages for girls/women to offer them alternative ways of making a living. In addition, Maiti Nepal is setting up a support system for AIDS victims and making special efforts at health advocacy among the victims.

107. There are also other important NGOs working on this issue. Among them are the Asia Foundation, the Forum for Women, Law and Development, ABC Nepal, Child-Workers in Nepal (CWIN), Shakti Samuha, WOREC, the Informal Sector Service Centre (INSEC), the International Institute for Human Rights, Environment and Development (INHURED), Action Aid, PLAN, Redd Barna, the Alliance Against Trafficking in Women and Children in Nepal (AATWIN) and the National Network Against Girl Trafficking. All of these groups play a vital role.

## VI. INDIA

108. India is a source, a transit point for persons trafficked to Pakistan and the Gulf States, and a destination for trafficked persons. India remains the main receiving country in the region of victims of trafficking. NGOs estimate that more than 12,000, and perhaps as many as 50,000 persons are trafficked into India annually from neighbouring countries.

109. Women and girls are trafficked into India for sex work, for forced labour and for forced marriage. Forced prostitution remains the primary goals of many of the traffickers. While a survey by the governmental Social Welfare Board estimates that in 1991, in six metropolitan cities there were about 1 million women and children engaged in sex work, the Indian Association for the Rescue of Fallen Women estimates that in 1992 there were 8 million women and children in sex work.

110. Internal trafficking also occurs from the rural, economically depressed areas to the cities. According to the Indian Centre for Indigenous and Tribal Peoples (ICITP), more than 40,000 tribal women, mainly from Orissa and Bihar, have been trafficked.

### Legal framework

111. The Government of India is signatory to the Convention on the Elimination of All Forms of Discrimination against Women but has made reservations to article 16 dealing with family law and family life. In a famous case, Visakha v. State of Rajasthan, the Supreme Court of India held that the Convention was an essential part of Indian law. The Indian Constitution specifically prohibits trafficking, in article 23, but the term is not defined in detail. It has been interpreted as a generic definition that applies to the State as well as the private sector.

112. The Supreme Court has used the articles in the Constitution that deal with equality, human dignity, the right to life and trafficking to be activist when it comes to the rights of women. Of all the judiciaries in the world, the Supreme Court of India has made a name for itself internationally as the one that has championed the cause of women within a constitutional framework. Whether it is women in a remand home, Air India hostesses, or sexual harassment, the Supreme Court of India has made pathbreaking decisions.

113. The Supreme Court has delivered two important judgements with regard to the issue of trafficking. On the issue of child prostitution, in the case of Vishal Jeet v. Union of India, the Supreme Court called on the central and state governments to set up advisory committees to advise government on matters relating to child prostitution and social welfare. As a result of this decision, the Government of India set up a Central Advisory Committee on Child Prostitution and state governments also set up advisory committees.

114. In the second decision, Gaurav Jain v. Union of India, the Supreme Court in 1997 directed the Government to constitute a committee to make an in-depth study of the problem of prostitution and child prostitutes and to develop strategies for their rescue and rehabilitation. A Committee on Prostitution, Child Prostitutes and Children of Prostitutes was constituted, headed by the Secretary, Department of Women and Child Development. Its report was submitted in 1998. A copy was presented to the Special Rapporteur.



115. The primary legal framework that deals with the problem of trafficking is the Prevention of Immoral Traffic Act of 1986 (PITA). This Act is supplemented by provisions of the Indian Penal Code that are based on the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Prostitution is not illegal in India but soliciting and exploiting prostitution are offences. The framework for laws are very close to those prescribed by the 1949 Convention. PITA was amended recently and the presumption of guilt is now on the accused for cases in which children or minors are found in a brothel who have been determined by medical examination to have been sexually abused. PITA has made stricter punishment for offences relating to children.

116. PITA also provides for the appointment by the Government of a police officer to fight trafficking nationwide. Such a person had not been appointed when the Special Rapporteur arrived in India. However, the Secretary of the Home Ministry promised the Special Rapporteur during the course of her visit that such an officer would be appointed. At a meeting held at the end of her stay, the Government informed the Special Rapporteur that the order appointing the officer had been made and that the officer was female and sensitive to gender issues.

117. There are many efforts under way to replace PITA with comprehensive trafficking prevention legislation. The National Commission on Women is looking into this possibility. The Special Rapporteur is very apprehensive about these initiatives given the experience in the other SAARC countries. The human rights implications of the new legislation are very disturbing. Many of the drafts shown to the Special Rapporteur contain the same negative features that were discussed above in the General Findings section. The texts criminalize prostitution, give police sweeping search and seizure powers, alter evidentiary requirements and stipulate mandatory punishments for traffickers. The only innovative bill in this regard is the one prepared by the National Law School of the University of India, which has strong provisions to fight trafficking but which also respects the right of sex workers. It attempts to organize them to prevent sexual exploitation and to protect health and hygiene in sexual work. It is the Special Rapporteur's belief that unless something like this can be adopted, PITA, with some amendments, should remain as the principal legal framework for combating trafficking.

118. According to the report of the Committee on Prostitution, Child Prostitutes and Children of Prostitutes submitted by the Department of Women and Children pursuant to the Supreme Court decision, the number of cases involving trafficking has lessened in recent years, especially during the period 1991-1995. However, given the fact that commentators have indicated to the Special Rapporteur that trafficking is on the increase, that statement may reflect the fact that PITA is not fully implemented. In addition, there are regional variations. The states of Tamil Nadu, Karnataka, Maharashtra and Andhra Pradesh account for 96.5 per cent of the cases. The question is also raised about which aspect of PITA is being implemented. Government officials and NGOs claim that 80 per cent of the cases registered under PITA are for soliciting. So the person who is being arrested is the victim. The number of actual cases of trafficking filed against traffickers is marginal. This proves the argument of many women's groups that more stringent laws and law enforcement may actually result in greater victimization of women and girls.

119. Other legislation that also has some bearing on trafficking cases, and in particular protective custody, are the following:



(a) The Indian Penal Code, 1860, includes offences, among others, relating to wrongful confinement, kidnapping, abduction, slavery and forced labour, and sexual offences. Of particular significance are importation of a girl from a foreign country, selling of a minor for purposes of prostitution, buying a minor for purposes of prostitution, and rape:

(b) The Juvenile Justice Act 1986 has elaborate provisions for the care, protection, treatment, education, vocational training, development and rehabilitation of children rescued from those procuring, inducing and taking persons for the sake of prostitution and detaining persons in premises where prostitution is carried on. Such children are covered under the definition "neglected juvenile". Besides the police, any person authorized by the state government may bring the juvenile before the Juvenile Welfare Board for placement with a fit person or a fit institution, or failing which, in a juvenile home. Voluntary institutions also function as protective homes under the respective laws. These institutions must function on the basis of certain minimum standards of care and reformatory treatment:

(c) The Foreigners Act, 1946, which regulates the entry, stay and departure from India of foreigners, is also relevant to the trafficking issue.

120. The governments of Maharashtra and West Bengal, the states that the Special Rapporteur visited, deal with trafficking under PITA and similar criminal law provisions. In this context, the Special Rapporteur was encouraged to note the approach of the government of Maharashtra and its Secretary, Mr. Sharma, who displayed very keen interest in the visit of the Special Rapporteur and involved her in intensive discussions on the future course of action. At the end of her visit, the Chief Minister of Maharashtra promised to set up a special team to study the problem of trafficking and to set up mechanisms to combat trafficking. She was also encouraged to note that they took up her suggestion that the new law to combat organized crime, the Maharashtra Organized Crime Act, should also include a protocol on trafficking like its international counterpart. The government also seemed interested in meeting the social welfare requirements of the women victims and the team was asked to look into this matter in detail.

#### **Programmes and policies to combat trafficking**

121. The year 2001 has been named Women's Empowerment Year by the Government of India and a host of activities will take place with regard to the rights of women under the ninth five-year plan (1997-2002), which has identified the empowerment of women as a strategy for development.

122. The National Commission for Women (NCW) is the body that takes the lead with regard to the protection of the rights of women. The Commission's mandate is to safeguard the rights and interests of women by running legal awareness programmes, looking into complaints regarding the violation of women's rights, examining the non-implementation of laws as well as non-compliance with policy guidelines, providing relief to women by taking up their concerns with the appropriate authorities, conducting research, undertaking investigations, etc. The NCW also has the powers of a civil court when investigating any case provided for by the NCW Act 1990. Combating the trafficking of women is one of its main areas of priority. When the Special Rapporteur made her visit, the Commission was in the process of engaging in national-level consultations with a view to amending PITA. It has been involved in



consultations in all the states and has talked to state officials, NGOs and the sex workers themselves. The Commission organized a very informative half-day workshop for the Special Rapporteur on trafficking. The members of the Commission seemed very committed to combating trafficking as well as other crimes of violence against women. In addition to reforming the law, the Commission has through public interest litigation intervened in the courts to protect the rights of victims of trafficking. The Commission is also in the process of working out a curriculum for gender training of the police.

123. The Department of Women and Child Development within the Ministry of Human Resource Development of the Government of India is the other official entity that plays an important role in protecting the rights of women. The Department's mandate is to formulate plans and policies, to enact and amend legislation, and to guide and coordinate the efforts of governmental and non-governmental organizations that work with women and children. The present Secretary seems very committed to developing a strategy on trafficking for the Department. The previous Secretary chaired the Committee on Prostitution, Child Prostitutes and Children of Prostitutes.

124. The Committee's report contained a Plan of Action, which was very interesting and included innovative ideas. The section on awareness raising and the provision of health services is particularly useful and comprehensive. The Social Welfare component is dealt with in detail, from rescue to rehabilitation, to education of the children of prostitutes, to housing and shelter. The section on health services is also very comprehensive, arguing for the setting up of health care centres in red light areas specializing in HIV/AIDS and the conducting of awareness and education campaigns on AIDS. Unlike other plans in the region, there is a determined effort to include psychological counselling as an aspect to health care.

125. The aspects of the Plan of Action that the Special Rapporteur feels pose human rights problems are, among others, the suggestion that the children of prostitutes be removed from their mothers to more healthy environments. This is a very disturbing violation of the right to family even if it is done with good intentions. The report also seems to rely on social surveillance as a method of preventing and fighting trafficking. Given the hierarchies of class, religion and caste, this can result in a great deal of abuse. Some of the women we interviewed described this abuse in detail, describing how certain women and groups are targeted for this type of social surveillance. Accountable state institutions are better vehicles for enforcement than social surveillance. In addition, the report focuses on the victim and has little to add with regard to laws and strategies for finding and punishing traffickers.

126. The Department of Women and Child Development is also planning to commission a nationwide survey on trafficking in order to collect comprehensive data on the subject so that the Government will know the nature and extent of the problem. This survey will be done with the support of the ILO.

127. There are also a number of state-level initiatives on trafficking.

128. At the level of state governments, especially in Maharashtra and West Bengal, the relevant ministries of women and child development were also in the process of developing programmes to combat trafficking. At the moment, much of the social welfare work has been



relegated to NGOs and the state governments have not played an active role. The government of Maharashtra was very eager to develop a plan and a programme to combat trafficking. The Special Rapporteur hopes that her visit will be a catalyst for this endeavour as much of the abuse resulting from trafficking takes place in Bombay and its environs. Bombay is located in Maharashtra.

129. The National Human Rights Commission was another institution that seemed very committed to eradicating trafficking in India as a human rights problem. The Commission has a good reputation in the country and is seen as fair and activist with regard to the protection of human rights. In discussions with the Special Rapporteur, the Commissioners intimated that they had decided to set up a focal point for trafficking within the Commission. They hope to deal with the issue as an important aspect of human rights protection in India.

### **Criminal justice system**

130. Trafficking in India cannot be combated without the unstinting support of those who work in the criminal justice system. Given the international and national attention on trafficking, the Indian ministries dealing with home affairs and law are slowly beginning to deal with the problem. Unlike the Ministry of Human Resource Development, these "bastions of patriarchy", as one NGO activist put it, in all the countries are slower to respond to the crisis. However, the Secretary, Ministry of Home Affairs in India promised the Special Rapporteur that a special officer and a unit on trafficking would be established in the Ministry that would deal with trafficking at the national level. The Special Rapporteur was informed at the end of the visit that this had been done.

131. Once there is political commitment, the police forces in India would begin to adapt to the new reality that trafficking is prohibited and that police corruption in this area must be eradicated. There appears to be a beginning. A manual for police training in the area of trafficking is currently being developed with the help of UNICEF. Such a handbook, translated in all the regional languages, would be a first step in the process of furthering effective law enforcement.

132. At the local level, the Special Rapporteur was informed that the Maharashtra police were also compiling a handbook and working out a gender sensitization programme for the police. The female officer in charge of the women's unit of the Maharashtra police described in detail the initiatives taken by the Maharashtra police to combat violence against women. The programmes seemed comprehensive, with the police playing an active role. She said that similar programmes would be developed to combat trafficking during the course of the year, in consultation with the Women and Child Department. The Special Rapporteur offered the technical services of OHCHR to assist the Maharashtra police in this endeavour. In Calcutta too, the West Bengal police described in detail strategies and programmes to make the West Bengal police more gender sensitive. In recent times successful raids had taken place and many minors rescued, both in Maharashtra and West Bengal.

133. The victims of trafficking tell another story. The rescued minors and sex workers the Special Rapporteur spoke to recounted story after story of corruption in the police forces of Maharashtra and West Bengal, especially concerning sex workers. Numerous incidents of police



corruption that were witnessed by sex workers were recounted, as described in the General Findings Section. The Special Rapporteur reiterates that unless that message is received by the average cop who works in the red light areas and other trafficking routes that corruption will not be tolerated, there will be impunity for traffickers and the rights of women and children will be abused.

134. Also as noted earlier, despite the Supreme Court having given very clear direction that trafficking is a major violation of women's fundamental rights, at the lower levels of the judiciary the picture is again mixed. Some judges in Maharashtra and West Bengal have been very activist. In February 1996, the Maharashtra High Court, acting on a newspaper article, intervened and rescued 469 girls, many of whom were Nepalis. Critics have called some of these judges publicity seekers but in actual fact, they have done a great deal to further the quality of life in India with regard to fundamental rights. At the same time the Special Rapporteur heard of cases in which judges have been insensitive, sometimes even sending the victims to jail, and of long confinement in government homes pending a hearing of their cases.

### **Rescue and welfare programmes**

135. The approach of state governments to the problem of rescue and social welfare centres around giving the women shelter in Government-run homes while their lives are sorted out. There are two kinds of home. The first is a Protective Home established by the Government for women and girls taken in under PITA. There are 80 such homes throughout India. The second type of home is a Short Stay Home. The Department of Women and Child Development assist these homes. There are also Juvenile Homes set up under the Juvenile Justice Act. Women rescued from brothels and from being trafficked may be assigned to any of these homes at the discretion of the judges.

136. The Special Rapporteur seriously questions the use of government homes as a means of "rehabilitating" victims of trafficking. From what she has seen, there are serious human rights implications associated with this strategy. Firstly, the women are not in these homes voluntarily. In the home that the Special Rapporteur visited, all the women said they wanted to leave. Having done nothing wrong, they are kept in homes that are akin to jails. Secondly, the conditions in these government homes from all reports are unsatisfactory. The one the Special Rapporteur visited was gloomy, the conditions barely basic and the women seemed extremely unhappy and idle. The Special Rapporteur suggests that the Government set up a committee involving government and NGO officials to review the conditions in these homes and to devise alternative modes of providing social welfare to women without depriving them of their basic rights.

137. The Central Social Welfare Board also provides financial assistance to NGOs to run centres and short-stay homes for women in need. Some trafficked victims are sent to these homes. In addition, financial assistance is given to NGOs to run development and care centres for the children of the sex workers. These centres are set up in the red light areas and provide day care along with educational support programmes and nutritional programmes for the children.

138. During her visit, the Special Rapporteur visited many homes managed by NGOs. Some were excellent, model institutions while others resembled the government homes. St. Catherine's in Maharashtra stands out as a model home though critics argue that, like at Maiti Nepal, there is a "moral overdose" given to victims of trafficking. Regardless of this, the premises were clean, and the women seemed alert and happy and involved in their work with a wide variety of programmes to keep them occupied.

139. Given the wide range of institutions she visited, the Special Rapporteur would assert that NGO management with government monitoring provides the best framework for the provision of social welfare to women and girl victims of trafficking. In any event, if human rights principles are to be respected the concept of "protective custody" in India must be reconsidered. Women and girls should never be kept in government or NGO homes against their will except in very exceptional circumstances.

### **International agencies**

140. Unlike in the other countries in the region, the United Nations in India does not have an integrated, coordinated strategy to address trafficking. There is no inter-agency task force. However, UNIFEM, ILO and UNICEF, amongst others, have some very important regional programmes with regard to trafficking which are also functioning in India.

141. UNAIDS has also formed a Regional Task Force on Trafficking and HIV/AIDS in order to develop and facilitate regional interventions. The UNDP Regional Office has been assigned the role of coordinator of the activities under this initiative. The UNDP project on HIV and Development in South and South-West Asia was prepared in consultation with UNICEF, UNIFEM and WHO. The main objective is the empowerment of women and girls to enhance human security and mitigate factors that create their vulnerability to trafficking and HIV/AIDS, including social, economic and sexual exploitation and discrimination.

142. UNICEF has played a key role in advocacy and awareness raising on the issue within the region. Its country offices have also developed and conducted training workshops with law enforcement agencies, especially the police, on sensitization, investigation and establishment of women's units. It has sponsored research for situation analyses on trafficking in the various countries and supported skills training, protection and reintegration for children at risk, survivors of trafficking and children of sex workers. The Rights Cluster has activities regarding the trafficking of children and adolescents. The India office has supported both Government and NGOs in developing and implementing various kinds of activities and programmes on trafficking, working closely with the Department of Women and Child Development; it has also sponsored cross-border police workshops on the issue of trafficking.

143. UNIFEM provides technical assistance to the ministries concerned with women and children in the respective countries. UNIFEM has undertaken advocacy and sponsored action-research on trafficking in the region. It has played a leading role in supporting advocacy on the part of NGOs on the SAARC convention. UNIFEM also provides technical assistance to the various women's ministries and departments in developing databases and collating information.



144. The International Programme for the Elimination of Child Labour (ILO/IPEC) supports NGO prevention programmes, awareness raising, rescue and rehabilitation. Assistance is provided to projects to develop training packages to sensitize primary schoolteachers in human rights and child rights, and to establish "prevention camps" in trafficking-prone areas. ILO/IPEC also supports workshops for legal experts and prosecutors on enforcement and legislation regarding trafficking. ILO conducts intensive advocacy on the issues of child rights and child labour and works closely with the ministries of labour and social welfare in the concerned countries.

145. The International Organization for Migration (IOM) has placed trafficking on its regional agenda and is concerned with understanding and operationalizing the distinctions between migration and trafficking. IOM focuses primarily on cross-border trafficking and seeks to strengthen organizations and programmes which provide support to survivors of trafficking. UNFPA, WHO and UNAIDS are also committed to addressing the issue of trafficking through their principal mandates.

#### **Non-governmental organizations**

146. National and international NGOs working in India should be congratulated for raising awareness and for putting trafficking on the world's agenda as a high-priority issue. The Special Rapporteur could only visit a few NGOs during her visit. It is not possible to mention all the NGOs working on this issue (a list of selected persons/organizations with whom the Special Rapporteur met during the mission is contained in the annex); however, a few NGOs that the Special Rapporteur visited deserve very special mention.

147. The most unusual NGO that the Special Rapporteur met was the Durbar Mahila Samanvyaya Committee (DMSC) and the Usha Collective of Sex Workers in Calcutta. These are self-help organizations of sex workers that have begun to address how to reduce forced entry of women and voluntary or forced entry of minors into the sex industry, including through trafficking. DMSC aims at mass-scale mobilization of sex workers to organize for their rights, better working and living conditions and freedom from abuse, coercion, violence and stigmatization. DMSC members have made a formal commitment to prevent the forced entry of women and the trafficking of minors into the industry. DMSC hopes to monitor this through its self-regulatory board. If trafficking into the sex industry is to be combated, the support and active participation of sex workers is extremely useful. They have the inside information about the methods employed, the perpetrators, as well as the location of the victims. The women from the DMSC that the Special Rapporteur met were committed women who were fighting a difficult cause with dignity and fortitude.

148. Prerana in Bombay and Sanlaap in Calcutta are also exceptional NGOs. Prerana has a project to eliminate second-generation trafficking of children into sexual exploitation, a night care centre for the children of the red light districts and a placement programme for the children of women sex workers. It is also trying to get ration cards for sex workers. The activities of Prerana have evolved through constant consultation and interaction with the beneficiaries. They are aimed at enhancing the capacity and self-reliance of the victims rather than generating new dependence. Prerana is currently fighting a case under public interest litigation at the Bombay High Court against the state government of Maharashtra to improve the post-rescue operations.

Sanlaap also provides shelter for women and child victims, health services, legal and psychological counselling and a whole array of other services. Committed staff supports it and its success lies in the large number of children and women who come to them for assistance on a voluntary basis. The children and women in their care seemed healthy and happy despite conditions of poverty.

149. Another NGO that seemed to provide exceptional services given the resource constraints in the NGO sector was St. Catherine's Home in Bombay for rescued children, abused children from brothels, and children with HIV/AIDS. St. Catherine's strives to provide a happy home environment for the children so they can learn and discover themselves and their potential through education and vocational training. Clean and friendly, St Catherine's seems, like the other NGOs mentioned above, a model NGO.

150. There are many NGOs working in the field with great enthusiasm and commitment. As a general rule, their centres, especially when they are monitored by the Government, are far cleaner, healthier, and provide more services than Government-run homes. However, government officials in Maharashtra did say that there were also many NGOs that are financially corrupt and provide minimum services to the women and girls. NGO management may be better for the women and children but government monitoring of standards is also essential if the victims of trafficking are to be given the necessary social welfare services.

## **VII. RECOMMENDATIONS**

### **International**

151. The international community must continue to play a proactive role in preventing trafficking in the South Asian region. More resources should be given to the Governments of the region to meet this problem of human servitude and forced labour. In this connection, the Nepalese effort should be replicated in the other SAARC countries. There should be an Inter-Agency Task Force on Trafficking or a Joint Initiative on Trafficking involving all the international agencies. Cooperation among the agencies is essential if there is to be a coordinated effort to deal with the problem of trafficking in South Asia.

### **Regional**

152. The countries of the SAARC region should get together to collect comprehensive data on trafficking. There should be a central database and a regional survey to assess the nature of the problems, the numbers involved, the profile of the trafficking victim, the profile of the trafficker and the response of national Governments. The collection of data is absolutely necessary if the problem is to be dealt with effectively.

153. The adoption of the SAARC Convention on Trafficking should be encouraged. If the present draft Convention is signed, there should be an amendment conference within a year to ensure that the definition of trafficking in the SAARC instrument is in conformity with the international language agreed upon at Vienna for the Convention on Organised Crime Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention on Transnational Organized Crime. In addition,



the social and economic rights of the victims should be respected in the section entitled "Rehabilitation". A monitoring mechanism should be set up along with a regional fund to help victims of trafficking once they are rescued.

154. There should be an intergovernmental regional task force on trafficking that will plan and implement a concerted strategy for the region. This task force could be linked to the women and child ministries of the respective countries. In addition, there should be an interregional police task force to fight trafficking, track traffickers and gather jointly intelligence on trafficking rings.

#### **National**

155. The Governments of the region should each have a national plan of action to combat trafficking. To prevent such a plan from being just a piece of paper, there should be a monitoring mechanism involving Governments, NGOs and international agencies.

156. There should be a nodal agency entrusted with implementing the plan. In some of the SAARC countries there is such a nodal agency for drug prevention. Human trafficking is a far more despicable crime than drug abuse. The establishment of a nodal agency would give the world a sense that the countries take this issue seriously and that there is political will to eradicate trafficking.

157. Legislation to combat trafficking should be considered, but only if it complies with international human rights standards and does not violate the rights of women. Nothing should be done to prevent the freedom of movement of adult women. No law or regulation should place them at the mercy of the men in their families or in their villages. Their autonomy must be respected.

158. Governments should refrain from enacting regulations and orders that restrict the free movement of women under the guise of fighting trafficking. Instead, measures aimed at educating women about their rights and raising awareness about conditions in receiving countries should be compulsory. The respective embassies in receiving countries should be proactive in providing assistance to women and girl victims of trafficking.

159. "Protective Custody" as a means of dealing with victims of trafficking should be reconsidered. Women who are victims of trafficking have not committed any crime. For this reason, they should not be detained. Any stay in a government home should be voluntary. In addition, conditions in these homes should be such that the women would want to stay there voluntarily. There should be programmes to keep women occupied; there should be legal and psychological counselling and an effort to help the women plan their future. Proven NGOs should manage such homes with government monitoring and supervision.

160. In cases of trafficking victims who are foreign nationals, the Governments of the region must work towards facilitating their voluntary return, if that is appropriate, rather than detain them for long periods in government homes.

161. All the countries of the region should have training for their police forces on how to combat violence against women in general as well as trafficking. The training should consist of

awareness raising on the issue as well as development of investigative skills so that crimes of violence against women are investigated and prosecuted with proper evidence. The Special Rapporteur suggests that the countries of the region draw on international expertise present at OHCHR and the United Nations Office for Drug Control and Crime Prevention in Vienna.

162. Corruption in the police seems a significant problem in all the countries of the region, especially in the area of trafficking. There should be a clear direction from the top of the police hierarchy that such behaviour will not be tolerated and police officers who engage in such activity should face severe consequences.

163. There should be seminars and workshops with judges in the region to increase their awareness on issues relating to violence against women, as well as to issues related to trafficking. There are a number of such programmes already in existence and they should be encouraged.

164. The human rights commissions in all the countries of the region should make trafficking a special focus of their work.

165. Witness protection schemes should be set up for women victims so that they will testify against their traffickers. Such schemes should assist the police in presenting evidence before the courts and would help to secure a higher rate of conviction.

166. There should be a concerted effort to deal with the problem of HIV/AIDS in the region. Resources should be allocated to deal sufficiently with the problem. Special centres should be set up in the red light districts to assist sex workers. International standards on "voluntariness" with regard to testing and confidentiality should guide the campaign. Gender training for the medical profession should be provided to ensure that women receive non-judgmental, confidential treatment.

167. Prevention programmes should exist in all three countries. Prevention should take the form of awareness raising through the media, through the education system and through social mobilizers in the villages. Prevention should not rely on social surveillance and neighbour spying on neighbour, as such surveillance can be subject to a great deal of abuse.

168. Extensive support should be given to NGOs working in this field. The NGOs working with the children of the sex workers should be given special encouragement along with those who work with the victims of trafficking. A partnership between Government and NGOs working in this field is essential if the problem of trafficking is to be dealt with in the South Asian region.

#### Notes

<sup>a</sup> For further information please refer to the Special Rapporteur's report on trafficking in women, women's migration and violence against women, submitted to the Commission on Human Rights at its fifty-fifth session (E/CN.4/2000/68).



<sup>b</sup> Human Rights Watch, Rape for Profit, Trafficking of Nepali Girls and Women to India's Brothels, 1995, p.11

<sup>c</sup> Ibid.

<sup>d</sup> Central Welfare Board, Prostitution in Metropolitan Cities of India, New Delhi, August 1993.

<sup>e</sup> This was the figure given to the Special Rapporteur by NGO activists working in Bombay and Calcutta.

<sup>f</sup> Human Rights Watch, op. cit., pp. 20-24.

<sup>g</sup> Jyoti Sanghera, Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead, for UNICEF and Save the Children Alliance, November 1999.

<sup>h</sup> Ibid.

## Appendix

### SELECTED LIST OF PERSONS/ORGANIZATIONS WHOM THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN MET DURING HER MISSION

#### BANGLADESH

##### Dhaka

Mr. Munshi Faiz Ahmad, Director-General, Ministry for Foreign Affairs  
Dr. Ali, Acting Foreign Secretary, Ministry for Foreign Affairs  
Mr. Rabab Fatima, Director, Ministry for Foreign Affairs  
Mr. Abul Hasan Chowdury, State Minister for Foreign Affairs  
Mr. Reza, Ministry of Home Affairs  
Prof. Zinantun Nesa Talukdar, State Minister, Ministry of Women and Children Affairs  
Prof. (Dr.) Tehmina Hussain, Secretary, Ministry of Women and Children Affairs  
Mr. Abdul Matin Khasru, Minister, Ministry of Law, Justice and Parliamentary Affairs  
Mr. Mahmid Al-Faird, Acting Inspector-General of Police

Ms. Shamim Hamid, Principal Officer, Office of the United Nations Resident Coordinator  
Ms. Farah Ghuznavi, Programme Officer, UNDP  
Ms. Shahida Azfar, UNICEF Representative  
Ms. Jun Kukita, Senior Programme Coordinator, UNICEF  
ILO Representative  
World Bank Representative  
UNHCR Representative  
IOM Representative

Mr. Kamal Khairuzzaman, Executive Director, Bangladesh Manabadhikar Sangbadik Forum  
Ms. Salma Ali, Executive Director, Bangladesh National Women Lawyers Association (BNWLA)  
Ms. Shirin Naer, Advocate, Supreme Court of Bangladesh/BNWLA  
Ms. Maleka Begum, Gender Specialist and Researcher  
Ms. Ruby Ghuznavi, Convenor, Naripokkho  
Ms. Ayesha Khanam, GS, Bangladesh Mahila Parishad  
Ms. Salma Sobhan, Executive Director, Ain O Salish Kendra  
Ms. Sigma Huda, Advocate, Chancery Chambers, Ain-O-Unnyan Sangstha  
Ms. Angela Gomes, Executive Director, Banchte Shekha  
Ms. Salima Sarwar, Executive Director, ACD, Rajshahi  
Ms. Farida Akhter, Executive Director, UBINIG  
Mr. Aminul Islam Miah, GS, Bangladesh Retired Police Officers' Welfare Association, Detective Training School  
Ms. Selina Shelley, Country Representative a.i. Oxfam  
Ms. Mufawesa Khan, Executive Director, CWFD  
Ms. Khushi Kabir, Chairperson, ADAB  
Prof. Ishrat Shamim, President, CWCS



Ms. Salma Khan, President, Women for Women  
Ms. Lulu Bilkis Khanom, Senior Programme Officer, Dhaka Ahsania Mission  
Ms. Naheed Kamal  
Ms. Carol Jenkins  
Mr. Matthew Friedman  
Mr. Rakin Hossain  
Aparageya Hostel

## NEPAL

### Kathmandu

Mr. Ram Chandra Paudel, Deputy Prime Minister  
Mr. Mahanth Thakur, Minister of Law  
Mr. Arjun Kant Mainali, Section Officer, Ministry for Foreign Affairs  
Ministry of Women, Children and Social Welfare  
Mr. Badri Bahadur Karki, Attorney-General  
Mr. Pradeep SJB Rana, Acting Inspector-General of Police, Chief of Nepal Office  
Mr. G.P. Thapa, Deputy Inspector-General of Police, Training Directorate, PHQs  
Mr. Jogendra Keshari Ghimire, Secretary, National Human Rights Commission  
Ambassador Nihal Rodrigo, SAARC Secretary-General

Mr. Nick Langton, Representative, the Asia Foundation  
Ms. Shtrii Shakti  
Ms. Sapana Pradhan-Malla, Advocate, Forum for Women, Law and Development  
INHURED  
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Global Alliance Against Traffic in Women  
Foundation Against Trafficking in Women  
International Human Rights Law Group

## HUMAN RIGHTS STANDARDS FOR THE TREATMENT OF TRAFFICKED PERSONS

January 1999

### SUMMARY

These Standards are drawn from international human rights instruments and formally recognized international legal norms. They aim to protect and promote respect for the human rights of individuals who have been victims of trafficking, including those who have been subjected to involuntary servitude, forced labour and/or slavery-like practices. The Standards protect the rights of trafficked persons by providing them with an effective legal remedy, legal protection, non-discriminatory treatment, and restitution, compensation and recovery.

Under international law, states have a duty to respect and ensure respect for human rights law, including the duty to prevent violations, to investigate violations, to take appropriate action against the violators and to afford remedies and reparation to those who have been injured as a consequence of such violations.

Accordingly, the Standards adopt the following definition of trafficking and mandate the following State obligations towards trafficked persons:

**Trafficking:** All acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion (including the use or threat of force or the abuse of authority) or debt bondage for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage.

**Principle of Non-Discrimination:** States shall not discriminate against trafficked persons in substantive or procedural law, policy or practice.

**Safety and Fair Treatment:** States shall recognize that trafficked persons are victims of serious human rights abuses, protect their rights notwithstanding any irregular immigration status, and protect them from reprisal and harm.

**Access to Justice:** The police, prosecutors and court shall ensure that their efforts to punish traffickers are implemented within a system that respects and safeguards the rights of the victims to privacy, dignity and safety. An adequate prosecution of traffickers includes prosecution, where applicable, for rape, sexual and other forms of assault (including, without limitation, murder, forced pregnancies and abortions), kidnapping, torture, cruel, inhuman or degrading treatment, slavery or slavery-like practices, forced or compulsory labour, debt bondage, or forced marriage.



**Access to Private Actions and Reparations:** States must ensure that trafficked persons have a legal right to seek reparations from traffickers as well as assistance in bringing such actions, if necessary.

**Resident Status:** States shall provide trafficked persons with temporary residence visas (including the right to work) during the pendency of any criminal, civil or other legal actions and shall provide trafficked persons with the right to seek asylum and have the risk of retaliation considered in any deportation proceedings.

**Health and Other Services:** States shall provide trafficked persons with adequate health and other social services during the period of temporary residence.

**Repatriation and Reintegration:** States shall ensure that trafficked persons are able to return home safely, if they so wish, and when they are able to do so.

**Recovery** includes medical and psychological care as well as legal and social services to ensure the well being of trafficked persons.

**State Cooperation:** States must work cooperatively in order to ensure full implementation of these Standards.

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## HUMAN RIGHTS STANDARDS FOR THE TREATMENT OF TRAFFICKED PERSONS

January 1999

### INTRODUCTION

These Standards are drawn from international human rights instruments and formally recognized international legal norms. They aim to protect and promote respect for the human rights of individuals who have been victims of trafficking, including those who have been subjected to involuntary servitude, forced labour and/or slavery-like practices. Victims of trafficking are treated as objects or commodities by traffickers who use coercion, deception or debt bondage to deprive victims of their fundamental freedoms, such as their ability to control their own bodies and labour. To remedy this injustice and address the needs of the victims, the Standards adopt a victim-rights perspective. They protect the rights of trafficked persons by providing them with an effective legal remedy, legal protection, non-discriminatory treatment, and restitution, compensation and recovery.

States have a responsibility to provide protections to trafficked persons pursuant to the Universal Declaration of Human Rights (UDHR) and through ratification or accession to numerous other international<sup>1</sup> and regional instruments. These and other instruments to which states have acceded or ratified are binding, while non-treaty declarations and standards adopted by the General Assembly have a strong hortatory nature and establish a standard by which national practices can be and are measured. International human rights instruments impose a duty upon states to respect and ensure respect for human rights law, including the duty to prevent and investigate violations, to take appropriate

action against the violators and to afford remedies and reparation to those who have

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<sup>1</sup>International Covenant on Civil and Political Rights (ICCPR)  
International Covenant on Economic, Cultural and Social Rights (ICESCR)  
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT)  
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Convention on the Rights of the Child (CRC)

Slavery Convention (SC) and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (SCAS)

International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (ICPRMW) (not yet in force)

International Labor Organization Conventions No. 29 Concerning Forced Labour (ILO No. 29) and No. 105

Concerning Abolition of Forced Labour (ILO No. 105).

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been injured as a consequence of such violations. Nonetheless, as yet, few states have fulfilled their obligation to implement these commitments or to provide adequate human rights protections to trafficked persons.

The protections called for in these Standards apply to all trafficked persons - women, men and children. However, it should be noted that trafficking disproportionately affects women and girls. The overwhelming majority of the persons trafficked to work in sweatshops and brothels are women and girls due to their inferior and vulnerable status in most societies. The gendered nature of trafficking derives from the universal and historical presence of laws, policies, customs and practices that justify and promote the discriminatory treatment of women and girls and prevent the application of the entire range of human rights law to women and girls.<sup>2</sup>

The historical linkage of 'women and children' has proven problematic in multiple ways. Linkage often encompasses the treatment of women as if they are children and denies women the rights attached to adulthood, such as the right to have control over one's own life and body. The linkage also serves to emphasize a single role for women as caretakers for children and to deny the changing nature of women's role in society, most notably, women's increasing role as the sole supporter of dependent family members and, consequently, as economic migrants in search of work. Nearly half of the migrants today are women. Consequently, the Standards focus upon the rights and needs of adults and pay particular attention to the concerns and needs of female victims of trafficking.

The Standards do not contain specific provisions addressing the special status, rights and needs of the girl child or children generally. Adults, particularly women, have legal positions and require legal remedies that are not always consistent with the legal positions and needs of children. The special rights and needs of children should be protected according to the principles contained in the Convention on the Rights of the Child.

The second component of the Standards is effective prosecution of traffickers, which depends upon the cooperation of victims. However, trafficked persons typically fear authority and are unwilling to trust the police. Traffickers exploit persons who are



trapped in conditions of poverty and subordinated by conditions, practices or beliefs, such as gender discrimination, gender violence and armed conflict. Their ability to operate further depends upon the existence of lax or corrupt law enforcement officials and traffickers themselves are often corrupt officials. Thus, a critical component in the effective detection, investigation and prosecution of traffickers is the willingness of trafficked persons to assist in prosecutions. In recognizing and protecting the rights of trafficked persons, the Standards provide an incentive to trafficked persons to report to the authorities and act as witnesses.

In furtherance of achieving the full implementation of the rights of trafficked persons, we urge states to take all necessary measures to adopt and amend laws, where necessary, and to implement laws and policies extending the universally accepted basic human rights of all persons to all trafficked persons. At a minimum, those laws and policies should contain the provisions set out below.

## **I. DEFINITIONS**

States shall adopt and/or implement and periodically review and analyse legislation to ensure its conformity with the following definitions:

**Trafficking:** All acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person

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<sup>2</sup>See Declaration on the Elimination of Violence against Women, General Assembly, A/RES/48/104 (2/23/94)

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(a) Involving the use of deception, coercion (including the use or threat of force or the abuse of authority) or debt bondage

(b) For the purpose of placing or holding such person, whether for pay or not, in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage.<sup>3</sup>

**Commentary:** Trafficking can involve an individual or a chain of individuals starting with the recruiter and ending with the last person who buys or receives the victim (such as the owner of the sweatshop) or the person who holds a person in conditions of slavery or subjects such person to slavery-like practices, forced or bonded labour or other servitude. Persons are trafficked into a multitude of exploitative or abusive situations, such as in the garment, agricultural, fisheries, begging, sex and other industries and in domestic labour as servants or through forced 'marriages' where they held as virtual prisoners, raped continually by their 'husbands' and often forced to become pregnant for the purpose of providing their 'husbands' with children. Trafficking does not require the crossing of borders. A large portion of modern trafficking consists of moving persons from one region to another within one country. The violations and harms suffered by in-country victims are no less than for cross-border victims. For example, the harm suffered by a person trafficked several thousand kilometers within a country can be as great or even greater than the harm suffered by a person trafficked a few hundred kilometers across a border.



The core elements of the act of trafficking are the presence of deception, coercion or debt bondage and the exploitative or abusive purpose for which the deception, coercion or debt bondage is employed. Typically the deception involves the working conditions or the nature of the work to be done. For example, the victim may have agreed to work in the sex industry but not to be held in slavery-like conditions or to work in a factory but not in a brothel.

The nature of the labour or services provided as such, including those in the sex industry<sup>4</sup>, are irrelevant to the question of whether or not the victim's human rights are violated. The trafficker's use of deceit, coercion, or debt bondage to force the victim to work in slavery-like or exploitative or abusive conditions deprive the victim of her or his free will and ability to control her or his body, which constitutes serious violation of the fundamental rights of all human beings.

The definition reiterates existing international human rights standards prohibiting such acts. The Slavery Convention, article 1(1), defines slavery as: "the status or condition of a person over whom any or all of the power attaching to the right of ownership are exercised." The Supplementary Convention to the Slavery Convention, article 1, calls for the elimination of the slavery-like conditions in which many trafficked persons find themselves. It calls for "the complete abolition or abandonment...[of] [d]ebt bondage,

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<sup>3</sup>See ICPRMW 68.1.

<sup>4</sup>The International Labour Organisation has officially recognised that sex work is a form of labour. The Sex Sector: The economic and social bases of prostitution in Southeast Asia, ed. by Lin Lean Lim (ILO 1998). Similarly, Anti-Slavery International proposes the redefinition of prostitution as sex work as a preliminary condition for the enjoyment by sex workers of their full labour and human rights. Redefining prostitution as sex work on the international agenda, Anti-Slavery International with the participation of Jo Doezeema (Network of Sex work Projects) (July 1997). These Standards adopt the same position and argue that the human rights of sex workers can only be realised through the recognition, application and protection of the same rights and protections to sex workers that are available to other workers.

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That is to say, the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined", forced marriages, the transfer of a woman "for value received or otherwise", and delivery of a child "to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour." Article 6.2 prohibits the act of "induc[ing] another person to place himself or a person dependent upon him into the servile status resulting from any of the institutions or practices mentioned in article 1...."

The International Labour Organization also condemns such slavery-like practices.<sup>5</sup> Article 2 of ILO No. 29 prohibits the use of forced or compulsory labour, defined as "all work or service, which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." Also, article 4 holds that "[t]he competent authority shall not impose or permit the imposition



of forced or compulsory labour for the benefit of private individuals, companies or associations."

**Trafficked Person:** A person who is recruited, transported, purchased, sold, transferred, received or harboured as described in 'Trafficking' above, including a child (as defined by and consistent with the principles in the Convention on the Rights of the Child), whether the child has consented or not.

**Commentary:** The definition distinguishes between adults who freely agree to travel (within or across borders) and who are fully informed about the type and conditions of work or services they are expected to perform and adults who do not consent at all or whose apparent, implied or express consent is vitiated by the use of deception, coercion or debt bondage. It respects the right of adults to make decisions about their lives, including the decision that working under abusive or exploitative conditions is preferable to other available options. However, even when migrants know the type of difficult and even dangerous work they will be required to perform, they often become victims of trafficking because the traffickers routinely confiscate their passports, hold them in confinement through coercion, and otherwise deprive them of their freedom of movement and choice.

In situations where labour conditions are no worse than those expected by the worker and the worker is not deprived of her or his freedom of movement or choice, the abuser or exploiter remains criminally liable for other crimes, such as assault, unlawful detention, and labour abuses and for appropriate administrative and civil offenses. The existence of consent to work under such conditions does not excuse the abuser or exploiter from being subjected to the full force of domestic laws that prohibit such practices.

Lastly, the definition recognizes that children need special protection and that 'consent' can never be a defence to a charge of trafficking in children.

**Trafficker:** A person who, or an entity that, intends to commit, is complicitous with, or acquiesces to, any of the acts described in 'Trafficking' above. **Commentary:** The definition is intended to punish only those persons or entities that have the requisite mental element, including persons and entities that intentionally remain ignorant of the manner in which their acts contribute to the trafficking chain. It excludes

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<sup>5</sup>ILO No. 105, art. 1, obliges each state party to undertake "to suppress and not make use of any form of forced or compulsory labour...as a method of mobilising and using labour for the purposes of economic development." See also, UDHR, art. 4; ICCPR, art. 8.

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persons and entities that unwittingly (and without any reason to suspect the existence of trafficking) become a link in the trafficking chain, such as an innocent taxi driver or hotel owner.

## II. STATE RESPONSIBILITIES

As discussed in the Introduction, all states have obligations to recognize and protect the human rights of all persons in conformity with the Universal Declaration of Human Rights and other international human rights instruments. States are obligated to respect and protect the human rights of the persons within its territorial boundaries, as well as to enable such persons to realise those rights, which includes the concept that human rights encompass not only states' obligations to respect and protect but also their obligation to



provide or make available the means (including information, capacity and structures) to ensure the realisation of rights possible by each person.

In recognition and furtherance of those obligations, all states should adopt and/or implement and periodically review and analyse legislation to ensure its conformity with international human rights standards and its effectiveness in eliminating trafficking and in protecting all rights of trafficked persons.<sup>6</sup> Accordingly, states shall:

#### **Principle of Non-Discrimination**

1. Ensure that trafficked persons are not subjected to discriminatory treatment in law or in practice on account of race, colour, gender, sexual orientation, age, language, religion, political or other opinion, cultural beliefs or practices, national ethnic or social origin, property, birth or other status,<sup>7</sup> including their status as victims of trafficking or having worked in the sex industry.

2. Cease enforcing and repeal all measures targeted at preventing or obstructing the voluntary movement of its citizens or legal residents within the country of residence,<sup>8</sup> into or out of the country upon the ground that the citizen or legal resident might become, might be, or has been a victim of trafficking.<sup>9</sup>

**Commentary:** Trafficking of women is typically facilitated by the intersection of discriminatory practices and beliefs about women from a particular ethnic, racial, class or other marginalised or disadvantaged group. Anti-trafficking measures must not, in the name of 'protecting' all women from harm, deprive any woman of any of her human rights, as the principles of non-discrimination and the universality of human rights norms are fundamental and non-derogatory. States have a duty to ensure that all procedural and substantive rights are protected, including the right to non-discriminatory application and interpretation of the law.

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<sup>6</sup>Many of the provisions in these Standards are also contained in The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation, 24-26 April 1997. See also ICPRMW, which contains detailed state obligations towards migrant workers; Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, Annex to General Assembly Resolution A/RES/52/86, para. 9 (2 Feb. 1998), which Model Strategies serve "as a model for guidelines to be used by Governments in their efforts to address, within the criminal justice system, the various manifestations of violence against women;..."; and Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA res. 40/34 (29 Nov. 1985).

<sup>7</sup>UDHR 2; ICCPR 2.1, 2; ICESCR 2.2, 3; CEDAW 1, 2, 16; CRC 2; ICPRMW 7, 25; Model Strategies 4, 5, 6(a); Declaration of Basic Principles, art. 3.

<sup>8</sup>UDHR 13.1; ICCPR 12.1

<sup>9</sup>UDHR 13.2; ICCPR 12.2-4; CEDAW 15.4; ICPRMW 8.

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#### **Safety and Fair Treatment**

3. Ensure access to:

a. The embassy or consulate of the country in which the trafficked person is a citizen or, if there is no embassy or consulate, ensure access to a diplomatic



representative of the State that takes charge of the country's interests or any national or international authority whose task it is protect such persons,<sup>10</sup> and

b. Non-governmental organizations that provide services and/or counselling to trafficked persons.<sup>11</sup>

4. Provide protection to trafficked persons and witnesses in a manner that does not subordinate the safety and integrity of trafficked persons or witnesses to the interests of the prosecution, including:

a. Before, during and after all criminal, civil or other legal proceedings, measures to protect trafficked persons from intimidation, threats of reprisals and reprisals from traffickers and their associates, including reprisals from persons in positions of authority and, where necessary, provide similar protection to family members and friends of the trafficked persons.<sup>12</sup>

b. A change of identity, where necessary.

c. Take into account the need for the safety of the trafficked person, family members and friends in decisions on the arrest, detention and terms of any form of release of the trafficker, and notify the trafficked person prior to the release from custody or detention of persons arrested for, or convicted of trafficking, abusing or exploiting the trafficked person.<sup>13</sup>

5. Provide all trafficked persons, as well as all persons who might be victims of trafficking (such as illegal migrants held in custody) with information about their legal rights and the procedures available for claiming compensation, restitution and recovery as a result of being trafficked.<sup>14</sup>

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<sup>10</sup> Standard Minimum Rules for the Treatment of Prisoners 38; ICPRMW 23.

<sup>11</sup> Model Strategies 10; Declaration of Basic Principles 14-15.

<sup>12</sup> Rome Statute of the International Criminal Court (ICC) 57.3, 64.2, 64.6(e), 68; ICPRMW 16.2; Declaration of Basic Principles 6(d); Model Strategies 6(c), 7(h), 9(h).

<sup>13</sup> See Model Strategies 7(i), 8(c), 9(b).

<sup>14</sup> ICPRMW 16.5-7; Model Strategies 10(a).

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6. Not detain, imprison or prosecute any trafficked person for offences related to being a victim of trafficking, including for lack of a valid visa (including a work visa), solicitation, prostitution, illegal stay and/or the use of a false visa or false travel or other documents; and not hold trafficked persons in a detention centre, jail or prison, at any time, prior to, during and after all civil, criminal or other legal proceedings.<sup>15</sup>

7. Prohibit public disclosure of the names of persons trafficked into the sex industry and/or the use, by any person, of a person's history of being trafficked to discriminate or cause harm to any trafficked person or her or his family or friends in any way whatsoever, particularly with regard to the right to freedom of travel, marriage, or search for gainful employment.<sup>16</sup>

8. Establish, whenever possible, specialised police and prosecutorial units that are trained to deal with the complexities, gender issues and victim sensitivities involved in trafficking.<sup>17</sup>

**Commentary:** The above provisions, as well as others, are intended to ensure that trafficked persons are not treated as criminals but as victims of crimes who have suffered serious human rights abuses. The General Assembly recently called upon states "[t]o encourage and assist women subjected to violence in lodging and following through on formal complaints.<sup>18</sup> These provisions seek to meet that goal and constitute one leg of the stool upon which successful prosecutions sit. Unfortunately, most governments continue to treat trafficked persons as illegal migrants and criminals, thereby further victimising the victims.

Practice shows that current policies in the majority of states have the effect of deterring trafficked persons from reporting to the authorities, as reporting may result in arrest, detention and/or expulsion. The decision to press charges may have major consequences for the persons concerned, both in relation to their safety, in the light of the risk of retaliation against the person or her/his family (especially in cases of organised crime), and in relation to their future prospects, in the light of the risk of stigmatising exposure, social exclusion and/or harassment by authorities.

In order to obtain successful prosecutions of traffickers, states must implement policies and laws to allay the fear most trafficked persons have towards authority and law and must further provide incentives to encourage trafficked persons to seek help, report to the authorities and, if they wish, act as witnesses. The names of trafficked persons should not be recorded in any court or other public documents, nor should they be released to the press or members of the public, including family members, without the consent of the trafficked persons.

#### **Access to Justice**

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<sup>15</sup> ICPRMW 16.4.

<sup>16</sup> Model Strategies 7(c).

<sup>17</sup> ICC 42.9; Model Strategies 11(f).

<sup>18</sup> Model Strategies 16(b).

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9. Take all necessary steps to ensure that all trafficked persons, irrespective of their immigration status or the legality or illegality of the work they perform (e.g., begging or sex work) have the right to press criminal charges against traffickers and others who have exploited or abused them. In the case of a trafficker who has diplomatic immunity, states shall make a good faith effort to obtain a waiver of immunity or, alternatively, shall expel the diplomat. States should adopt a mechanism for promptly informing trafficked persons of their rights to seek this and other forms of redress.<sup>19</sup>

10. Provide trafficked persons with a competent, qualified translator and legal representation before and during all criminal, civil, administrative and other proceedings in which the trafficked person is a witness, complainant, defendant or other party, and provide free transcripts or copies of all documents and records related to any and such proceedings, in their own language. Trafficked persons and defendants shall have different translators and legal representatives. If the trafficked person cannot afford to pay, legal representation and translation shall be provided without cost.<sup>20</sup>



11. Recognize that trafficking is often only one of the crimes committed against the trafficked person.<sup>21</sup> In addition to charging defendants with the crime of trafficking, states should consider bringing charges, for example, of:

- a. Rape, sexual and other forms of assault (including, without limitation, murder, forced pregnancies and abortions) and kidnapping.<sup>22</sup>
- b. Torture, cruel, inhuman or degrading treatment.<sup>23</sup>
- c. Slavery or slavery-like practices, involuntary servitude, forced or compulsory labour.<sup>24</sup>
- d. Debt bondage.<sup>25</sup>
- e. Forced marriage, forced abortion, forced pregnancy.<sup>26</sup>

12. Ensure that trial proceedings are not detrimental or prejudicial to the rights of the trafficked person and are consistent with the psychological and physical safety of trafficked persons and witnesses.<sup>27</sup> At a minimum, states must ensure that:

- a. The burden of proof prior to and during any prosecution of a person alleged to be guilty of trafficking lies with the prosecution and not with the trafficked person.<sup>28</sup>

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<sup>19</sup> UDHR 8; ICCPR 2.3; ICPRMW 16.2; Declaration of Basic Principles 4-5.

<sup>20</sup> ICCPR 14.3; ICPRMW 18.3

<sup>21</sup> Model Strategies 8a, 9(a)(i).

<sup>22</sup> UDHR 3; ICCPR 6; CEDAW 2(f), 6 and Recommendation 19 on Violence Against Women).

<sup>23</sup> UDHR 5; ICCPR 7; CAT, all; CRC 37(a); ICPRMW 10.

<sup>24</sup> UDHR 4; ICCPR 8; SC, all; SCAS, all; ILO Nos. 29 and 105, all; CRC 32; ICPRMW 11.

<sup>25</sup> SCAS 1(a).

<sup>26</sup> UDHR 16.1-2; ICESCR 10.1; ICCPR 23; CEDAW 16; SCAS 1(c).

<sup>27</sup> Model Strategies 10(d).

<sup>28</sup> UDHR 11.1; ICCPR 14.2; ICPRMW 18.2. "The primary responsibility for initiating prosecutions lies with prosecution authorities and does not rest with women subjected to violence," Model Strategies 7(b).

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b. The prosecutor either calls at least one expert witness on the causes and consequences of trafficking and the effects of trafficking on victims or consults with such expert in preparation for the criminal proceedings.<sup>29</sup>

c. Methods of investigation, detection, gathering and interpretation of evidence minimise intrusion, do not degrade the victims or reflect gender-bias. For example, officials shall not use the personal history, the alleged 'character' or the current or previous occupation of the trafficked person against the trafficked person or cite them as a ground for disqualifying the trafficked person's complaint or for deciding not to prosecute the offenders.<sup>30</sup>

d. Defendants are not permitted to introduce as a defence evidence of the personal history, alleged 'character' or the current or previous occupation (e.g., as a prostitute or domestic worker) of the trafficked person.<sup>31</sup>

e. Trafficked persons subjected to, and witnesses of, sexual violence are permitted to present evidence in camera or by electronic or other special means, after taking into consideration all of the circumstances and hearing the views of the victim or witness.<sup>32</sup>

f. Trafficked persons are informed of their role and the scope, timing and progress of the proceedings and of the disposition of their cases.<sup>33</sup>

g. The views and concerns of trafficked persons are allowed to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.<sup>34</sup>

13. Ensure that, if a trafficked person is a defendant in a criminal case:

a. She or he has the opportunity to raise a defense of duress or coercion and the same evidence is considered as a mitigating factor in sentencing, if convicted.<sup>35</sup>

b. In cases involving charges of having committed a crime against a trafficker(s), including homicide, she or he has an opportunity to plead self-defense and to present evidence of having been trafficked and the same evidence is considered as a mitigating factor in sentencing, if convicted.<sup>36</sup>

c. Trials involving migrant trafficked persons are conducted in accordance with these

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<sup>29</sup>ICC 42.9.

<sup>30</sup>ICC 21.3, 54.1(b); Model Strategies 7(d) and 8(b).

<sup>31</sup>ICC 21.3, 68.1; Model Strategies 7(d).

<sup>32</sup>ICC 68.2; Model Strategies 7(c).

<sup>33</sup>Declaration of Basic Principles 6(a).

<sup>34</sup>Declaration of Basic Principles 6(b).

<sup>35</sup>See ICCPR 14.3(d).

<sup>36</sup>See ICCPR 14.3(d).

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Standards, relevant provisions of Article 5 of the Vienna Convention on Consular Relations (VCCR) and the articles 16-19 of the ICPRWM. States providing assistance to their nationals under the VCCR shall act, at all times, in the best interests of, and consistent with the views of, the trafficked person.

**Commentary:** Action to combat trafficking must be targeted at the offenders and not at those who are victim of such practices. The victim too often is forced to stand trial instead of the offender, thus further undermining the victim's belief in the ability of the legal system to bring about justice. Anti-trafficking legislation, which is often more concerned with illegal migration and criminal prosecutions than with the rights and needs of victims, is often used as an instrument of repression by governments to punish, criminalise and marginalise trafficked persons and to deny trafficked persons their basic human rights.

When laws target typically 'female' occupations, they are usually overly protective and prevent women from making the same type of decisions that adult men are able to make. For example, anti-trafficking laws might prohibit women from migrating for work thereby throwing women into the hands of traffickers. Additionally, many women are deterred from reporting due to discriminatory treatment of migrant women, especially



women working in the sex industry. Police and prosecutors have exhibited a tendency in many parts of the world to undermine the credibility of female victims of trafficking and to categorize women as 'fallen' or 'without virtue', and thereby as not deserving of respect for their human rights.

Therefore, measures are needed to encourage and assist trafficked persons to report to the authorities and to act as a witness and to ensure 'fair treatment' by the criminal justice system and the safety and integrity of trafficked persons.

#### **Access to private action and reparations**

14. Take all necessary steps to ensure that all trafficked persons, irrespective of their immigration status or the legality or illegality of the work they perform (e.g., begging or sex work), have the right to bring a civil or other action against traffickers and others (including public officials and, when possible, persons having diplomatic immunity) who may have exploited or abused them, and have access to other legally enforceable forms of compensation (including lost wages), restitution and recovery for economic, physical and psychological damages.<sup>37</sup> Non-wage compensation, restitution and recovery shall be proportionate to the gravity of the violations and resulting harm.

15. Confiscate all assets of convicted traffickers and disburse such assets in payment of all court orders for compensation (such as unpaid wages), restitution and recovery due to the trafficked person.

16. Ensure that the relevant authorities, upon the request of the trafficked person and/or her or his legal representative, make available to the requesting party(ies) all documents and other information in their possession or obtainable by them that is relevant to the determination of the trafficked person's claim for monetary damages, including compensation, restitution and recovery.

**Commentary:** Trafficking in persons has major economic, emotional, psychological

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<sup>37</sup>ICCPR 2.3; ICC 75; ICPRMW 22.6 and .9, 68.2; Declaration of Basic Principles 8-11; Model Strategies 10(c); see also, The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms, adopted by the Economic and Social Council, Report of the Economic and Social Council for the year 1998, A/53/3 para. 202; (Draft) Basic Principles and Guidelines on the Right to Reparation for Victims of [Gross] Violations of Human Rights and International Humanitarian Law, Commission on Human Rights, UN (E/CN.4/1997/104, April 1997), which formed the basis for the Commission's examination of the matter.

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and physical consequences for the victims, their families and friends, which consequences are not accommodated by criminal investigation and prosecution of the offender. Adequate assistance and support as well as financial compensation serves not only to remove or redress the consequences, but also acts as a deterrent to traffickers by strengthening the position of trafficked persons.

Whereas, the victims of human rights violations have largely remained outside the spectrum of national and international concern; however, in recent years, the need for attention to the rights of victims, in particular the right to reparation, has increasingly been recognised as an essential requirement of justice. This trend is exemplified by the instruments cited in footnote 34.



## Resident Status

17. Prevent immediate expulsion by staying any actions of deportation and provide resident status (including the right to work) for a period of six months initially, during which time the trafficked person can decide whether or not to initiate a civil action or to be a witness in a criminal action against the traffickers.<sup>38</sup> If the trafficked person decides either to initiate a civil action or become a witness in a criminal action, or both, then the state shall provide the trafficked person with resident status (including the right to work) for the duration of such cases, including all appeals.

18. Not deport any trafficked person if there are substantial grounds for believing that such person would be in danger of being subjected to torture. All deportations shall be carried out in accordance with the law.<sup>39</sup>

19. Provide trafficked persons with information and an opportunity to apply for permanent residence under national laws and international treaties. In considering applications for asylum, a trafficked person shall be permitted to introduce evidence supporting a claim that repatriation could seriously endanger her or his life, such as a high risk of reprisal by traffickers or persecution or harassment by the authorities.<sup>40</sup> Guidelines recognising gender-based persecution as grounds for asylum should be followed.

20. If the state in which a trafficked person claims to be a citizen refuses for whatever reason to recognize the trafficked person's claim, consider whether, on the balance of probabilities, the trafficked person was born in and/or has spent most of her life in that country. In such event, the country in which the trafficked person is residing (legally or illegally) must provide the trafficked person with all the rights and privileges granted to other stateless persons contained in the UN Convention relating to the Status of Stateless Persons.

**Commentary:** Many trafficked person refrain from seeking help or reporting to the authorities for fear of deportation. Although, at first glance, deportation might seem to represent an escape from the trafficking situation, the reality is more complicated. Often, the victim has borrowed money to pay for the costs of recruiters. She may be indebted to her own family and also to the persons who recruited her in the country of origin. Deportation means returning home with empty hands, debts she will never be

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<sup>38</sup>ICCPR 13; ICPRMW 22.1-5. Under Dutch law, a suspected or actual victim of trafficking is entitled to a three-month 'reflexion period' in which to decide whether or not to press criminal charges against the trafficker(s) and act as a witness. If the person decides to press criminal charges, she or he is entitled to a temporary residence permit for the duration of criminal proceedings, including appeals. At the same time, she/he is entitled to benefits (for example, social security, housing, health care, social services, legal aid, counseling) on an equal basis with nationals. Aliens Circular Ch. B17 (1988, rev. 1993 and 1994), TBV 1996/3. Belgium has adopted similar measures. Ministerial Circular in Monitor Belge (July 1, 1994; Jan. 13, 1997).

<sup>39</sup>CAT 3.

<sup>40</sup>Convention Relating to the Status of Refugees, 1.2.

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able to pay off and without any future prospects. If it becomes known that a woman has been in the sex industry, she risks being ostracized by her family or her community.



Moreover, it is questionable whether or not deportation means an escape from the criminal circuit. In many cases women return home only to find the traffickers waiting to take them back immediately. Often, traffickers threaten to inform the victim's family about her activities if she does not comply with their demands. Deportation, in many cases, means that the trafficked person is put at the mercy of the traffickers again, without protection from the authorities or society. In many cases, trafficked persons not only have to fear reprisals from their traffickers but also harassment, arrest or detention from authorities in their own countries.

Providing victims with a stay of deportation, temporary residence during criminal and civil proceedings and an opportunity to apply for a permanent residence removes the fear of trafficked persons of immediate deportation. This serves two interests: first, the trafficked person is able to recover and take back control over her life and, second, it enables the effective prosecution of traffickers by encouraging victims to report to the authorities and to act as a witness.

### **Health and Other Services**

21. Promote and support the development of cooperation between trafficked persons, law enforcement agencies and non-governmental organizations capable of providing assistance to trafficked persons.<sup>41</sup> All persons providing services (health, legal and other) should receive training to sensitise them to the rights and needs of trafficked persons and should be provided with guidelines to ensure proper and prompt aid.<sup>42</sup>

22. Provide, on an equal basis with citizens of the State, adequate, confidential and affordable medical and psychological care.<sup>43</sup>

23. Provide strictly confidential testing service for HIV/AIDS and other sexually transmitted diseases but only if requested by the person being tested. Additionally, any and all testing must be accompanied with appropriate pre- and post-test counselling and no punitive or restrictive measures should be taken against any trafficked persons who tests positive for HIV/AIDS or any other sexually-transmitted disease. Testing should be provided pursuant to the standards contained in the "Report of an International Consultation on AIDS and Human Rights (UN Centre for Human Rights and World Health Organisation, Geneva, July 1989).

24. During the period of temporary residence status, provide:<sup>44</sup>

- a) Adequate and safe housing
- b) Access to all state-provided health and social services
- c) Counselling in the trafficked person's mother language
- d) Adequate financial support
- e) Opportunities for employment, education and training

**Commentary:** In most cases, trafficked persons have no place to stay or means of earning a livelihood once they have escaped from the trafficker's control. They may not speak the local language or have any family or relatives who can take care of them in the place where they are stranded. Often, they have been subjected to physical

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<sup>41</sup>Model Strategies 11, 12.

<sup>42</sup>Declaration of Basic Principles 16.

<sup>43</sup>ICPRMW 28; Declaration of Basic Principles 14-15, 16.

<sup>44</sup>Model Strategies 11(a).

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violence, unsafe working conditions (e.g., exposure to chemicals), forced abortions or unsafe sexual contacts and are in urgent need of medical care. Apart from physical abuse, they might be severely traumatised by the physical and psychological violence they have endured and suffer from an array of psychological and psychosomatic complaints. Moreover, viable employment opportunities are often lacking and/or damaged as a result of having been trafficked. Adequate support, employment and educational opportunities enable trafficked victims to regain control over their lives and to improve their prospects.

#### **Repatriation and Reintegration**

25. When and if the trafficked person returns to her or his home country, provide the funds necessary for the return<sup>45</sup> and, where necessary, issue, or provide assistance in the issuance of, new identity papers.

26. Provide reintegration assistance and support programmes for trafficked persons who want to return or have returned to their home country or community in order to minimise the problems they face in reintegrating into their communities. Reintegration assistance is essential to prevent or overcome difficulties suffered as a result of rejection by families or communities, inability to find viable employment, and harassment, reprisals or persecution from the traffickers and/or the authorities. Reintegration programmes should include education, training for employment opportunities and practical assistance and should not stigmatise or victimise trafficked persons. All programmes must guarantee the confidentiality and the privacy of the trafficked person.<sup>46</sup>

**Commentary:** In most cases, trafficked persons have been deprived by traffickers of the financial means to pay for return to their home country or community. Apart from lacking the financial means, trafficked persons may also lack travel documents as traffickers characteristically confiscate the passports or identity papers of their victims. Without money and without papers it is impossible for trafficked persons to return to their home country or community. This might result in them being held in shelters or detention centres, often for years and under inhumane circumstances. Trafficked persons who are able to return to their home country or community, either voluntarily or as a result of deportation, face multiple problems. The absence of adequate support and opportunities upon their return places them at a heightened risk of repeated abuse and exploitation, including repeated trafficking. Thus, reintegration services are essential to ending the cycle of trafficking.

#### **State Cooperation**

27. Cooperate through bilateral, regional, interregional and international mechanisms in the development of strategies and joint actions to prevent trafficking in persons, including cross-border cooperation in the prosecution of traffickers and the protection of the lives and rights of trafficked persons.

28. Coordinate the safe and voluntary repatriation of trafficked persons.

29. Provide support to programs, including those undertaken by non-governmental organizations, for education and campaigns to increase public awareness of the causes and consequences of trafficking.

**Commentary:** Cooperation between states is absolutely essential if the Standards are to be realised. Trafficking is an international crime, requiring multilateral responses. States



must deploy multi-disciplinary and multi-level strategies to combat the sophisticated networks operating throughout the world. States and non-governmental organisations must work together to ensure that traffickers are never able to find a 'safe haven' anywhere in the world. Without such a concerted and coordinated effort, trafficking will never be stopped or even minimised.

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<sup>45</sup>ICPRMW 67.1.

<sup>46</sup>ICPRMW 67.2.

## HOPES BELIED

### A RIGHTS BASED ANALYSIS OF THE SAARC CONVENTION ON PREVENTING AND COMBATING TRAFFICKING IN WOMEN AND CHILDREN FOR PROSTITUTION\*

By Jyoti Sanghera

*Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential that the protection of all human rights must be at the centre of any measures being taken to prevent and end trafficking. Anti-trafficking measures shall not adversely affect human rights and dignity of all persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced person, refugees and asylum seekers.*

Draft Guidelines and Principles for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the UN Convention Against Transnational Organised Crime (2000)

#### Introduction and Background

On January 5, 2002, the long pending fate of the SAARC Convention on Trafficking was sealed at the Eleventh SAARC Summit in Kathmandu Nepal – it was finally signed by the duly assigned representatives of the Heads of States of the South Asian Region. The SAARC Convention on Trafficking thus is the first regional instrument, globally, which seeks to address the problem of trafficking at the subregional level.

The history of this convention has been long and arduous. At the Ninth Summit of the South Asian Association for Regional Co-operation (SAARC) held in May 1997, the member states agreed that the formulation of a regional convention to combat the crime of trafficking of women and children for the “purpose of prostitution”, should be explored. This decision was significantly influenced by concerted lobbying on the part of women’s groups and anti-trafficking organisations from the region. A draft of this convention was prepared, which focused more on the purpose of trafficking, rather than on the harms arising from the crime. However, in subsequent discussions, once again prompted and fuelled by the lobbying efforts of NGOs and women’s groups, the term “for the purpose of prostitution” was deleted. Prior to the 10<sup>th</sup> Summit of SAARC held in July 1998, the Foreign Ministers adopted a draft *SAARC Convention for Preventing and Combating Trafficking in Women and Children* (SAARC document SAARC/Summit.10/CM.20/3). This draft was a significant improvement on the earlier one, insofar as it did not limit itself to prostitution and hence opened up the possibility of

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\* This analysis has drawn significantly from a report written jointly by the author with Ratna Kapur, which is entitled: *Trafficking in Nepal: Policy Analysis-An Assessment of Laws and Policies for the Prevention and Control of Trafficking in Nepal*, sponsored by the Population Council, New Delhi, and the Asia Foundation, Nepal, January 2001.



addressing the human rights violations of trafficked women and children subjected to exploitation, forced labour and slavery-like-practices in other sites of trafficking.

The SAARC Convention was expected to be approved at the 11<sup>th</sup> SAARC summit, which was scheduled to take place in Kathmandu in November 1999. However, due to tensions in the region, the summit was postponed to January, 2001. It was considered highly unlikely that the document would undergo further changes and amendments before being presented for adoption, and most of the lobbying groups took some consolation from the fact that the Draft of the Convention was at least not simply confining itself to the purpose of prostitution. Hence, the surprise and the shock on the part of these groups is legitimate and understandable - the final SAARC Convention is little more than the first first unevolved draft. By limiting itself to combating trafficking only for the purpose of prostitution the finalized version of the SAARC Convention reduces to naught more than two years of consistent lobbying efforts on the part of non-governmental groups with their government representatives to make this new regional tool more consistent with the other international instruments. The SAARC Convention on Trafficking is not only inconsistent with key human rights instruments such as CEDAW, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and recommendations of the Fourth World Conference on Women in Beijing but is also at a serious variance with the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Organized Crime*, which was opened up for signature in December 2000.

In the foregoing paragraphs, the strengths and limits of the SAARC Convention on trafficking are analyzed. Admittedly, this Convention will have implications for the entire South Asian region, as it will constitute the basis for the formulation of domestic legislation and policies concerning trafficking. Already, in India and Nepal, drafts of anti-trafficking laws are under discussion, which are expected to come up for adoption in their respective parliaments shortly. An analysis of these proposed as well as existing laws in the South Asian countries reveals that all of them increasingly veer towards a greater dependence on the crime-prevention framework through more punitive and draconian measures rather than fore-grounding human rights principles. On the one hand there is a recognition that the State parties must repeal or amend domestic policies, programmes and legislation that discriminates against women and children. However, on the other hand, the new SAARC Convention as well as the existing and proposed anti-trafficking laws in the South Asian countries are not based on a rights protective approach to the issue of trafficking. The SAARC Convention appeals uncritically to the use of the criminal law and punitive provisions to address the problem of trafficking within the region.

### **The Trafficking Problem**

The SAARC Convention is aimed specifically at criminalizing the activities of persons engaged in "moving, selling, or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the persons subjected to trafficking" (Article 1(3)). This definition would include a woman who has moved outside her country, with her consent, on payment of some kind of consideration. Although it is not presumably the intention of the Convention, this



definition could also implicate a woman who purchases an air ticket to travel outside of her country. In contrast however, Article 1 (5) defines 'persons subjected to trafficking' as "women and children victimised or forced into prostitution by traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means." A comparative analysis of these two provisions (Article 1 (3 and 5)) indicates some ambiguity as to whether consent is relevant at all. Clarification of the positions of State Parties on this is important in order to evaluate the full implications of this Convention. However, given the history of this Convention, it is quite certain that the governments consider consent irrelevant to the issue of trafficking.

The Convention directs States to use the criminal law to deal with the problem of trafficking. Article III (1) requires State parties to take "effective measures to ensure that trafficking in any form is an offence under their respective criminal law" and that "such offences are punishable by appropriate penalties which take into account its grave nature". Where the act of trafficking is committed by a person who is in a "custodial situation or educational institution" the offence should be considered as an aggravated offence and a more stringent penalty should be imposed (Article IV (1.f)). Parties to the Convention are also required to provide for the punishment of any person who "keeps, maintains, manages or knowingly finances or takes part in the financing of a place used for the purpose of trafficking and knowingly lets or rents a building or other place for the purpose of trafficking" (Article III (2)). The emphasis on the use of the criminal law treats trafficking as a crime against the State and a law and order problem.

It is not clear what situation is envisaged by the parties to the Convention in Article III(2) besides the running of brothels. If a person is kept against his or her will in any place, this can constitute abduction and/or kidnapping. Laws against such forceful detainment already exist in the criminal/penal codes of all SAARC countries. If a place is used as a transient point while a person is being moved, then the issue of consent becomes extremely relevant. If a person remains in a hotel room or another rented place with her consent, then no crime is ostensibly committed. If they are abused or harmed during the period of their stay, or they have been bought or sold, then it is unclear why the person letting the place or renting the room should be punished, unless he/she knows that such abuse/sales are occurring. By way of comparison, if a landlord lets a place to a family and sexual abuse or domestic violence is being committed in that family, the landlord cannot be held to have committed a crime by letting his/her place to such a family. If he/she knows that such abuse is taking place and fails to report it, then there *may* be grounds for prosecution under certain provisions in the existing domestic penal codes.

State parties are required by the SAARC Convention to grant each other wide mutual legal assistance in regard to "investigations, inquiries, trials and other proceedings", including with respect to evidence, the provision of information, search and seizure and service of documents, and offences in connection with the convention will be extraditable offences (Article VI (1.a-h)).

State parties are also obliged to sensitize their respective law enforcement agencies and the judiciary with regard to the subject of the Convention. Bilateral mechanisms to



implement the Convention are encouraged, and States parties are obliged to exchange on a regular basis, information relating to agencies, institutions and individuals who are involved in trafficking in the region, including the methods and routes that they employ. (Article VIII (2,5))

The SAARC Convention does not improve upon the already existing, flawed domestic laws which deal with the issue of trafficking in the various countries of the region. Importantly, it ignores the issue of consent, or at least considers consent or lack of it as irrelevant. Excluding the relevance of consent in the definition of the offence of trafficking can result in a serious violation of the rights of persons who are willing to be transported across borders and pay for such assistance. As such, the SAARC Convention on Trafficking fails to draw a distinction between legitimate or consensual mobility and coerced movement. Significantly, this is contrary to the Protocol on Trafficking Supplementing the UN Convention Against Transnational Organized Crime. The UN Protocol, though not perfect, has seriously attempted to address the issue of free and forced mobility by making a clear conceptual and operational distinction between trafficking and smuggling. And hence, the UN Convention Against Transnational Organized Crime is Supplemented by two separate Protocols – the one on Trafficking and the other on Smuggling. As such, trafficking or movement under coercion or deception is dealt with separately from agent facilitated consensual movement under this new UN Convention. The focus of an anti-trafficking measure or legislation should be on the specific illegalities or crimes that may be committed during the course of trafficking or migration. If a person is forced to move against her will, it should be an offence. But if the transport is with the consent of the person being transported or migrating, it is not an illegal act. The SAARC Convention fails to draw this distinction, and regards mobility *per se* for the purpose of prostitution as illegal.

### **Women are not Children**

The SAARC Convention collapses the harms related to the trafficking of adult women with those of children. This association obscures the very different and specific issues that affect these two separate groups ( Article 1(5)). The vulnerability of children is specific to their age and dependency status, and therefore, demands society's protection. The nature of the vulnerability of adult women is distinct from that of children and must be understood as such. If it is possible to address children's issues separately when it comes to the question of labour, it is also possible, and extremely important to address their issues separately from those of adult women when it comes to matters of trafficking, migration and sex.

Some women may have been forced to move when they were minors. An adult woman should be entitled to legal remedies for any harm she has endured as a child, whether it is in the form of child sexual abuse, slave labour, or coerced work. Making a remedy available for harms experienced as a child or minor is very different from setting up a legal regime that treats all adult women like children.

The issue of consent, especially in relation to the worst forms of labour, including prostitution, in the case of minors is irrelevant and considered as such in all the SAARC



countries. However, once a child reaches the age of consent then an entirely different set of rules and legal provisions must govern her. She is no longer a child, dependent and in need of protection in the same way as a minor. The primary tools she requires to defend herself are rights. Rights are the only legitimate means by which to resist any further violence, coercion or harm she may experience whether it is in the family or in exploitative labour sites. And the legal regime that governs adult women, who have the capacity to consent, must be separate from the legal regime, which governs children/minors who are accorded a conditional/ restricted or no capacity to consent, depending on the issue. The SAARC Conventions fails to acknowledge this basic human rights principle and hence, not only infantilizes adult women but at the same time trivialized the specific needs and concerns of children and minors who may be in need of special protection in such situations.

### **The Rescue and Rehabilitation Bind**

The SAARC Convention recommends that the signatories set up “protective homes and shelters for rehabilitation of victims of trafficking”(Article IX (3)). NGOs will be authorised for this task of “providing suitable care and maintenance for the victims of trafficking (IX (4)). This provision recognizes the lack of suitable arrangements for those who have been placed into what have been referred to as ‘protective homes’. However, there is no provision in the Convention which states that stay in a protective home should be voluntary (especially in the case of adults) and that persons released from trafficking should not be forced to stay in such places.

It is unclear as to how the SAARC Convention addresses some of the fundamental problems that have characterized rescue and rehabilitation programmes in the region. The rescue and ‘detention’ of trafficked women and girls in homes has by and large, proven not to be a particularly empowering option for the trafficked person. Once a woman or minor has been detained, she has little right to privacy or bodily integrity, and is subjected to invasive medical examinations and inquiries about her personal life. It has been seen that these institutions provide few options for self-employment and alternative, viable and sustainable livelihoods. Incarceration, loss of liberty, forced medical examinations and less than adequate living conditions, often drive women and girls placed in these institutions back into sex work or to the site they had been rescued from. Frequently, they incur huge debts to cover the cost of legal fees, bail and sureties, which reinforces their debt bondage status. The SAARC Convention states that adequate legal advice and health care facilities are to be provided to persons who have been released from trafficking and are awaiting the voluntary return to their home countries (Article IX (2)). There is no indication that anyone other than the person who has been released will bear the cost of such facilities. At the same time it is important to highlight the fact that via this Convention, State parties do recognize that trafficked persons require legal protection even after they have been released from trafficking.

### **Implications for Human Rights**

The SAARC Convention sets out two important provisions recognizing the need to support the human rights of those vulnerable to trafficking. Article VIII (7) provides that the parties shall “focus on preventive and development efforts on areas which are known



to be source areas for trafficking". States are thus obliged to take more initiative in preventing vulnerability to trafficking but it is unclear from the Convention how this is to be achieved. The issue of vulnerability is left completely unexplored, and there is no reference to the distinctive vulnerabilities faced by adult women and children.

It is important to note that a significant proposal in the earlier draft, which had a crucial bearing on human rights protection and promotion of trafficked persons, has been summarily dropped from the final version. This proposal stated that "State parties shall take steps to eliminate economic, social and political discrimination in national laws and policies which devalue the status of women" (*Previous draft*, Article VIII (10)). The inclusion of this statement in the earlier draft constituted an official recognition that trafficking is partly the result of discriminatory State practices, policies and laws against women, that undermine their human rights, the very tools they need to resist exploitation, force, coercion and fraud, wherever it may occur. Regrettably, the elimination of this proposal from the final version of the Convention is a telling comment on the manner in which human rights standards as well as women's rights and children's rights are viewed as dispensable by State parties.

One provision that can be used to either facilitate or to restrict women's rights encourages States to supervise employment agencies to prevent trafficking in women under the guise of recruitment. (Article VIII (6)) This could lead to a discriminatory impact against women as witnessed in the application of the Nepali Foreign Employment Act, where women are restrained from seeking employment in the gulf countries due to the possibility of the potential harm of trafficking and abuse.

### **The Prostitution Trap, Yet Again**

In its aim to prevent and combat trafficking the SAARC Convention ends up effectively criminalizing prostitution. Prostitution per se is deemed an offence by the manner in which it is defined by the convention. Article I (2) defines prostitution as the "sexual exploitation or abuse of persons for commercial purposes". When, by definition, prostitution is considered to be an abuse and sexual exploitation; when adult women are denied any possibility of engaging consensually in the trade of prostitution; and when preventing the crime of trafficking is linked only to the purpose of prostitution which is itself defined as an abuse and hence criminalized, then for all practical purposes, trafficking and prostitution are not only equated but equally outlawed. However, there is some confusion and discrepancy in the definitions subsumed under article I because there is a reference to "forced into prostitution"(I (5)). It is unclear whether in this particular clause the Convention is positing a distinction between forced and consensual prostitution.

At the consultative workshop for developing a National Plan of Action Against Trafficking in Children and their Commercial Sexual Exploitation in 1998, some statistics were presented about commercial sex work in Nepal gathered in a report



commissioned by UNICEF.<sup>1</sup> According to these statistics people of all castes are involved in sex work. Based on a sample group, about 66.3% of the commercial sex workers were involved in sex work out of their choice, 37.8% were influenced by female friends, 9.2% influenced by other natal family members, 6.1% by pimps, 4.1% by brothel owners and 3.6% influenced by mothers. Although once again these statistics are not based on a sustained and coordinated research programme on sex work in Nepal, they belie some of the broad assumptions being made about sex work, that need to be further interrogated in order to formulate effective laws and policies. In any case, to address the issue of trafficking even for prostitution through the force of the criminal law, will not facilitate the rights of either the trafficked women or sex workers. Once she is cast as a criminal by virtue of the work she has been engaged in, a woman or girl in sex work will have serious reservations in assisting the state by testifying against her abusers, pimps, clients or other actors since she herself is deemed a criminal and risks punishment. Therefore, she will be constrained to seek redress from the state for the abuse and violence she may be suffering as a woman trafficked into sex work.

There is already well documented evidence that the criminalization of prostitution only forces the issue underground<sup>2</sup>. The Convention is not in line with the current global trend to try and end exploitation in prostitution rather than eliminate prostitution itself. Commenting on this aspect, the UN Special Rapporteur on Violence Against Women stated in her interim report on trafficking in South Asia, "...experience has shown that criminalization of prostitution results in double victimization of the woman concerned as she, and not the traffickers, becomes the main target of police action. This provision is a major step backwards... and will create hardship for the women concerned"<sup>3</sup>

The SAARC Convention does not directly and head-on address the real issues of violence, coercion, fraud and stigma that arise in the context of trafficking. Women and girls who have been involved in prostitution face severe stigmatisation and social marginalisation. The Convention has made no proposal for adopting affirmative action measures in favour of women who are discriminated against to assist in removing this stigma. If such women and girls are HIV positive or have STD's no recommendations have been put forward for the treatment and care of these women. Far from creating an 'enabling' environment for these women, the SAARC Convention might reinforce the stigmatization and discrimination that they will experience.

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<sup>1</sup> Siddhartha Man Tuladhar, *Situation Analysis of Sex Work and Trafficking in Nepal with reference to Children*, at 4, in the PROCEEDING OF THE CONSULTATIVE WORKSHOP ON THE DEVELOPMENT OF A NATIONAL PLAN OF ACTION AGAINST TRAFFICKING IN CHILDREN AND THEIR COMMERCIAL SEXUAL EXPLOITATION, organized by the Ministry of Women and Social Welfare, International Labour Organisation, International Programme on the Elimination of Child Labour, April 22-24, 1998, Kathmandu, Nepal.

<sup>2</sup> Marjan Wijers and Lin lap-Chew, *TRAFFICKING IN WOMEN, FORCED LABOUR AND SLAVERY-LIKE PRACTICES IN MARRIAGE, DOMESTIC LABOUR AND PROSTITUTION*, Foundation Against Trafficking in Women and the Global Alliance Against Traffic in Women (1997).

<sup>3</sup> Economic and Social Council, *Integration of the Human Rights of Women and the Gender Perspective: Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, Ms. Radhika Coomaraswamy, on Trafficking in Women, Women's Migration and Violence Against Women, Submitted in accordance with the Commission on Human Rights resolution 1997/44, E/CN. 4/200/68, 29 February 2000 at para 29.



## Conclusion

The SAARC States deserves acknowledgement for the political will they have demonstrated as well as the initiative they have undertaken to address the problem of trafficking of women and girls in the region. The intentions and commitment to combat trafficking are indeed sincere and laudable. However, the framework and the approach which informs the formulation of the clauses of the SAARC Convention on Trafficking are not consistent with the protection, promotion and fulfillment of the rights of women and children who are affected by trafficking.

In light of the structural discrimination against women and girls in societal and state institutions, a major concern while assessing legal instruments related to trafficking of women and girls is that governments often and inadvertently tend to institute policies and practices that may further undermine the rights of women, especially the right to mobility and the right to earn a living. For marginalized communities, in particular women, the need to migrate for sustainable livelihoods is a pressing need today. It is imperative to understand the impetus, needs, and desires of people contained within the move to migrate, and to support these needs by protecting their right to mobility and right to earn a living by making the process of migration and mobility, as far as possible, free of harm and safe, rather than restricting movement and thereby quashing genuine needs.

There is only one meaningful lens through which any legal instrument on trafficking may be evaluated – and that is the lens of human rights. An analysis of the SAARC Convention on trafficking reveals that yet again this instrument confuses and conflates trafficking with migration on the one hand and prostitution on the other. The real issues related to trafficking, that is, the violence, abuse, deception, debt bondage, forced labour and a host of other human rights violations of trafficked women and girls, remain largely unaddressed by this Convention.

In summation, the comments of the UN Special Rapporteur on Violence Against Women on an earlier draft of the SAARC Convention on Trafficking continue to be relevant and are hence quoted below:

*The Special Rapporteur is especially concerned that the Convention lacks conceptual clarity on important issues and is not in conformity with the new international legal standard on trafficking in persons as set out in the protocol to the new UN Convention on Transnational Organized Crime..... The SAARC Convention does not distinguish between women and children. The legal regime surrounding women should be based on a framework of rights and the concept of coercion when it comes to trafficking. The legal regime with regard to children must be completely different. The draft convention also does not explicitly recognize that trafficking could be for other purposes than for prostitution. By concentrating on the end result and not on the process of trafficking and abuse, for whatever purpose, the convention does not recognize trafficking as a distinct and unique crime regardless of a nexus with prostitution. In not recognizing this distinction it is not in keeping with current international standards as set out in recent international conventions and instruments. In addition, the convention does not distinguish between movements and migrations that are legitimate and consensual and those that are coerced. This will result in a great deal of abuse and the*

*violation of women's freedom of movement in a context of constant movement of people across national and local borders. In addition, the convention brings into play the concept of "protective custody" after rescues and rehabilitation without stipulating that any stay in government home should be voluntary. The need to ensure women's economic and social rights within this context is also not examined.*

UN Special Rapporteur on Violence Against Women: Integration of the Human Rights of Women and the Gender Perspective: Report on Trafficking in Women, Women's Migration and Violence Against Women, Mission to Bangladesh, Nepal and India<sup>4</sup>.

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<sup>4</sup> Ibid. at para 31.



We hope to see you there.

Warm regards,

Aashti

Lib

## South Asia Court of Women on the Violence of Trafficking and HIV/AIDS

August 2003, Dhaka, Bangladesh

### *Vision and Objectives*

Asian Women's Human Rights Council (AWHRC) in partnership with UNDP SSWA is proposing to organise a *South Asia Court of Women on the Violence of Trafficking and HIV/AIDS* in August 2003 in Dhaka, Bangladesh. The Court is being organised in the context of our concern with the increasing violence and vulnerability that is being associated with trafficking specifically in the context of changes being created by the crises in the current patterns of globalisation and governance that are leading to the destruction and devaluation of livelihoods and life systems of entire communities of people in the *global south*; to the absolute erosion of all notions of rights or dignity for the survivors of the violence of trafficking.

Through the *voices* and *visions* of women survivors and resisters, the Court will seek to:

1. Advocate for and share widely the issues, concerns and opportunities related to the core theme from the perspective of the victims, survivors and resisters to trafficking.
2. Provide a forum for women from different regions of the world to share, reflect and have a deeper understanding of the phenomenon of trafficking in different contexts.
3. Recognize and build upon the strengths and survival strategies of affected women towards challenging and transforming discriminatory social and legal policies and evolving a notion of rights rooted in their realities.
4. Illustrate the critical linkages and the border less nature of the core issues and the importance of regional co-operation.
5. Deepen knowledge through dialogue among people in the regions and facilitate creative and concrete policies and program action.
6. Reiterate the urgency of the crisis related to governance in the *global south* due to the effects of globalisation and the impact of these on trafficking.
7. Formulate concrete and relevant follow up actions and campaigns at the regional, national and international levels to evolve long term sustainable strategies to address the issue.



8. Strengthen regional and national networking among individuals and groups on this issue in order to work for more effective action and advocacy at various levels.

#### ***AWHRC: it's Concerns Related to Trafficking***

*Trafficking of women and children in Asia has been one of the earliest and primary concerns of AWHRC ever since we had the first Asian Conference on Traffic in Women in December 1991 in Seoul, Korea. Several programmes including workshops, Courts of Women, Fact Finding Missions, publications, lobbying and advocacy have been held in different parts of Asia in collaboration with groups like Gabriela, Philippines; Foundation for Women, Thailand; Global Alliance Against Trafficking in Women (CAATW); Migrants International; Oxfam (Nepal); Sangram, SANLAAP (India) and RESISTANCE, UBINIC (Bangladesh). We have, over the years, lobbied at various fora including SAARC, the UN Working Group on Contemporary Forms of Slavery and the UN Crime Commission.*

The attempt has been to broaden the scope, notion and definition for trafficking, thereby separating it not only from prostitution but also migration. Any move to combat trafficking must not interfere with either women's right to mobility or her right to remain in or adopt prostitution as a livelihood option. What should be of greater concern are the lack of consent, forms of coercion, abuse and deception and consequently therefore it is the trafficker and trafficking networks that should be the focus of penalisation. The other major area of concern is that the interests of trafficked women and the need to provide them support and security must take precedence over the citizenship concerns of member states regarding the legal identity of the women.

**AWHRC, while working on the issue of trafficking, has also been attempting to relook at the issue of prostitution through the life experiences and realities of women in prostitution – at issues related to self worth and dignity, at their right to life a life free of violence, abuse and stigmatization.**

It is in this context that AWHRC has been emphasizing a human rights approach as far as both women in prostitution and victims of trafficking are concerned. Therefore, the attempt to evolve and lobby for a Human Rights Standard, in the policies related to prostitution and trafficking.

While this we feel is important in terms of strategies and addressing State agencies, we also feel the need to look more critically at the conceptual limitations of the Rights framework that fails to contextualise the larger contemporary realities within which trafficking and prostitution are totally located. And this universal and therefore a decultured, impersonal, amoral framework anaesthetizes the pain of poverty in those developing worlds where not only has the violence of trafficking been in fact legitimised but which are also witnessing the increasing brutalisation of prostitution. This increasing brutalisation cannot therefore be separated from the New Economic Order that seeks to industrialise, transnationalise and commercialise the phenomenon on an unprecedented scale. The violence of trafficking too can not be separated from the total impoverishment of the entire societies that constitute either the resources base for wealthier nations or end up as waste by products of a highly industrialized or corporate world; a world in which the disparities between the rich and the poor are horrifyingly stark; a world in which human relationships have gained a cold contractual, impersonal quality and the complex fabric of human impulses have been



reduced to the undimensional desire of an individual-rootless and ruthless in his desire for self fulfillment

It is in this nebulous terrain that we seek a framework of dignity and self worth while evolving a language of rights, justice and empowerment for women- be it those who are victims of trafficking or those who choose prostitution as a livelihood- a way of life.

It is these concerns that we seek to bring forward through the South Asia Court of Women against Trafficking in Women, a Court that is part of a process initiated by AWIIRC and El Taller International a sister organisation located in Tunis; a process that not only seeks to create a new space and a new politics for women but also one that offers a valuable input into local, national and international campaigns against different forms of violence against women.

### *The Courts of Women: An Alternative Political Space*

AWHRC and El Taller in partnership with organisations in different regions with Corinne Kumar as the International Coordinator have been organizing several Courts of Women focusing on issues specific to the regions. Apart from seven Courts of Women held in Asia, the others include *Mahkammet El Nissa*, the Arab Courts of Women, organised in collaboration with networks and organisations in the region focusing on violence against women in the Arab world, *Nga Wahine Pacifica*, (Pacific Court of Women) organised along with the Maori Women's Network focusing on issues related to the nuclearisation of the Pacific and land rights; the *Mahakama Wa Mama Wa Africa* (Africa Court of Women), the *World Court of Women Against War, For Peace* and the *World Court of Women Against Racism*, all organised in Africa in collaboration with several groups and networks like the Institute for Black Research, University of Natal, the University of Western Cape, Women's support Network, Cape Town; the Durban social Forum; *The International Court of Women on Violence of the Economic Blockade* and its effects on women and children organised by El Taller with the Federation of Cuban Women and the Institute of Philosophy in Cuba; *The Indigenous and Refugee Women's Human Rights Court* organised in Sydney, Australia with the Centre for Refugee Research, ANCORW and the Aboriginal Research and Resource Centre

As part of this process of the Courts of Women, this South Asia Court of Women on the Violence of Trafficking will seek to deepen our understanding trafficking in the context of the new global order and while holding them accountable, will call upon the states and governments to make appropriate economic, social and legal provisions to protect the rights of the trafficked women and children.

### *The South Asia Court of Women on the Violence of Trafficking and HIV/AIDS*

This Court that is proposed to be held in August 2003 in Dhaka, Bangladesh will comprise of three events:



- a. A one day series of *roundtable discussions* on the day preceding the court, on critical, cutting edge issues related to the core themes that will provide the *context* for receiving the *text* and testimonies of the Court.
- b. *The Court* itself on day-2 that will hear the testimonies of women survivors and resisters to the violence of trafficking; that will view a deeper nuanced understanding of the issues through a series of poetic visuals; that will listen to the voices of wisdom spoken by a jury of women and men chosen for their experience and sensitivity to the issues involved.
- c. *The follow up meeting* following the court on the third day, which will discuss the concrete way to go forward taking the primary issues that emerge both from the roundtables and the Court.

The Court will seek to involve a wide range of participants, including women who have been trafficked, activists, and networks working on the issue, trade union representatives, media representatives, students, academia, policy makers and representatives from various government agencies from the region. Leading human rights activists and other influential people from the region will be invited to be part of the jury.

### ***Issues Before the Court***

Specifically, the testimonies and discussions will be heard in five sessions.

***1. The different faces of trafficking:*** As of now since most national and regional legislations and conventions fail to provide a clear definition of trafficking, its scope, notion and definition need to be broadened. The existing unclarity results in the application of such laws only to women trafficked into prostitution and this too most often framed within a moralistic framework. The Immoral Trafficking Prevention Act in India for instance under which women trafficked into prostitution are criminalised while the traffickers themselves are allowed to go free. The testimonies during the Court and the discussions will attempt not only to draw out the different faces of trafficking like forced marriage, begging, forced labour, domestic work, organ trade et al., but will also attempt to define the differences even while redrawing its links with prostitution, migration and HIV/AIDS.

***2. Globalisation, poverty, migration and racism:*** The impact of globalisation is being felt at various levels including the realm of economics, culture, economics, governance models and even knowledge systems. What is clear is that this new global world order is creating new institutional frameworks for marginalisation and exploitation like poverty, migration, the tourism industry, within which is the violence of trafficking being legitimized. It is clear that trafficking of women and children is directly related to the disintegration of the rural communities and extreme insecurity of livelihoods that leads to displacement, migration and the vulnerability of those who are forced to migrate in search of livelihood options.

***3. Militarisation, War and Conflict:*** War and conflict situations engender situations of extreme vulnerability particularly for women and children. This is especially so in times of modern warfare, which has drawn the maximum number of civilian casualties ever. Apart from being direct victims as for instance being raped in times of conflict and wars or being conscripted as sex slaves by the military as the Japanese military slavery did during the



Second World War, what is increasing is phenomena like the trafficking of refugees at borders or setting up of brothels around military camps. We will explore the possibility of identifying women and getting testimonies that will highlight issues like trafficking in refugee camps as in Afghanistan, at the Burmese border, during ethnic conflicts as in Sri Lanka, in the North East.

**4. Human Rights and Trafficking:** Institutions of the State like the police, judiciary and health system, that are supposed to ensure the rights of the citizens to justice, redressal or care, are in fact the greatest violators of the rights of the people, particularly the poor and the vulnerable. Incarceration of *illegal immigrants* most of who fall prey to traffickers who lure them to foreign lands through false promises; prosecution of the trafficked by discriminatory national legislations; exploitation and abuse of women in prostitution by the police in police stations; *forced testing* of trafficked women or women in prostitution for HIV / AIDS at detention centres on the borders; *forced repatriation* of the trafficked women to homes where they may be facing conditions of violence, discrimination or stigmatization; irrelevant *rehabilitation policies* for survivors of trafficking ... Apart, therefore, from looking at the larger context within which violence is escalating, the Court will also attempt to evaluate policy frameworks and legal mechanisms that are violating the human rights of the trafficked.

**5. Voices of Resistance:** This session will listen to testimonies from women and groups of women who have been trafficked and have learnt to assert themselves beyond their victimhood carving out their life choices. For it is these women who in the dullness of their lives have seen much violence, exploitation, marginalisation and stigmatization, in whom suffering has forged the strength to be survivors with the sharpest insights – be it on the double standards of morality in society, the violent underpinnings of trafficking networks or even the hollowness of state sponsored rights.

## Roundtables

On the day preceding the Court will be organised a series of roundtable discussions around the basic themes listed above. The discussions will however attempt to take up more critical edge issues as for instances the different approaches to trafficking and prostitution; the alternative understandings that are emerging on the HIV/AIDS issue; an assessment of the legal and policy frameworks that have been evolved at the national, regional and international levels and an evaluation of the possibilities and limitations of the human rights framework that has been adopted to address the issues, drawing out the implications of the far reaching transformations in the macro context and the dominant discourse of politics and knowledge systems that is creating conditions of extreme vulnerability at various levels for a majority of the peoples and communities the world over.

## Possible Jury Members / Resource for Roundtables/ Expert Witnesses



Queen of Bhutan

Mary Robinson

Ms. Nane Kofi Annan

Ita Nadia, Indonesia

Fariat Cauhar, Pakistan

Gayatri Chakravarthi Spivak

Naila Khan, Bangladesh

Sergio Vieira de Mello, OHCHR

Medha Patkar, India

Gopal Sivakuti Chintan, Nepal

Pam Rapput, India

Nelia Sancho, Philippines

Nimalika Fernando, Sri Lanka

Jyoti Sanghera, OHCHR



Dear Thelma,

from awhrci

DIS-24

sub. preparatory meeting

Warm greetings from AWHRC!

Please find enclosed an invitation for the Preparatory meeting for the South Asia Court of Women on the Violence of Trafficking and HIV/AIDS.



**The South Asia Court of  
Women on the Violence of  
Trafficking  
And HIV / AIDS**

**11 – 13, August 2003**  
*Dhaka, Bangladesh*

Dear Friends,

Asian Women's Human Rights Council (AWHRC) in partnership with UNDP Regional HIV and Development Programme for South and North East Asia and UBINIG, Bangladesh is organising the *South Asia Court of Women on the Violence of Trafficking and HIV/AIDS* from August 11-13 2003 in Dhaka, Bangladesh. The Court is being organised in association with Oxfam GB, in Nepal and AATWIN, Nepal; IMADR, Sri Lanka; LHRLA, Pakistan and Vimochana, Bangalore.

The South Asia Court of Women, through personal testimonies of violence and of resistance, analyses of expert witnesses and inspiring vision statements of a jury of women and men of wisdom, will seek to understand the increasing violence and vulnerability associated with trafficking in women and children and HIV/ AIDS in the context of the current patterns of globalisation and governance that are leading to the destruction, and devaluation of livelihoods and life systems of entire communities of people in the global south; the increasing restriction on mobility due to concerns of national security; the absolute erosion of all notions of rights or dignity for the survivors of the violence of trafficking and HIV/AIDS. In this context therefore it is important to relook at the issue of trafficking not merely as a cross border law and order problem linked to women, citizenship concerns, repatriation and rehabilitation but draw out its critical linkages with issues related to gender, migration, asylum and refugee seekers, conflict and the contemporary discourse on terrorism - in fact the new global world order.

Lib - Trafficking + HIV/AIDS file

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*We write seeking your support and solidarity for the Court and also to invite your possible participation.*

Through the holding of the Court we would attempt to:

1. Provide a forum for women from different countries of South Asia to share, reflect and have a deeper understanding of roots of the violence and vulnerability faced by women affected by trafficking in women and children and HIV/ AIDS.
2. Recognise and build upon the strengths and survival strategies of affected women towards challenging and transforming discriminatory social and legal policies and evolving a notion of rights rooted in their realities.
3. Evaluate and assess the policy frameworks that are being evolved to address the issues at national, regional and international levels.
4. Strengthen regional and national networking among individuals and groups on this issue in order to work for more effective action and advocacy at various levels.

This Court will comprise of three events:

- a. A one-day series of *roundtable discussions* on the day preceding the court, on critical, cutting edge issues related to the core themes that will provide the *context* for receiving the *text* and testimonies of the Court.
- b. *The Court* itself on day two that will hear the testimonies of women survivors and resisters to the violence of trafficking. The very specific text and textures of the individual testimonies of survival and resistance will be woven together with reflections on crucial issues related to the dominant discourse of politics and knowledge systems that is creating conditions of extreme vulnerability and violence for a majority of the peoples and communities the world over.
- c. *The follow up meeting* following the court on the third day, which will discuss the concrete way to go forward taking the primary issues that emerge both from the roundtables and the Court.

The Court will seek to involve a wide range of participants, including women who have been victims of trafficking, activists, and networks working on the issue, trade union representatives, media representatives, students, academia, policy makers and representatives from various regional and international government agencies.

#### *The Courts of Women: A Background*

*The South Asia Court of Women on Trafficking and HIV/AIDS* is part of a process of the Courts of Women initiated by the Asian Women's Human Rights Council and several other women's and human rights groups in Asia; a process that not only seeks to create a new space and a new politics for women but also one that offers a valuable input into local, national and international campaigns against different forms of

violence against women. While it began in Asia through the AWHRC, El Taller, an organisation based in Tunis, has taken the Courts to the other regions of the world including the Arab region, Africa, Central America and the Mediterranean. Seventeen Courts of Women have been held so far with seven being held in the Asia Pacific region.

The Courts have been held at regional, national and international levels, with five World Courts. The issues the Courts have addressed so far include specific issues such as the violence against Dalit Women, Crimes against Women related to the Reproductive technologies, Trafficking in Women, War Crimes against Women, and Crimes against Women related to the Violence of Development. The Courts have also taken up issues such as the Rights of Refugee and Indigenous Women; Land rights, Racism and the Economic Blockade in Cuba.

While the Courts are *deeply symbolic* and an attempt to define a new space for women; *a new politics*, as a forum for human rights education they have been an extremely sensitive and powerful media to reveal the interconnections between the various forms of personal and public violence against women in different societies. Violence that has been increasing and escalating; *a violence that has become brutal*.

The *Courts of Women* challenging the dominant ways to knowledge seek to weave together the *objective reality* (through analyses of the issue) with the *subjective testimonies* of the women; the *personal* with the *political*; the *logical* with the *lyrical* (through video testimonies, artistic images and poetry) urging us to discern fresh insights, to find a *new political imagination*.

The *Courts of Women* attempt to write counter hegemonic histories by creating a space where we can listen with care to the *voices of the women speaking in their own centre*. And in re-writing history the Courts of Women not only hear of the need to extend the dominant human rights discourse from the experience and perspectives of women; they speak too of a new generation of women's human rights.

As part of this process of the Courts and our ongoing involvements with the issue, the *South Asia Court of Women on Trafficking and HIV/AIDS* will seek to deepen our understanding of the issues in the context of the new violent global order and while holding them accountable, will call upon the states and governments to make appropriate economic, social and legal provisions to protect the rights of the women victimised by trafficking and those affected by HIV / AIDS.

*Many of you have been a part of the Courts either through your participation or through extending your solidarity. We invite you once again to be part of the South Asia Court of Women on the Violence of Trafficking and HIV / AIDS by extending your support through a message of solidarity that will be acknowledged in the publications and reports of the Court.*

We would request that you send us your message to the address given below by July 10 2003, at the very latest.

With warm regards



Sincerely,

Corinne Kumar  
International Coordinator  
Courts of Women, AWHRC/EI Taller  
International

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# **“Oh! This one is infected!”: Women, HIV & Human Rights in the Asia-Pacific Region.**

**Paper commissioned by the UN Office of the High Commissioner for Human Rights, from ICW**

**2004**

*By Susan Paxton, with Alice Welbourn, P Kousalya, Anandi Yuvaraj, Sapana Pradhan Malla and Motoko Seko.*

**March 2004**

for CHC Lib.  
JN  
3/1/04 -  
HIV/AIDS resource file.  
(gender issues)



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# **“Oh! This one is infected!”: Women, HIV & Human Rights in the Asia-Pacific Region.**

**Paper commissioned by the UN Office of the High Commissioner for Human Rights, from ICW. 2004**

*By Susan Paxton<sup>1</sup>, with Alice Welbourn<sup>2</sup>, P Kousalya<sup>3</sup>, Anandi Yuvaraj<sup>4</sup>, Sapana Pradhan Malla<sup>5</sup> and Motoko Seko<sup>6, 7</sup>*

***“Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”***  
**WHO Constitution, 1946**

## **SETTING THE SCENE - THE GLOBAL BACKGROUND**

By the end of the 20<sup>th</sup> century, AIDS was the fourth leading cause of death in the world, after lower respiratory infection, heart disease and stroke. Women are more than four times more vulnerable to HIV infection than men are, and women less than 20 years old are up to ten times more vulnerable. Coupled with their greater vulnerability to becoming infected, women are significantly more likely than men to experience AIDS-related discrimination after infection. The response to HIV and AIDS to date has failed to address adequately women's inability to prevent themselves from becoming infected, resulting in a thriving epidemic and huge populations of HIV-positive women who live in unsafe and undignified conditions.

The Asia-Pacific region is no exception. This paper sets out to explain the varied reasons why a significant majority of women in the region are disproportionately at risk of infection, documents specific examples of discriminatory attitudes and actions against HIV-positive women in the region as a result of their HIV status; and concludes with recommendations of action by and for all levels of society to counteract these human rights violations.

Determinants of health are multi-faceted. Societal and cultural double standards for men and women are barriers to health care efforts and the oppression of women has led to denial of their rights. Women's lower social, political & economic status is fundamentally linked to negative health outcomes, particularly in relation to HIV/AIDS. Society has constructed profound psychological and social differences based on gender, yet the

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<sup>7</sup> With many thanks to Luisa Orza for background comments and editorial support and to Promise Mthembu, Bev Greet, Vicci Tallis, Kate Butcher and Junsuda Suwunjundee for further advice.



response to HIV/AIDS fails to recognise these differences. Women are still seen primarily in their reproductive role, whilst men are seen as the monetary providers, and thus retain physical, social, legal, religious and medical control over women's lives. Because of this imbalance of power, public health interests are usually determined by men, driven by economic rationalism and often override women's rights. Compare, for instance, the finances invested in AIDS vaccines versus female-controlled microbicides; and the funds invested in drug trials of white males. Prevention of mother-to-child transmission programs improve quality of life of a child but often overlook or neglect the health of the mother; and abortion is often advocated for positive women. Interventions always target women in relation to either men or children and do not recognize women as separate entities in themselves. These interventions are also very often judgmental.

Women carry a "triple jeopardy" of AIDS: as people infected with HIV, as mothers of children infected, and as carers of partners or parents with AIDS (or, in the case of increasing numbers of grandmothers, as carers of orphans). Care, traditionally one of women's many responsibilities within a family, is provided free, but has a hidden cost. When women care for others, their labour is lost, which has a huge impact on the wealth and therefore the health not only of themselves, but also of the whole household. In the case of girls, they are often removed from school to care for sick relatives. This is also a huge economic and social loss, both for them and for their future families. HIV/AIDS is thus contributing to the acceleration of feminised poverty across the world and the Asia-Pacific region is no exception.

### **WOMEN'S GREATER VULNERABILITY TO HIV INFECTION**

Latest UNAIDS figures (December 2003) indicate that 9.5 million people are living with HIV/AIDS in the Asia-Pacific Region. For most women in the region, the means of transmission is overwhelmingly heterosexual and, for a range of reasons, infection rates in many countries are escalating more rapidly in women than in men. If trends in Asia follow those of Africa, then it can be only a matter of time before the overall percentage of infected women and girls in Asia will overtake that of men and boys. The reasons for women and girls' greater vulnerability to HIV infection are summarised below:

#### *Biological Reasons*

- There is more virus in sperm than in vaginal secretions; therefore women are more likely to be infected by men than men infected by women.
- The vagina has a large mucosal surface; any microlesions caused during intercourse may be entry points for the virus; young women are even more vulnerable because the mucosal lining is thinner and less mature.
- Coerced and violent sex increases the risk of microlesions, especially since condoms are unlikely to be used in such circumstances.
- The presence of untreated STIs, which may cause open sores and which women may not actually notice, increases risk of exposure to the virus.

### *Economic Status*

Women are more likely to be less educated than males, more overworked and underpaid; women are expected to work in the home and are often discouraged from going out to work; women are therefore more financially dependent on men.

- Women have few opportunities to engage in waged labour and so have limited financial survival skills if the primary breadwinner is sick.
- If women work outside the home, many are forced to become transient workers.
- Many women have to exchange sex for material favours for daily survival.
- Poor nutrition increases vulnerability to HIV infection. (In India, nearly 50% of all married women suffer from anaemia (UNIFEM 2002)).
- Women are often not permitted to own property or to legally inherit ancestral properties or possessions. Though recent legal interventions in some countries (such as the eleventh amendment to the Country Code in Nepal and the amendment in the Hindu Succession Act in a few states of India) have given them legal ownership and inheritance rights, these rights are seldom upheld in practice, hence women's status remains the same.

### *Social and Cultural Norms*

- Women are not expected to discuss or make decisions about sexuality. "Good" women are expected to be virgins before marriage and are expected to be "ignorant" or uninformed of any matters relating to sex, including their own sexuality.
- If women refuse sex or request condom use, they risk abuse.
- Violence against women (especially domestic violence) leads to forced sex (thus increasing microlesions).
- Marital rape is not recognized as a crime in many countries (and in no countries in South East Asia), so marriage condones non-consensual sex between a man and his wife at any time.
- For men, multiple partners and sex outside marriage are widely culturally accepted.
- Women are expected to have relations with or marry older men, who are more sexually experienced and more likely to be infected.
- Arranged marriages, particularly among relatives, without the bride or groom getting to know one another first, are a norm in rural India. (In India, 60% of married women become mothers before the age of 19 (UNIFEM 2002)).
- Marriage is strongly associated with reproduction and creating a family, and there is strong pressure on young, newly married women to have children.
- A woman's status greatly improves if she becomes a mother.
- The majority of non-literate people in Asia are women. This limits women's ability to access information for HIV/AIDS prevention, care or treatment.

The following remarks are from HIV-positive women who took part in the ICW study in Thailand, "Positive women: Voices and Choices". They clearly illustrate the importance of, and societal pressure on women to have children, and the conflict that results from a desire for children and a positive diagnosis:



*"If we were childless, our family wouldn't be perfect. I mean, there was conflict. He wanted to see what his child would look like. I had to take a risk. If the baby is HIV-negative, our lineage goes on. If we were childless, there would be conflict." (Woman in the Northeast, aged 27)*

*"I wanted to make the family perfect. If we had no child, he wouldn't stay with me and I would be alone, lonely." (Woman in the Northeast, aged 31)*

*"Having a child is necessary for those not infected [with HIV]. But the infected, they shouldn't see it as necessary. I mean, a family must have a mom-dad-kids thing in order to be perfect. The child is the centre, the heart, of a family." (Woman in Central Region, aged 36)*

### *Programmatic Vulnerability*

In health services across the region – and indeed around the world - organizational structures and the development of policies are often gender-blind and even uphold and exacerbate discrimination against women. Mann and Tarantola (1996) refer to this as "programmatic vulnerability" of women. Most of the senior management positions are held by men and most doctors are men who have not considered the gender dimensions of health care, nor explored their own issues around sexuality or their own vulnerability to HIV. Healthcare policies tend to be formulated almost exclusively by men. Thus, to take one example, female controlled barrier methods such as the female condom or microbicide development have received relatively little research support. Similarly research on drugs has focused mainly on men, and has not addressed, for example, potential gender differences in drug tolerance. Female health service staff are often placed in junior, poorly respected front-line positions, as nurses, cleaners, or in other auxiliary positions, with long hours, poor pay and little prospect for career development. Although they may have many insights into how services may be better run, based on their direct working experience, their opinions are not sought or welcomed.

### **OTHER SPECIFIC ISSUES**

#### *Women and condoms*

Women's lack of socio-economic power is perhaps the greatest catalyst for spread of HIV. "AEC" messages of "abstain, be faithful or use condoms" fail to recognise the context of women's lives.

The Behavioral Surveillance Survey 2, conducted by the National AIDS Control Organisation in India, showed that 80% of women currently living with HIV/AIDS had only one sexual partner and contracted the virus from them. The majority of women did not perceive that they were at risk of contracting HIV and even if they had perceived the risk they did not have the skills to negotiate to use the condoms with their partners; in fact the majority of women do not even know that condoms prevent infection.

Most women have no control over when, with whom and in what circumstances they have sex. Condom use is particularly problematic. If women suggest using condoms, their partners often assume that the women have been unfaithful. Condoms are not under women's control and some women are threatened with violence and rejection if they insist on condom use. It is not culturally acceptable in most Asian societies for women to purchase or to possess condoms. In China, if a woman is found with a condom in her bag, she can be arrested on suspicion of being a sex worker. In Nepal, female sex workers reported many cases of police abuse because of carrying condoms with them.<sup>8</sup> In India, people involved in sex education work, especially field workers and social workers, face problems from law-enforcing agencies if condoms are found in their bags. Thus reaching and educating not only men, but also women to accept condom use is challenging.

Costs are also an issue. For instance, in India, the female condom was launched in New Delhi in 2004, but each one currently costs Rs 45 – nearly a dollar. The company has agreed to negotiate with the Government to bring it down to Rs 20-25. NGOS say that it should cost Rs 3 at the most, though it would be better given free.

#### *Women and drug use*

In some parts of Asia, sharing injecting equipment is a significant mode of HIV infection. Needle exchange programs have shown success in curbing the spread of the epidemic amongst injecting drug users but tend to be very male-focussed and deny the reality of women's lives, particularly those of women who are partners of injecting drug users. It is common for women, whether they are themselves drug-dependent or not, to be exposed to gender violence and exploitation by their partners, who may force them to sell sex to others. Many people assume that women using drugs are also engaged in commercial sex to finance their drug use. Thus female drug users are doubly discriminated against, by their communities and health service providers, because of negative attitudes towards sex workers and drug use.

#### *Women and sex work*

HIV-positive women who are sex workers or who sell sex but do not identify themselves as sex workers are often especially at risk from discrimination and violation of their rights because of the moral judgments imposed on them by society. Studies conducted in Tamil Nadu and Andhra Pradesh states in India show that only 20% of sex workers use condoms with their non-paying (mostly regular) partners. (Behavioural Surveillance Survey, NACO, India). This finding echoes similar findings from elsewhere in the world. Sex workers are therefore at increased risk of HIV-infection from their regular partners.

*I worked in both a cocktail lounge and a massage parlor which provided sexual services. I was married twice. My first husband worked in the same place as me. He was the one to infect me with HIV and he died later. I used a condom when I had sex with a guest. It was safety first. (Thai Woman, aged 30, Positive Women: Voices and Choices)*

<sup>8</sup> Report of Focus Group Discussion with Commercial Sex Workers and Homosexuals, organized by FWLD, GWP, Watch and Women Centre and Police, 2003.



In a study conducted in Nepal (FWLD, 2001 Report of Empirical Data Collection on HIV/AIDS, A UNDP Regional Study), out of a total of 100 respondents only 44% of women's partners had used a condom while having sexual intercourse. Of these, 84% stated that their partners used it for the purpose of family planning and not for safer sex; 49% said that they have sexual intercourse with their partners because they perceive it as a responsibility and duty to their partners. When discussing the refusal of sexual intercourse by women, 37% of respondents stated that their partner's reaction includes arguments, scolding, beating, expressions of suspicion towards their wife, threats that they would take a second wife or have an extramarital relationship. Nine percent of women complained that their partners consider sexual intercourse to be a matter of their right and not rape. In Nepal, the rape law exempted marital rape as a crime; the definition of rape was non-consensual sex "other than one's own wife". After a case filed in the Supreme Court by FWLD in May 2012, the court interpreted marital rape as a crime and issued a directive order to the government to introduce an appropriate bill into parliament. Until now however, no initiative has been taken towards enacting such legislation.

In Asia, discrimination against sex workers is so strong, even from other women, that many HIV-positive women will not go to an STI clinic, for fear of being labelled as a sex worker. Because HIV prevention strategies focused initially on sex workers, HIV-positive women face strong discrimination and assumptions that they must have been sex workers.

*"Yes, it happened to me. My wife, who the flat gossiped about me. They knew that I was HIV infected from my work (as a sex worker). They said that I've got AIDS and asked other people not to come close to me, not let me touch their children." (Thai woman, aged 30, Positive Women: Voices and Choices)*

The situation facing women and girls who are trafficked for sex work is in many ways even worse, since they are often taken far from home to live and work in situations where they have no one to turn to who can speak their language.

#### *Women and sexual orientation and transgendered people*

Lesbians, bisexual women or transgender persons are especially vulnerable to human rights violations because of judgemental attitudes in society. If they are HIV-positive also, they may face even more discrimination. The specific issues facing these women, although beyond the scope of this paper, are of concern and need particular recognition and support.

### **AIDS-RELATED DISCRIMINATION**

#### *Ante-natal testing*

Along with the explosion of HIV has come increased discrimination, particularly against women found to be infected with HIV. A young woman is often the first person in a family to be tested, particularly with increased routine HIV screening during pregnancy. (In many instances testing happens without the woman's informed consent and without pre- or post-test counselling.) Good women in Asia are not supposed to have pre-marital or extra-marital sex and are supposed to enter marriage as virgins, with no sexual knowledge. For men, by contrast, the rules are not so strict. Although most

women contract HIV from their monogamous long-term partners, such as their husbands, it is often assumed that it is the women who have been unfaithful and so they are often seen as “vectors” of the virus, blamed for bringing it into the family and then subjected to violence and abuse by their spouse or in-laws.

Of the women who participated in the ICW Thailand study, 52% discovered their positive status as a result of having their blood tested in antenatal clinics, during treatment for other medical conditions, or because it was required by their employers. Often the women did not know that they had been tested for HIV until they were given their results:

*“The time I was hit by a car and I was taken to hospital, they took my blood for a test. They did not say for what test. I kept on it because I was a patient. Then they told me that I was positive for a blood test, but not what kind of blood test. I knew nothing. (Thai Woman, Central Region, aged 34)*

*“When I was pregnant and went for antenatal care, I was told to have a blood test. They did not tell me what the test was for. Every woman who came to the clinic had to have their blood tested. They did not explain at all what kind of test they were doing. I realized it was the AIDS test when I received the results.” (Thai Woman, Central Region, aged 24)*

*“I was cheated by a doctor to have blood exam. The doctor said to my husband that it was the virus, and asked my husband to take me for an exam too. I consider this as cheating because they did not tell the truth. They neglected my personal rights. If someone learns about it, and then tell others, it may have an ill effect on my work. I may be unemployed because society will not accept people infected with this disease.” (Thai Woman, Central Region, aged 30)*

*“While I was working in this factory I had a blood test. I was not told that it is the AIDS test, but it was. They just said I was a physical check-up, health check-up.” (Thai Woman, Central Region, aged 26)*

*“At that time I knew that I’ve got AIDS because my husband died of AIDS. I had already gotten a job..., but my boss asked me if I had HIV and wanted me to leave my job... He forced me to have blood test.” (Thai Woman, Central Region, aged 28)*

### Health providers’ attitudes

*“When I went to give birth, a my husband spoke badly. He said that I should be sterilized. Actually, I was fearful and confused. He said there was no reason why I should keep it and I should get an abortion... I could not respond then, all I could do was shake my head and feel really bad.” (Thai Woman, Central Region, aged 25, Positive Women: Voices and Choices)*

*“Some health personnel even told the women that if they are not sterilized, they will not receive powdered milk for their babies.” (ICW: Thailand Positive Women: Voices and Choices Report)*

Findings from twenty-six key informant interviews, conducted in India and Thailand for a study by Das (de Bruyn et al. 2007), indicate that women diagnosed with HIV have very limited reproductive choices; decisions are often made by the health care provider, the husband or the in-laws, often resulting in the woman resigning herself to an unplanned



or unwanted pregnancy, or a coerced abortion and sterilization. This is despite the fact that abortion is still illegal in many countries in the region (eg: Indonesia, the Philippines, Laos, Myanmar) and therefore has to be carried out in ways which can severely endanger women's lives (McConville, 2002). All respondents in the Ipas study felt that community attitudes towards women with HIV who become pregnant are that these women are irresponsible and should have an abortion, and be sterilised. Attitudes of health care workers are often patronising and judgmental and any counselling is usually directive. Women with HIV reported general reluctance and frequent refusal by health care workers to provide invasive treatment to help with childbirth.

If women refuse to do what they are told, and go ahead with the pregnancy, they often find themselves giving birth without skilled attendants at hand, thereby placing themselves and their newborn infant at greater health risk.

*"It happened to one of our friends who got pregnant, who opted for medical termination of pregnancy from a government hospital. She decided to do that because her husband was hospitalized and terminally ill that time. She was 16 weeks pregnant. She was her husband's second wife. That was the third time she was preparing herself for an abortion. She told me they had never used a condom and the pregnancies were not planned. She ended up twice terminating a pregnancy, which she did not like, but she had no options. When she conceived a third time she did not want to continue but this time she was afraid to visit the health care providers because she knew they would scold her for coming back with this problem. She told me in the last two years her husband often fell sick and most of her time was spent in hospitals caring for her husband. When she sought a doctor for terminations she was advised to undergo sterilization, which she was not willing to do. She asked me whether I would be able to convince the doctor to do this abortion. This happened while her husband had been again hospitalized for his AIDS-related illness. I took her to the gynaecology doctor and she told me "You know she is coming for the third time. I have been telling her to get sterilized and I am doubtful: how did she get pregnant when her husband is so weak and bedridden?" I was shocked to hear this statement from her - this is a form of discrimination, and she has the right to decide and she only knows her situation; nobody can judge her. The government hospitals refused on the grounds that she was in her 16th month of pregnancy and that they could not do anything. While she was shunting between hospitals her husband also was in the hospital. She had no other choice other than to go through the pregnancy, which she was not prepared for. She gave birth to a girl and is staying with her natal family now. She had no access to condoms and no supportive environment in which to make any decisions. The story of my friend reflects the judgmental attitudes of health care providers (of both genders) with women living with HIV/AIDS where we live." A.Yuvuraj, personal communication*

Discrimination by health care workers, especially in the prevention of parent-to-child-transmission, was echoed recently in a study conducted by the Positive Women's Network (CFAR and UNIFEM *Positive Speaking*) in 2003 in southern India. Discrimination from service providers was also experienced by women in Thailand who sought HIV-related treatment and family planning services:

*"When we fall ill and go to the hospital, we do not want them to discriminate against us. It is not that they should not because it is their duty or something like that. We want them to be willing to give us good services. If they give services because it is their duty, we can notice from their face whether or not they are willing." (Thai Women, aged 29, Positive Women: Voices and Choices)*

*"I'd been to a hospital, and I wanted to have an IUD fitted. When I went for the fitting, they did not allow me to use it because I didn't live permanently with my sex partner. They asked me why I should bother using it. Then, when they checked my medical file and learned that I've got HIV they said Oh! This one was infected! HIV-infected should not use it. They said this as if those who were infected should not be given any services. Eventually, I gave back the money." Thai Woman, aged 39, Positive Women: Voices and Choices)*

Confidentiality from health service providers also emerged as an issue:

*"It happened that person at the health care center, a nurse, said somewhere around my room I heard that... 'Yes..yes..this girl (meaning myself) really has HIV. It's very serious. She shouldn't have talked about me like that, but she'd already said it.' Thai Woman, aged 29, Positive Women: Voices and Choices)*

In Nepal, medical practitioners acknowledged that they discriminate against patients infected with HIV/AIDS because of the fear of infection. They also expressed the view that HIV-positive patients must be segregated from other patients<sup>9</sup>.

Many health care workers are themselves women or men living with HIV and often themselves have little access to information, support or services – or even the awareness of their own status. Many of these staff, especially frontline women workers, are also over-stretched and exploited by their male managers (Khanna et al 2002). They also often lack basic information about HIV transmission. In Pakistan, for instance, it is a common practice in rural areas for health workers to inject patients with unscreened blood, in order to boost their energy levels. In India, a parliamentary reply in February 2006 reported that 80-90% of injections in government clinics are "unsafe" (<http://164.106.24.208/lsq/ques.asp?ref=70356>). Health staff need proper information and support to cope with their own realities and those of their clients.

#### *Discrimination within families and communities*

A documentation of AIDS-related discrimination in Asia conducted by APN+ in 2001-2 found that HIV-positive women are much more likely to experience discrimination in the family and the community than men. The study interviewed over 750 HIV-positive people in India, Indonesia, Thailand, and the Philippines. Forty-six per cent of the sample was women.

<sup>9</sup> Report on Group Discussion conducted with Health Practitioners of Various Hospitals of Nepal for South Asian Human Development Report, UNFPA/UNDP, October 2002.



**Differential discrimination experienced by HIV-positive men and women**  
**Key findings from APN+ study**

Questions Asked	Affirmative responses (%)	
	Males (n=394)	Females (n=348)
Has anybody been told about your HIV status without you wanting them to know?	33.5	35.3
Have you ever been ridiculed, insulted or harassed because of your status?	20.3	31.3*
Have you ever been physically assaulted because of your status?	2.5	6.3*
Have you ever been refused entry to, restricted from or asked to leave a public establishment due to HIV?	2.8	8.6*
Have you been forced to change your place of residence because you are known to be HIV-positive?	6.3	12.4*
Have you ever been excluded from social functions due to your HIV status?	8.6	16.1*
Since your diagnosis have family members excluded you from usual family activities?	10.9	17.8*
Have you ever lost financial support from family members due to your HIV?	4.6	10.6*
Has anybody ever advised you not to have a child since you were diagnosed as HIV positive?	17.8	45.1*
Have you ever been coerced into an abortion or sterilisation because of your HIV status?	-	11.5
Has your child (or children) ever been involuntarily taken away from you because of your HIV status?	2.0	2.9

\* Indicates a significant difference in responses between male and female respondents ( $p < .05$ )

Overall, 45% of females (but only 18% of males) were advised not to have children after their diagnosis and 12% of women were coerced into an abortion or sterilisation because of their HIV status. At least 6% of men lost custody of their children.

Ten per cent of respondents (for men 12%, males 6%) were forced to change their place of residence because of HIV and half of these had to change their home more than once. In India, eight per cent of respondents had been physically assaulted because their HIV status had become public knowledge.

The situation for single and widowed women is even worse. Widows and single women are particularly vulnerable to human rights violations, including physical assault, from family or from members of the community. They disproportionately head poor households affected by HIV and appear to bear the brunt of AIDS-related discrimination.

The major determinant of AIDS-related discrimination is gender. Overwhelmingly, findings from the APN+ study indicate that women are significantly more likely to face discrimination than are men.

The research conducted in India by the Positive Women's Network, and the Centre for Advocacy and Research included 11 in-depth interviews with HIV-positive women (CFAR and PWN 2003). Their findings indicate the following key areas of concern with regard to the attitudes towards and treatment of HIV-positive women:

- Stigma, Discrimination
- Violence
- Livelihood and Property
- Security
- Health care
- Information
- Support Systems
- Economic difficulties resulting from having a male family member with AIDS
- Negotiating capacity

Similar findings emerged from the HIV Positive Women: Voices and Choices research with 120 HIV-positive women in Thailand. The key findings of this research also highlighted a broad range of issues of concern, including:

- HIV status disclosure and acceptance,
- motherhood, pregnancy and child-rearing,
- sexual relationships and condoms,
- reproductive health services including abortion, sterilization, social welfare and other support,
- sexual practices, STIs, and family planning after HIV diagnosis,
- blood-screening,
- involvement in clinical trials,
- income generation and support,
- participation in HIV-support groups, and participation in support and assistance programmes, including access to information

*"The doctors should tell us, give us information on how to behave after getting this disease. But as I'm concerned they just tell you how to prevent getting the disease, not what to do about it once you are infected." (Thai Woman, aged 37, Positive Women: Voices and Choices)*

*"I think that getting accurate information is important. We want to learn how to behave; and understand that how the disease has changed. We need full information to make our own will... We still have hope" (Thai Woman, age 39, Positive Women: Voices and Choices)*

*"When I went to have a blood test, I decided I decided to have a check-up at one of the government hospitals. After the blood test, a nurse asked me to go into a room, and I was told that I'll certainly die. She asked me if I knew how many people die every year, and she said that around 60% of people died with AIDS. I was so scared ...a nurse said 60% which is about half, so I'll probably die in the next few years... my feeling was so bad." (Thai Woman, Central Region, aged 37, Positive Women: Voices and Choices)*



### *Self-discrimination*

In response to the discriminatory attitudes that women face on diagnosis, many hide away. This internalised ostracism becomes stronger once HIV symptoms become more obvious. Issues of body image are especially important to women, as a result of gendered stereotypes promoted in the media of how women *should* look. Thus advanced HIV-related illness can be especially psychologically debilitating.

"Give me any job that will not let me mingle with people, any job that will not allow me to meet people; a job in which I can work behind the scenes, such as washing up dishes, anything, the kind of job where I do not have to see people. They may not like me. I do not want to face other people's eyes when they look at me, any job that I can work behind the scenes; no one can see me; or a job that ... [HIV-positive people] ... work together among us" (Thai Woman, quoted in: *Positive Women: Rights and Choices*)

### *Discrimination from NGOs and funders*

HIV-positive women also face discrimination from funders and NGOs, even if they want to form themselves into groups to develop their own response to the pandemic. In India, for instance, some funding agencies focus on community care and support programmes, to be implemented through NGOs. HIV-positive women are, in theory, supported by these NGOs. However, in practice they find that they are not being allowed to access funds to start networks or implement their own initiatives. The programmes that are funded are very service-oriented and do not focus on building the skills of the women concerned. Though there is talk of the "GIPA" principle, the reality is very different.

### *Women, HIV and ethnicity*

Ethnicity is another factor that exacerbates HIV-vulnerability. In Australia, the rate of HIV in the indigenous population in 2002 rose sharply compared to that within the non-indigenous population.<sup>10</sup> Within the indigenous population women represent 35.6% of overall HIV infections, compared to 17% of infection within non-indigenous people (Bev Greet, personal communication<sup>11</sup>). This is not unexpected, given the poorer socio-economic and health conditions and poorer access to education, employment, health and other services experienced by indigenous Australians. Similar quality of life issues exist in indigenous communities elsewhere in the world. Therefore, HIV prevalence among women in indigenous communities in other parts of the Asia-Pacific region may be higher than in the wider population.

### *Conclusions and elsewhere*

The findings reviewed above from the Asia-Pacific region are reflected in many different settings the world over. For instance, there are marked similarities in the recent ICW Positive Women, Women and Children's Research Studies conducted by and with HIV-positive women in Zimbabwe (Munoz, Manchester and Maposhere 2002), in France (see West Africa (forthcoming)) and in Latin America (forthcoming). This underlines the urgent and critical importance to the region of adopting a gender-based response to these findings. The circumstances of the vast majority of HIV-positive

<sup>10</sup> For further Australian data see [www.health.gov.au/ncheer](http://www.health.gov.au/ncheer)

<sup>11</sup> "Oh I feel it's affected?" Women, HIV and Women's Rights in the Asia-Pacific Region

women and girls in the region are disproportionately exacerbated by the combination of their HIV status and their gender.

## RECOMMENDATIONS a: THE NEED FOR A GENDER-BASED RESPONSE

Gross inequality between males and females denies women the ability to protect themselves from infection, increase discrimination against them when they have HIV and drive the epidemic.

HIV disproportionately affects women:

- they are highly vulnerable to infection;
- they are often blamed for spreading HIV;
- they bear the psychosocial and physical burden of care;
- they face the greatest level of AIDS-related discrimination

Programs to respond to human rights violations of people living with HIV need to be gender sensitive. They need to be designed to challenge and transform those cultural norms that are harmful, enhance women's participation in decision-making and remove the socio-cultural barriers to women's improved health and dignity.

### *International instruments of accountability*

Trying to operationalise a gender-based perspective to overcome discrimination is problematic. Many countries are signatories to various covenants and declarations aimed at ensuring that the rights of all women are upheld (some key ones are set out below) but there is a need to strengthen the enforcement mechanisms of the treaty bodies that exist for compliance with these international conventions.

#### *Some key declarations in support of women*

The 1966 International Covenant on Economic, Social & Cultural Rights explicitly names the right to the highest attainable standard of health, and to enjoyment of the benefits of scientific progress. Signatory states have a duty to promote women's health services and to prevent or remove the barriers to women maintaining physical, mental & social well-being.

The 1979 UN Convention on the Elimination of All Forms of Discrimination against Women aims to end discrimination and bring gender equality, and to ensure equal access to health care services. It is an international legal instrument, giving rise to the observance of the human rights of women and is not nullified by the CEDAW Committee. The CEDAW Committee has also adopted the 'Lifeline' Recommendation No. 15 for avoidance of discrimination against women in national law and for the prevention and control of acquired immunodeficiency (syndrome AIDS).

The 1994 UN Plan of Action calls for the elimination of violence against women in the public sphere. This is the first time that an international instrument has addressed the issue of domestic violence. However violence continues to be a worldwide problem and greater efforts are needed to ensure countries comply with their commitments to domestic violence.



The 1994 International Conference on Population and Development signed in Cairo by 121 governments of the international community, improving women's health and development process.

The 1996 International Conference on HIV/AIDS and Human Rights adopted the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations High Commissioner for Human Rights urges States, in the community, to promote a supportive and enabling environment for men, children and other vulnerable groups by addressing underlying structural and social inequalities through community dialogue, health services and support to community groups.

The promotion of women's health and dignity depends on the upholding of *all* human rights, including the rights to equal access to education, to information, to sexual and reproductive choice and to women's rights to property ownership.

However, it is not legal processes or policies by themselves that change harmful traditional norms and create a culture of respect for women, but these in combination with a strong will level of social order to ensure that policies are known and translated into practice.

## RECOMMENDATIONS: PRACTICE ALWAYS FORWARD

Below are some of the many practices which different sectors of society can make, in order to offer change in current attitudes and practice, and begin to make a meaningful shift towards upholding the rights of HIV-positive women and girls in the Asia-Pacific region. Each of these practices should provide access to education, information, legal support, proper nutrition, security, and making powers for women.

### 1. Political Leadership

**1a** Governments can provide political leadership to influence strongly women's ability to attain gender equity and facilitate change. Governments should be pressured to acknowledge the importance of women with dignity and respect, and be made responsible to discrimination of women. One part of this leadership is the promotion of female representatives to the parliaments of the region. Another is the pressure to update legislation in any given country is reviewed and the responsibility of women, to protect the rights, dignity and control further spread of the virus, in line with the above treaties and conventions. It is also vital that all Government departments are constituted to this end, in coordination to make a difference. All governments should implement the policies and fully support any laws which their own status or discuss their support for

relationship with HIV. Such public disclosures can make huge steps in terms of public awareness of the issues and public rejection of discrimination.

*Specific areas of law that could not be addressed urgently to uphold women's sexual and reproductive rights:*

- Rape should be recognized as a crime and treated accordingly.
- HIV-positive women should have the right to have children when they want to, and should be supported to do so, without judgment. (This means that the AIDS law in Cambodia, for instance, needs to be reviewed. This is because it criminalizes anyone who, while aware of having HIV, transmits it to others. While this law was intended to protect women from men who knowingly pass the virus on to them, it has also been used in judgment against HIV-positive women, if they want to have a baby.)
- HIV-positive women should have the right to have an abortion if they want to, regardless of their HIV status, and should be supported to do so, without judgment. They should be given access to full, unbiased and correct information and should not be pressured either to continue with a pregnancy or to terminate it. Their choice should be their choice and their choice should be fully supported.
- Sexual intercourse between HIV-positive women should be outlawed unless each woman gives full, informed and uncoerced consent.
- HIV-positive pregnant women should receive drugs not only to protect the HIV status of their children, but also their own right, to maintain their own health throughout of their child.

Women need physical and financial security, independent of men, and power to control their lives; governments and NGOs can take the lead on this. It implies a profound shift in social and economic power relations between men and women. Action must start through increased education and employment opportunities for women, including free education, micro-financing and women's property ownership schemes and the repeal of discriminatory laws and practices against women. Women and girls who are in danger of being trafficked, as well as those who have already been trafficked, especially those who are HIV-positive, should be supported to find alternative options for education and employment within society. It is also essential that boys are taught, from an early age, the importance of women's contribution to society and the importance of advancing the role of women in society. Rights and power should not be seen as something men should have which have to be taken away from men, but rather as equal rights which should be shared by everyone in society.

**1b Faith-based organizations** can also provide significant political leadership, given the huge numbers involved, existing across many different faiths across the region. Faith organizations already do much to provide care and support for HIV-positive people in the region, however, they should be encouraged to take a more public, political stance. The network of influence built up by prominent faith leaders who stand up and speak in support of the rights and dignity of HIV positive people, and especially in support of the rights and dignity of HIV positive women cannot be underestimated. The



recent international pledge made by representatives from several different South Asia countries concerning a full, active and involvement of HIV-positive people in prevention, care and support programmes across the region, is a welcome step in this direction.

**1c The business community** can take a strong role in political leadership, through the introduction of positive and gender equitable HIV-workplace policies and HIV-awareness programs for staff. If the directors and their personal partners - outwards of the paid work environment - are encouraged and supported at work to consider the violence against women and related topics in a gendered framework, opportunities are greater for them to take responsibility for their actions sooner, to be tested and to start to protect themselves earlier, for them to stay healthy for longer, to remain in paid employment longer, and to start to work *together* with their partners to support their families longer. All lives from some international groups, such as Standard Chartered Bank, and from employers, such as the gender equity zone of the Indian Railways, are worthy of this respect.

**1d The role of the UN, the World Bank and bi-lateral donors.** There is a key role also to be played by the UN bodies and the World Bank. Important new global collaborative initiatives such as the recent launch of UNAIDS Global Coalition for Women and AIDS, provide an opportunity for the UN bodies, the World Bank and bi-lateral donors across the region to promote and to support gendered mainstreaming of HIV across all sectors of their own organisations' work, to include the knowledge, experiences and views of workers of HIV-positive men and their partner organisations in their policy work and to promote similar good practices with governments and other partners across the region. There is a real opportunity for UNAIDS and UNIFEM jointly to develop a knowledge base for good practice to share with their UN colleagues in the region. There is also the opportunity for the World Bank to ensure that it actively funds, promotes and coordinates these policies and activities which ensure gender equity and solidarity between all workers in a particular.

## 2. Public health services to form the basis of the policy and provision

**2a Health care staff** should be provided with adequate and non-judgmental information and access to services to enable women and men - to make informed reproductive health decisions. Women should be engaged with on their voluntary, informed consent. Maternity services should be available and not stop immediately and be replaced, where possible, by voluntary counselling and testing. Moreover, there is also a need to address the problem of poverty, which denies most women access to health services even when they need them. Considering that the time of pregnancy is the *only* opportunity for any potential HIV infection to be treated at a health care facility, innovative approaches to the dissemination of relevant HIV-related information to women must be explored. In addition, for its role in the region with regard to the health of HIV-positive women is only through providing support to child transmission programs. The health services, and all other health departments must be willing to provide

quency of exposure to HIV-p  
have been found to reduce

26. *ensuring access to barrier methods, drugs for opportunistic infections and ARVs.* Health providers also need to provide women and girls with an adequate and affordable supply of barrier methods and drugs. Generic triple combination antiretroviral drugs to manage HIV infection cost approximately US\$1 per day. They are available to less than 10% of people with HIV worldwide. Most people with opportunistic AIDS-related illnesses have no access to the most basic and cheap medications such as fluconazole or cotrimoxazole.

HIV spreads from men and girls, of course, often also the carers and when they die, the orphans left behind are also at increased risk of contracting HIV. It therefore makes not only human but also strong economic sense to keep mothers alive. It is also compelling to provide 3 million people with antiretroviral drugs by the end of 2008, but many countries urgently need to improve their basic health infrastructure in order to monitor the distribution and use of increased access to these drugs. The next couple of years, therefore, should focus on improving access to services already proposed, and improving voluntary counselling and testing facilities. The danger is that they are driven by targetted numbers of people, as this may lead to coerced testing which in turn will lead to increased instances of sexual abuse and girls' victimisation.

A simple, easy, effective protection method that is under women's control is also essential for female condoms to become more acceptable to women than was originally anticipated. A less reliable, available and considerably more expensive than the male condom, the skilled demonstration of female condoms is needed so that women can use them. The declining birth control expectation of women to have children must be addressed. In addition, the development of a spermicide. Such a development ultimately will require a more vigorous political will and investment in international research.

**2b. Training for health staff.** Health staff need urgent training and support in their work, so that they become better informed, less judgmental and more supportive especially in male clients. Training of health care providers (eg Khanna et al, Dhungana et al) should also be needed to ensure the importance of *confidentiality* of all patients. Health staff also need more training and support in thinking about their own HIV status and to ensure that they do not let their jobs on potential discovery of their HIV status affect their role. For example, men can be trained and *employed* in vast numbers as paid promoters, educators and as ARV educators and distributors.

2d. *reality of overhaul of health system v. Recommendations 2a-2c above can only really*  
 take place if the health system is sustainable if the health service of each country is radically  
 reformed and designed to serve the population improves services which fully respect the  
 essential human rights of all people and where HIV-positive people as well as  
 not only the infected population but also the non-judgmental gendered health service  
 providers become a part of the health service to acknowledge that many of their



own staff are often living with HIV or have a relative with HIV but are too scared to be tested or to speak out; such people need firm and unreserved support, since their personal as well as their institutional insights are highly valuable to their institutions. Leadership needs to come from government and to reach far beyond senior medical staff across the region.

### 3. Supporting contributions of HIV-positive people

If more women put a face to AIDS, human rights violations reduce and community members have a greater readiness for caring for people with HIV and protecting themselves from infection. Encouraging more women living with HIV to speak out takes time, courage and support. HIV-positive women are far more likely to cope well with the challenges of living with HIV, including access to mental health care, early referral to peer support groups with counselling, and support from family members. They require encouragement to move beyond self-doubt, to overcome the face of others' criticism; and they need practical skills, the emotional support to remain productive, and new skills to advocate on their own behalf and to contribute to education, if they wish to.

**3a** *Positive women as role models and advocates.* Since early in the epidemic people have spoken out in public about HIV and share the realities of living with HIV. Experience has been living with HIV and its profound impact on people's attitudes to people living with HIV and to people in general. Women in particular have been shown to be especially likely to do this and to influence attitudes (Paxton, 2002). Considering the enormous difficulties they face, it is surprising that their skills have not been utilised to much greater effect in the response to AIDS.

Ideally, women will speak out to contribute to an established network of HIV-positive people, rather than to you as an individual and they need on an on-going basis. External agencies need to be able to make the most of individuals of being asked to speak without being asked to support them, and to avoid individual exhaustion and burnout (Mackenzie, 1999).

**3b** *Women's effective involvement in decision-making.* Speaking out is one aspect of women's involvement in decision-making. However, this can often become a tokenistic exercise, leaving women concerned at times feeling drained, disempowered, and excluded from the real contributions of HIV-positive women and their organisations in their own lives and in all aspects of decision-making that affects them. This should not be the case in the Asia-Pacific Region. The 1982 UN Declaration on the Elimination of All Forms of Discrimination against Women (A/39/59) and the 1994 "GPA" principle both uphold the rights of women to participate in the decision-making of people with disabilities and with HIV-related issues that affect our lives. But while the intention of these instruments is rarely fully realized in practice. For example, in 1999, the United Nations' *Convention on the Rights of Persons with Disabilities* (UNCRPD) states that an HIV-positive man can speak for all HIV-positive people, and a few women can speak for the views and perspectives of the vast majority of women. This is not fair both on the individuals concerned and on the women who have formed themselves across

the region, true involvement should mean that the skills and experiences of organizations of HIV-positive women – including young women – could be harnessed at all stages of the entire care and support work within the region. The HIV-positive women belonging to these organizations are already doing so much – and could do much more – for their own initiatives which are already funded. Moreover, they also have so much more to offer others, in terms of their efforts, skills and experience and insights, if they were in a proper place to do so. These networks often lack funds and are also in need of capacity building, various means to fund management, strategic planning and other administrative processes, and need to articulate their visions.

**3d Women's roles in HIV networks:** The equitable role of HIV-positive women in organizations of HIV-positive people across the region and in individual countries also needs to be studied. Many organizations of HIV-positive people receive funding from donors, but at most of the time funding is male. The leadership positions are mainly held by men. Donors to such organizations need to ensure that there is an equitable leadership team, with women as well as men, in proportion to the role and status of the women in the organizations concerned address properly the specific conditions and specific challenges facing women in the region.

**3d HIV-positive women's support groups:** HIV-positive women are also excellent providers of help and support, especially to women who have only recently learnt about their status as HIV-positive women and to other women in terms of information sharing about living positively, how to avoid further exposure to infection, and many other aspects of life with HIV. Such support groups often operate with very little funding. In more structured and formalized support groups, the role of HIV-positive women and girls is hardly being utilized to the full. Such groups are however often overlooked and rarely adequately manned. They also need strong support through proper recognition, skill development, office space and financial support across the region.

#### **4 Role of the role of organizations and individual women and girls**

**4a Gender equality and women's groups:** Women's groups of women, who are active around issues of gender equality, can play a key role in reducing the discrimination faced by HIV-positive women. The efforts need to be supported. The work of the Indian Women Lawyers' Association, for instance, is strong in raising awareness of the gulf between positive and other women. The contribution of the members of other women's groups, such as the Indian Women's Workers' Union, the Indian women's environmental groups, and other groups of women, can be increased. Those members are themselves HIV-positive, and they should be encouraged to use these groups need to find ways of making the positive women's groups a safe place for women who are HIV-positive so that they can be encouraged to a safe place where they can build alliances with other relevant organizations.



4b) *Support women and girls* – It is girls and women who, while not the main target of the making decisions, are calling for a family not to be of an ill-reputed nature. It is often the women and girls who are the most vulnerable and who are the most in need of community and family-based support financially.

It is important not to forget that many women and girls are HIV-positive, or not yet aware of their status, and are making significant yet invisible contributions through their work. They are often felt highly isolated and they too are often related to people with HIV; yet their needs should be included, especially when issues of their health and well-being are also supported.

## 5. *Creating a supportive and enabling environment across society*

HIV is a virus that is a health risk and a social issue. In the Asia-Pacific region, older men often take advantage of women as a result of their power and influence. They are often the ones who are making additional younger sexual partners. The social gender norms in the region are often patriarchal, with men, not women, with the men, not the women, in the dominant relationships, and the men are often the ones who are the most vulnerable to the virus.

Older men often encourage their daughters into sexual relationships with younger men, and they are often the ones who are making additional younger sexual partners. They are often the ones who are making additional younger sexual partners. They are often the ones who are making additional younger sexual partners.

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Many of the communities need to be more receptive to the needs of women and girls. They need to be more receptive to the needs of women and girls. They need to be more receptive to the needs of women and girls.

Older men often encourage their daughters into sexual relationships with younger men, and they are often the ones who are making additional younger sexual partners. They are often the ones who are making additional younger sexual partners.

The need for a supportive and enabling environment across society is a key message.

Older men often encourage their daughters into sexual relationships with younger men, and they are often the ones who are making additional younger sexual partners. They are often the ones who are making additional younger sexual partners.

to transform traditional gender-roles in the nation and financial support. Community-based sexual dimension to this pandemic, economists and women on all matters, are working on the gender and social justice work Himalaya, India, which nurtures young (2004), the work of Khana and partners in roles with soldiers and others (Sellers et al. 2004). The "Stones" package on gender, HIV, and communities in southern India (2004) for adaptation and duplication of HIV-positive people – men and women – and employed as facilitators of such work to collaborate with them, in mutual

and girls who are in school, the school system, provided that boys and male teachers are also involved in HIV prevention programs. The curriculum, however, should focus on gender violence on the whole family, not just on a woman's likelihood of contracting HIV. Comprehensive sex education, delivered before the first sexual intercourse, higher recorded use of condoms, etc. Examples such as the introduction of sex education in schools in Delhi to explore gender and HIV-related issues. Integrated AIDS, HIV-positive women (and men) should be encouraged to appropriately trained, accredited teachers to help them need to get their kids back into schools, by providing them with options for them; and they should get their kids back into school sex and HIV.

Community health workers also have a key role to play in HIV prevention, as well as priests, imams, rabbis, and Buddhist monks. Many of these religious leaders are also HIV positive. The more their own status and experiences with HIV are known, the more they can help their congregations. They can be junior staff (who are often women) or

6.  $\frac{1}{2} \times 18 \times 10 = 90$  kJ/kg

the changes that are needed to end the epidemic across the Asia-Pacific region. The AIDS Commission has a number of recommendations that the member states can use to further the stability of the region. In these chapters, we provide some practical examples of how different countries have shared information and how the world might treat the epidemic in the Asia-Pacific Region.



HIV-positive women and girls – their families and communities around them. It is impossible to do recommendations that are exhaustive and there are many groups not mentioned here such as community-based organisations, the media, the military, police forces, artists and writers who also have a positive and significant role to play. The challenge is to be able to reach people – local, national, regional, global; it must be through a range of media – broadcast, print, graphics, drama, poetry, dance and music; and it must address multiple levels of social, physical, spiritual, psychological and sexual. AIDS is the greatest taboos facing all our humanity around the world – so death and gender – so the task before us is extraordinary – but then so are the groups of people who are facing up to it at first hand. What is they are doing? What ways of thinking and working and reshaping the world are they doing in the face of this responsibility? The rest of us is to give them all the support and resources they need in order that they can turn their individual efforts into a shared responsibility that we all share.

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*Hosain*

# Beliefs, sexual behaviours and preventive practices with respect to HIV/AIDS among commercial sex workers in Daulatdia, Bangladesh

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## KEYWORDS

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Bangladesh

**Summary Objectives.** Despite the rising prevalence of human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS) since 1994 in Bangladesh, the World Bank found the epidemic to be preventable provided vigorous and prompt action is taken. High-risk heterosexual contact, especially among commercial sex workers (CSWs), is a major mode of transmission. Formulation of relevant and effective prevention programmes for HIV/AIDS requires better understanding of the knowledge, attitudes, behaviours and practices in the high-risk groups.

**Study design and methods.** A cross-sectional survey comprising face-to-face interviews using a structured questionnaire with items on knowledge, beliefs, condom use and other sexually transmitted diseases (STDs).

**Settings.** In total, 300 CSWs were interviewed between July and October 2000 in Daulatdia brothel. Daulatdia is one of the largest river ports in Bangladesh.

**Results.** Although most CSWs had heard of AIDS, correct knowledge of transmission and symptoms was lacking. HIV/AIDS was viewed as a remote threat, over-ridden by immediate economic and survival concerns. Although the majority of CSWs knew that condoms afforded protection against STDs/AIDS, only one-third of sex acts on the last day of work were protected through condom use. CSWs who were married, had been a CSW for less than 5 years, were with a new client, or had two or more clients in last working day reported significantly higher condom use. Client dissatisfaction was the major reason for not using condoms. Many did not obtain treatment for STDs in a timely fashion, if at all.

**Conclusions.** Bangladesh needs a comprehensive HIV programme that combines clinical and screening measures with behaviour change and communication interventions, along with change in social norms and attention to the rights of CSWs in order to avert a widespread epidemic.

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## Introduction

With estimates that 5.6 million people are infected, the human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS) epidemic has seen a dramatic rise in South and South-east Asia.<sup>1</sup> Situated between two very highly prevalent nations (India and Myanmar), where official data suggest that the infection rate ranges from 0.7 to 4%,<sup>2</sup> Bangladesh, a poor country with a population of 130 million and an annual gross national product per capita of only US\$350,<sup>3</sup> has paradoxically detected only 188 AIDS cases and an estimated 13,000 people are HIV positive, according to UNAIDS.<sup>2</sup> The third round of the sentinel surveillance conducted in Bangladesh in 2000-2001 showed an HIV prevalence of less than 1% among the high-risk groups such as commercial sex workers (CSWs), injection drug users and professional blood donors.<sup>4</sup> The World Health Organization (WHO) classifies Bangladesh as a Pattern III country, which means that the HIV infection rate has not reached one adult per 1000.<sup>5</sup> The probability of underestimation cannot be excluded due to poor surveillance, limited voluntary testing and counselling capacity in the country, and the stigma and fear of being identified and detected as HIV positive.<sup>2</sup> Although the Government argues that the forces behind epidemics in other countries are less pronounced in Bangladesh,<sup>6</sup> several studies now show that the prevalence has been increasing since 1994.<sup>7,8</sup> However, the World Bank found Bangladesh to have a narrow window of opportunity to prevent an HIV/AIDS epidemic if vigorous and prompt action is taken.<sup>9</sup>

Surveillance findings in Bangladesh concluded that a high rate of behavioural risk factors for the acquisition of HIV infection were very much in existence, at least among the sample population. Surveillance findings also revealed a low perception of risk, an alarming level of self-reported sexually transmitted diseases (STDs), and low condom use.<sup>4</sup> In Bangladesh, as in many countries in the region, heterosexual transmission of HIV is the most common means of infection, and CSWs represent a potential transmitter and/or recipient of AIDS. Furthermore, the factor heightening Bangladesh's risk of an epidemic is that one-quarter of single males and a significant but lower level of married males have had relations with CSWs. This is one explanation for the fairly high levels of STDs in Bangladesh.<sup>10</sup>

CSWs in most Asian countries have demonstrated extremely high (25-50%) HIV seroprevalence rates. HIV prevalence among CSWs in 1999 increased to 16.9% in Port Moresby, Papua New Guinea, and to

10.8% in Ho Chi Minh City, Vietnam. In 2000, prevalence among CSWs increased to 12.8% in Kuala Lumpur, Malaysia, and to 10.3% in Kunming, China.<sup>11</sup> Despite the substantial risk faced by CSWs, data on the HIV burden in this population is still scarce in Bangladesh. Serosurveillance and ad-hoc surveys have been conducted for CSWs by various organizations, but little data have been published to date.<sup>12</sup> A few studies in Bangladesh found reported levels of STDs among CSWs to be as high as 57% for syphilis and 28% for gonorrhoea.<sup>8,13,14</sup> Lack of economic opportunities, especially for women, poverty and other social and cultural factors related to gender-based exploitation ensure that a thriving sex industry exists throughout the country. According to the Institute of Epidemiological Disease Control and Research in Bangladesh, there are 50,000 registered CSWs in the country. This figure excludes another 50,000 hotel- and street-based CSWs. Therefore, some activists estimate the figure to be 100,000. According to the non-governmental organizations (NGOs), over 150,000 women are involved in prostitution in Bangladesh, while government statistics acknowledge only 9000.<sup>10,15,16</sup>

With treatment measures being expensive, prevention remains the mainstay of HIV control among less-developed countries, with intervention strategies such as education and changes in sexual behaviour. Therefore, a more comprehensive understanding of factors such as knowledge of, and attitude towards, AIDS and STDs, sexual behaviours and condom use among CSWs is essential in formulating appropriate policies, as well as in designing and implementing effective intervention programmes. This paper reports the findings from a descriptive cross-sectional survey to assess HIV/AIDS-related knowledge, attitudes, behaviour and sexual practices, including condom use and treatment-seeking behaviour for STDs among CSWs in Daulatdia, Bangladesh.

## Methodology

There are 15 registered brothels in Bangladesh, with Daulatdia brothel being the largest.<sup>15</sup> Daulatdia, in the Rajbari district, is situated about 100 km west of Dhaka and is the largest river port of the country, located at the confluence of the two largest rivers in Bangladesh—Padma and Jamuna. The Dhaka-Benapole highway, a major cross-country artery, passes through Daulatdia and connects the capital city Dhaka with Benapole, the largest land port of the country, and also connects to India. Every day, more than 1000 loaded freight trucks and a similar number



of passenger buses cross this river port by ferry. The trucks usually wait for 1-2 days for a ferry. This waiting time for truck drivers has led to a flourishing sex business in Daulatdia. Truck drivers have been identified as an important means for the transmission of HIV infection.<sup>17</sup> In addition, this is the last stop of the Khulna-Daulatdia railway route. As a result, thousands of temporary workers such as rickshaw pullers, taxi and pushcart drivers, porters, shoeshine boys, hawkers, day labourers, petty businessman, shopkeepers and restaurant/hotel workers can be found in Daulatdia.

This brothel was built on the side of the river extending over several acres of land. Periodic raids upon brothels by police and the mobility of CSWs prevent an accurate count of the number employed in the brothel at any given time. CSWs openly complain about exploitation and cheating by various powerful groups such as police and politicians. CSWs do not have access to health and education services, credit, sanitation, housing, information, recreation and other services available to other communities.<sup>18</sup> Although CSWs in the brothel may earn significant amounts of money compared with other disadvantaged groups, they cannot actually spend the earned money. Most of their earnings go to exploitative groups, such as pimps, brothel madams and corrupt officials.

At the time of this survey, there were approximately 2000 CSWs working in Daulatdia brothel. Of these, a convenience sample of 300 CSWs was selected for this cross-sectional study conducted between July and October 2000. In an effort to identify attitudes and beliefs that may put CSWs at greater risk for HIV infection and to define a focus for future intervention programmes, researchers used a survey questionnaire to interview the CSWs. This type of survey is effective in providing a baseline for evaluating intervention programmes as well as revealing aspects of education that need to be reinforced in specific population groups.<sup>19</sup> Interviews were conducted by three senior health workers of the Dhaka office of Gonoshasthaya Kendra (GK), one of the leading NGOs dealing with health in Bangladesh. The CSWs were familiar with GK because of their presence in Daulatdia brothel for the last several years offering mainly clinic-based curative services and disseminating health messages. An experienced primary healthcare physician of GK (one of the authors) conducted the training sessions for the interviewers.

The instrument (questionnaire) was pretested with 25 CSWs of Marwori-Mondir (a brothel of the Jessore district). The questionnaire was in Bangla (the language spoken by the local people) and consisted of both open- and closed-ended

questions. According to previous research and reports, this framework of knowledge, attitudes, beliefs and practices has been widely used in HIV/AIDS studies,<sup>20,21</sup> and some more questions were added by the researchers. Other than socio-demographics, the CSWs were also asked questions about how long they had been a CSW; HIV/AIDS knowledge including transmission, signs and symptoms, prevention, treatment and fatality; sources of information about HIV; attitudes towards HIV/AIDS; risk of contracting HIV/AIDS; preventive practices; condom use in last 24 working hours; and treatment-seeking behaviour for STDs.

Permission was obtained from the local police station before the interviews were conducted to avoid harassment. Interviews were conducted in the brothel complex between 9 am and 2 pm to avoid possible interference with their working hours. The CSWs are essentially lodged in small longitudinal structures made of tin (corrugated sheet) walls and roofs, consisting of small, adjacent rectangular rooms including rooms for the brothel owner or madam (bariwalli), pimps and some relatives. There are about 500 such structures inside a big compound. The backs of these structures form a natural wall for this compound. There are several entry points into the brothel from different entry points on each day and worked towards the centre in order to get a representative sample of CSWs. The respondents were aware of the purpose of the study, and verbal informed consent was obtained from each respondent after discussing confidentiality procedures. In order to gain a sample of 300 respondents, interviewers had to approach 314 CSWs, providing a response rate of almost 95%. Most respondents were extremely open and few appeared to display reticence in answering questions. Data were entered at the GK hospital of Savar, Dhaka. Bivariate analysis and  $\chi^2$  tests were performed to test associations between outcome variables and exposure variables. When small numbers were present, Fisher's exact test was used to compare differences in proportions. Odds ratios were measured taking one subsample as their referral group. The *P* value was set at 0.05 for significance at this stage. Data were analysed using STATA.<sup>22</sup>

## Results

### Demographic profile of the study population

A total of 300 CSWs were interviewed. The mean age of the sample was 26.6 years ( $SD \pm 6.2$ , range 15-46).



Most of them were never married (70%), had very little education (11%) and almost all came from rural areas (95%). Mean income in the last working day was about Bangladeshi Taka 173 (US\$1=Taka 55), which is approximately US\$3. More than half (58.4%) of the CSWs had been working in this profession for more than 5 years. Poverty and deprivation (51%) were the main factors forcing them to join the sex trade. The sociodemographic characteristics of the respondents are described in Table 1.

### Knowledge and attitudes

Table 1 also shows the level of knowledge and attitudes to HIV/AIDS. More than two-thirds ( $n=204$ ) of the CSWs had heard of 'HIV/AIDS'. Age and education were significantly associated with having heard about HIV/AIDS. Most of the 204 CSWs that had heard of HIV had learned about it from the health clinic run by the NGO, followed by radio/television and theatre/drama. Of those who had heard of AIDS, 85% ( $n=173$ ) named sexual

**Table 1** Sociodemographic characteristics of all respondents ( $n=300$ ), and knowledge and beliefs about HIV among commercial sex workers (CSWs) who had heard of AIDS ( $n=204$ ).

Variable	<i>n</i>	%	Variable	<i>n</i>	%
Age (years)			Income in last 24 h (Bangladeshi Taka)		
15-20	116	38.7	No income	108	36.0
21-25	71	23.7	<200	95	31.7
>25	113	37.7	201-400	49	16.3
Education			>400	48	16.0
No education	266	88.7	Duration in this profession (years)		
Can read and/or write	34	11.3	1-2	57	19.0
Religion			3-5	68	22.7
Muslim	252	84.0	6-10	89	29.7
Hindu	48	16.0	>10	86	28.7
Marital status			Reasons for joining this profession		
Never married	211	70.3	Poverty	152	50.7
Ever married	89	29.7	Family discord	64	21.3
Origin			Enticement/sold	47	15.7
Rural	284	94.7	Born in the brothel	37	12.3
Urban	16	5.3	Heard of AIDS		
Have children			Yes	204	68.0
Yes	104	34.7	No	96	32.0
No	196	65.3			
<i>Knowledge and beliefs of CSWs who had heard about HIV/AIDS (n=204)</i>					
<i>Source of knowledge<sup>a</sup></i>			<i>Beliefs about HIV/AIDS</i>		
Health clinic	121	59.3	AIDS can be prevented <sup>a</sup>		
Radio/television	107	52.4	By condom	162	79.4
NGO-staged drama	92	45.1	Vaccine	43	21.1
Clients/peers	78	38.2	Cleaning/washing	34	16.6
Local practitioners	32	15.7	By antibiotic	26	12.7
Spread of AIDS <sup>a</sup>			Do not know	12	5.9
Sexual intercourse	173	84.8	Need more health education		
Casual contacts	55	29.0	For themselves	161	53.7 <sup>b</sup>
Needles	37	18.1	For clients	183	61.0 <sup>b</sup>
Mother to fetus	13	6.4	There is a vaccine against AIDS	43	21.1
Do not know	11	5.4	At risk of contracting AIDS	185	90.7
Symptoms of AIDS <sup>a</sup>			Healthy person can have AIDS	93	45.6
Extreme weight loss	63	30.8	AIDS means death	167	81.9
Recurrent fever	45	22.1	Clients should use condom	79	26.3 <sup>b</sup>
Chronic cough	39	19.1			
Prolonged diarrhoea	17	8.3			
Do not know	103	50.5			

NGO, non-government organization.

<sup>a</sup> Total response exceeded 100% because of multiple responses.

<sup>b</sup>  $n=300$ .



transmission as a mode of transmission. Misconception about HIV transmission by casual contact such as kissing, using contaminated clothes, sharing food, and sharing toilets and a room with an HIV-infected person was found to be common. Uneducated CSWs were 1.5 times more likely to have misconceptions about disease transmission, but the difference was not statistically significantly ( $P=0.21$ ,  $\chi^2=1.60$ , 95% CI=0.7-3.5). Common symptoms of HIV/AIDS mentioned by the CSWs were weight loss and cough. About 185 CSWs (91%) believed that they were at personal risk of acquiring AIDS because of their work. For prevention, 162 women (79%) believed that condom usage was an effective prophylactic to prevent HIV infection, 43 CSWs (21%) believed that there is a vaccine for AIDS, and 34 women (16.6%) thought that HIV could be preventing by washing/cleaning after sex (see Table 1).

### Benefits of using condoms

CSWs consider the function of condoms to be either for prevention of STDs/AIDS or pregnancy. The most common response was that it would prevent STDs (76%), followed by prevention of HIV/AIDS (72%). Forty-nine percent of respondents said that it would prevent unwanted pregnancies. About 12% mentioned that it would prevent abdominal infection, tumour/cyst formation and jaundice.

### Preventive practices against AIDS

More than four-fifths (85%) of CSWs who had heard of AIDS reported that they took certain measures to prevent AIDS/STDs, such as condom use during sexual intercourse (79%), washing genitalia (17%) after sex, and taking vaccines and antibiotics.

### Sexual practice and condom use

A total of 502 clients were served by these 300 CSWs during their last working day prior to the survey. The average number of clients served by each CSW in the last working day was 1.67 (see Table 2). More than one-third of clients were repeat/regular clients. The proportion of sex acts protected by condom use was 36%. Sex with new clients had 3.3 times greater likelihood of being protected through use of condoms than sex with repeat/regular clients ( $P\leq 0.001$ ,  $\chi^2=18.03$ , 95% CI of OR=1.8-6.1). CSWs who were married, had spent 5 or less years in the profession, had two or more clients in their last working day, and sex with a new client were factors that were significantly associated with condom use

Table 2 Sexual practices of commercial sex workers (CSWs) in Daulatdia.

Variables	n/total	%
Number of clients		
1	149/300	49.9
2-3	91/300	30.3
4-5	43/300	14.3
>5	17/300	5.6
Type of clients		
New	318/502	63.3
Repeat/regular	184/502	36.7
Protected sex	181/502	36.1
Consistently used condom	11/300	3.7
Consistently did not use condom	10/300	3.3
Initiation of condom use		
CSW	58/181	32.0
Client	53/181	29.3
Both	70/181	38.7
Reasons for not using condom		
Clients refusal	149/321	46.4
Acquaintance/no STD	114/321	35.5
Financial incentives	31/321	9.7
Condom was not available	17/321	5.3
Physical abuse/threat	10/321	3.1

STD, sexually transmitted disease.

(see Table 3). Although about 36% of sex acts were protected by condom use during the last working day, only a minority of the CSWs (3.7%) had used condoms consistently during their last 2 working weeks. About 26% ( $n=78$ ) of respondents wanted their customers to use a condom every time they had sex, and in one-third of cases, CSWs initiated condom use. In cases, where the CSW offered to use a condom, 28% of the clients protested at first but finally agreed to use one. The CSWs mentioned a variety of reasons for not using condoms, with 'client's refusal because of diminished sexual pleasure' ( $n=149$ ) as the main reason (see Table 2).

### Treatment-seeking behaviour

Of the 300 CSWs asked whether they sought any treatment for STDs during the month preceding the interview, more than half ( $n=153$ ) reported some treatment-seeking behaviour for STDs. Of those, 72 had sought treatment from the GK health clinic, 43 sought treatment from local unqualified allopathic practitioners, and 21 had self-medicated or treated themselves by purchasing drugs from the pharmacy. The mean delay in treatment seeking after the onset of symptoms was 27 days. Those who did not seek treatment ( $n=33$ ) for their complaints mentioned various reasons such as: (i) symptoms were



Table 3 Association of various independent/predictor variables with condom use.

Variable	Condom use		$\chi^2$	P value	OR (95% CI)
	Used	Did not use			
Age (years)					
≤25	54	133	1.79	0.18	1.4 (0.8-2.4)
>25	41	72			
Education					
No	81	185	1.60	0.21	1.6 (0.7-3.5)
Yes	14	20			
Marital status					
Unmarried	55	156	10.3	<0.01*	2.3 (1.3-4.0)
Married	40	49			
Duration as sex worker					
≤5 years	48	77	4.49	0.03*	1.7 (1.01-2.8)
>5 years	47	128			
Heard about AIDS					
No	26	70	1.37	0.24	1.37 (0.8-2.5)
Yes	69	135			
Know sexual transmission of HIV					
No	33	93	3.13	0.07	1.6 (0.92-2.7)
Yes	62	111			
Number of clients					
1	36	113	7.71	<0.01*	2.01 (1.2-3.5)
2+	59	92			
Types of clients					
Repeat	19	102	18.2	<0.001*	3.3 (1.8-6.1)
New	76	123			

\*Denotes significance at 0.05 level.

self-limiting; (ii) symptoms were not serious enough to warrant medical treatment; (iii) the *bari-wali* (landlord of the brothel) does not allow me to seek medical care; and (iv) I do not have enough money to visit a doctor/clinic.

### Substance abuse

Most CSWs were at risk of being addicted to various substances. Betel leaf/areca nut, cigarettes/*bidi* and *Gul* (ashed tobacco) are used commonly by most CSWs. Among the studied CSWs of this study, 156 reported drinking alcohol. Some of them admitted using marijuana ( $n=54$ ), opium ( $n=10$ ) and sleeping pills ( $n=13$ ). None admitted using intravenous drugs, cocaine or heroin.

### Discussion

This paper presents extensive information about knowledge, attitudes and practices with respect to HIV/AIDS, condom use and STD treatment-seeking behaviour in a sample of 300 CSWs in Bangladesh.

Survey interviews are always subject to inaccurate recall. The researchers attempted to reduce this bias by minimizing the recall period, careful selection and training of the interviewers, and providing assurances of privacy and confidentiality to respondents. Some respondents were probably sensitized by previous educational encounters. The non-random sample of CSWs may affect the generalizability of the results. However, the demographic profile of the sample interviewed for this study is very similar to that of CSW samples studied previously in Bangladesh.<sup>23-25</sup>

As in the previous studies, almost two-thirds of CSWs were aged 15-25 years. They had left their homes due to family discord, and were misguided or sold when they came to this area in search of jobs. Some of the CSWs were born in the brothel. Most respondents (89%) did not have any formal education, and had been working in this profession for more than 5 years. Thus many young women in commercial sex work have become practically captive in this profession.

A high number of CSWs, almost three-quarters, had heard of AIDS but misconceptions persisted over transmission by casual contact such as hand



shakes, kissing, contaminated clothes, sharing food, and sharing toilets and a room with an HIV-infected person. There is a need to dispel unfounded fear of causal AIDS transmission that may lead to discriminative behaviour towards people with HIV infection. Taking antibiotics, washing external genitalia with antiseptic/cleansing agents and inspecting clients' genital organs were considered to be preventive measures against HIV. It was found that the GK health clinic, radio/television, NGO-staged drama/theatre and peers were important sources of knowledge. There could be a bias in naming the GK clinic as an important source of information about HIV because the interviews were conducted by GK workers, even though they were from the Dhaka office. However, the CSWs clearly did not have correct knowledge about HIV/AIDS. If at all, the study highlights the magnitude and scope of work for the NGO (GK) inside the brothel with respect to providing correct and appropriate knowledge about HIV. However, compared with earlier studies in Bangladesh,<sup>26, 27</sup> the level of knowledge about HIV/AIDS was found to be much higher. This may be due to various actions taken by the Government and various NGOs in the last several years.

Although only 36% of sex acts in the last 24 h were protected through condom use in this study, this figure is high compared with previous studies with CSWs in Bangladesh that found only 12-24% of sex acts to be protected.<sup>23,28</sup> This study also found that only 3.7% of the CSWs used condoms consistently, and this figure is much lower when compared with findings from other developing countries, which show much higher rates of condom use. For example, in Hong Kong, Cambodia and the Philippines, the proportion of female-CSWs who always used condoms in vaginal sex with commercial sex partners was 75, 50 and 42%, respectively.<sup>11,29,30</sup> The women more likely to have unprotected sex were single, had less clientele, and had worked in the profession for more than 5 years. They were more likely to have unprotected sex with repeat/regular clients than with new clients. Client's displeasure was cited as the main reason for not using condoms. These findings underscore the urgent need to implement educational and motivational campaigns regarding condom use among the male clients of CSWs. One core issue regarding condom use in the sex act appears to be the power to make decisions in the CSW-client interaction. Who wields the power in this interaction, and how does the person with less power (usually the CSW) negotiate the use of the condom? Unfortunately, health education programmes for STDs/AIDS are rarely complemented by adequate skills training to

negotiate with clients, and many women abort the negotiation process with sexual partners who refuse to use condoms. Skills training and role-playing exercise training may be especially useful in this regard.<sup>31</sup>

The study also revealed that condoms were offered depending on the type of sexual partner. For new clients, the CSWs are more persuasive about condom use than with repeat/regular clients. CSWs who had more than one client were twice as likely to use condoms than those with one client ( $P=0.005$ ,  $\chi^2=7.71$ , 95% CI of OR=1.2-3.5). This finding is similar to a study conducted in Singapore.<sup>32</sup> By denying the risk of HIV infection and shunning protected sex with repeat/regular clients, CSWs create the sense of a secure committed relationship. They also assume that their repeat/regular clients are free of AIDS/STDs, and believe that clients who look healthy and clean do not have any disease. Another reason mentioned by CSWs for not persuading clients to use a condom is that they had tried to convince their regular clients several times before, but it did not work. Therefore, they considered that asking clients to use a condom was a waste of time. For the past several years, AIDS prevention programmes in Bangladesh have introduced the promotion of condom use among CSWs and their clients. The 100% Condom use Program (CUP) in Entertainment Establishment, which was first introduced in brothels in Thailand, has become increasingly popular worldwide.<sup>33,34</sup> CUPs supported by governmental and non-governmental agencies have yielded measurable successes.<sup>35</sup> The main strategy of the CUP is to convince the pimps and managers of all brothels to enforce condom use as a precondition of commercial sex. However, two demonstration projects for CUPs in Mumbai, India gave mixed results, confirming the centrality of co-operation between sex work establishments and the Government in HIV risk reduction.<sup>36</sup> The study raises important questions: how do risk perceptions and knowledge of HIV/AIDS fit into decisions concerning condom use, and what does decision making regarding condom use tell us about the type of public health interventions required to stem the HIV epidemic? There is a pressing need for research aimed at answering such questions and identifying contextual and socio-cultural factors that influence protected sexual behaviour. Qualitative anthropological studies could be instrumental in elucidating why adequate knowledge of potential negative health consequences appeared to have little impact on reducing risky sexual behaviour. In addition to individual-based behaviour change interventions, HIV workers and researchers are increasingly arguing for



attention to institutional arrangements,<sup>37</sup> legal issues and a human-rights-based approach to HIV control and prevention.<sup>38</sup>

In a paper about HIV in India, the authors argued that CSWs can be empowered and emancipated, and that mere promotion of condom use or educational strategies will not be effective in controlling the HIV/AIDS epidemic.<sup>39</sup> Extensive developmental work aimed at improving the living conditions of CSWs is required for effective HIV/AIDS prevention.<sup>35</sup> There are two aspects to this change: certain facilitative policies, laws and programmes on the part of the Government coupled with changes emanating from within the community of CSWs that demonstrate a move towards empowerment and autonomy.

A review of health care of female CSWs concluded that the public health consequences of delivering poor health care to CSWs are generally severely underestimated, particularly in societies, where prostitution is illegal.<sup>40</sup> Authors reviewing international programmes for HIV control among CSWs found that regulatory efforts, such as mandatory HIV testing, and detention seemed ineffective.<sup>41</sup> The WHO called for changes to governmental laws and policies on sex work in Asia's rapidly growing sex industry because penalization of CSWs renders the implementation of HIV prevention programmes extremely difficult.<sup>42</sup> It is encouraging that the Bangladeshi High Court has ruled that prostitution, as a livelihood, is not illegal.<sup>43</sup> This judgement means that prostitutes in Bangladesh now have the legal authority to practice their trade. This judgement is highly unusual because it made Bangladesh one of the few Islamic countries that does not ban prostitution. Many health officials welcomed the ruling because outlawing prostitution only made it more difficult to distribute condoms to CSWs, and this could help in efforts to contain the spread of HIV.

Currently, about 200 NGOs are working in Bangladesh in the area of HIV/AIDS to supplement government activities.<sup>9</sup> One UNAIDS case study of HIV prevention projects in female CSWs in Papua New Guinea, India and Bangladesh found that the majority of projects tended to deal with high-risk behaviour on an individual basis by using methods such as advice, counselling and peer education. However, the best results appeared to be reached through enabling approaches geared towards creating greater access to safer sex, or those approaches that attempt to prevent unsafe sex.<sup>44</sup> These NGOs have to go beyond individually targeted educational interventions. Furthermore, social movements originating from within the CSW population in Bangladesh are also noteworthy and promising. In 1998,

Durjoy Nari Shongho was established with the aim of empowering the CSWs and it is registered with the Ministry of Women and Children's Affairs of Bangladesh. One of the main issues it dealt with was the right to sexual health, and it initiated a campaign for condom promotion among both clients and CSWs.<sup>45</sup> In a press conference on World AIDS Day in December 2003, the spokesperson for CSWs clearly articulated the need for female condoms (the supply of which was inadequate) as an option for safe sex choices because most male clients were reluctant to use condoms.<sup>46</sup>

## Conclusions and recommendations

The findings of this study suggest that female CSWs in Bangladesh are at high risk of HIV/AIDS transmission. Inadequate knowledge of the basic concepts of HIV/AIDS, low frequency of condom use, and lack of treatment for STDs contribute to the high risk in this population. The survey results also demonstrate that male clients' attitudes, especially towards condom use, may contribute to HIV transmission. Client refusal was one of the major reasons for lack of condom use, and the male client initiated use of a condom in only 29% of sexual encounters (see Table 2). Although the education of male clients is equally important, it is necessary that CSWs should be taught culturally appropriate, effective refusal and negotiation skills to modify their partner's behaviour and ensure consistent condom use. In particular, messages and materials intended for these CSWs must be kept simple so as to be easily understood by people with low levels of education. Any type of HIV/AIDS intervention requires that the target population is aware of the existence of the phenomenon of HIV/AIDS and is educated about the threats that it poses to them,<sup>21</sup> but education or (individualized) behaviour change campaigns alone is not sufficient. Some authors even call for innovative, interdisciplinary approaches that move beyond the limited successes of traditional behaviour interventions towards social and structural change.<sup>36</sup>

Sex work is a social problem that is difficult to address given the worsening economic recession in Bangladesh. Furthermore, Bangladesh as a country has many contextual features that are extremely conducive to rapid spread of HIV infection such as widespread poverty, unequal access to health services, subordinate status of women, and low literacy and education levels. Imbalance of power, low self-esteem, gender issues and violence



may also influence the use of condoms.<sup>47</sup> All combine to restrict knowledge in relation to health and negotiating power in matters of sex. These factors could place the country on the edge of an HIV epidemic. While economics is at the root of the problem, it is undesirable that the number of AIDS cases continues to soar. Therefore, while the economic problems are being addressed in developing countries such as Bangladesh, the threat of AIDS epidemics necessitates a comprehensive and multilevel strategy that includes clinical and screening strategies for the short term along with establishment of education and behaviour change programmes in the medium term, and ultimately changes in social norms with greater empowerment of CSWs for not only ensuring prevention of the disease but promoting their own health.<sup>48</sup>

Campbell provided a detailed account of the social organization of commercial sex work in a squatter camp in a South African gold mining community.<sup>49</sup> In-depth interviews with 21 women living in conditions of poverty and violence revealed that even amongst this disadvantaged group of women, the tendency to speak of women's 'powerlessness' (as is the case in many studies of African women in the context of the HIV epidemic) is unduly simplistic and fails to take into account that, in order to face the struggles of daily living, the women have constructed a range of coping strategies and social support networks, which could serve as potentially strong resources for community-based programmes.

In January 2004, the Daulatdia sex workers were in the news for recognizing the importance of organizing themselves and taking collective action:<sup>18</sup>

'Sex workers at Daulatdia brothel have become organized under the banner of Mukti Mahila Samiti (MMS) to protect themselves, improve their lifestyles and create awareness of various issues like STDs. After working silently for 3 years, the MMS organized the annual conference of sex workers at the Daulatdia brothel, 100 km from the capital Dhaka, where they raised a charter of demands consisting of 11 points including social rehabilitation and integration of their children into the mainstream of society through long-term measures, and ensuring educational and recreational facilities for their children. Raising their voice against the contemptuous attitude of society towards them, the sex workers called for understanding and acceptance, saying, "We're also human beings. Like other professions in the world, ours is also

permitted by law. Then why are we being ostracized and excluded from normal life?"'

These reports from Bangladesh give hope that the epidemic can still be contained through broad-based public health efforts. A rights-based, participatory approach, comparatively new in the field of public health, is required not just for tackling the HIV epidemic but for promoting health and better quality of life among CSWs because their occupation is deeply entrenched in gender discrimination, exploitation and marginalization. However, it does need concerted effort on the part of the Government and other societal institutions.<sup>38</sup>

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