

Sex Work and Trafficking
A Donor/Activist Dialogue on Rights and Funding
11-12 December 2008
Tarrytown, USA

Creating Resources for
Empowerment in
Action (CREA)

Global Network of Sex
Work Projects (NSWP)

OSI's Sexual Health
and Rights Project
(SHARP)

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Objectives

The last decade has seen increased global attention and resources to combat trafficking, particularly into the sex sector. Many of the laws, policies and programs developed out of this support, however, have resulted in serious human rights violations against sex workers. In many cases, the application and emphasis of anti-trafficking legislation on curbing ‘sex trafficking’ criminalizes consensual adult commercial sex and ineffectively addresses issues of mobility and migration.

The Donor-Activist Dialogue on Sex Work and Trafficking brought donors, anti-human trafficking advocates, sex workers’ rights activists, researchers, and academics from different countries together to:

- Understand some of the language and terms generally used to describe sex work, migration and trafficking, and how these concepts are inter-related but distinct.
- Identify the real-life consequences to sex workers and persons trafficked into the sex sector and their families of policies and programs that are premised on the notion that all sex work results from trafficking.
- Examine how to leverage existing models that approach sex work from a rights-based perspective to stop trafficking into the sex sector.
- Recommend how to support and implement anti-trafficking efforts that affirm the rights of sex workers and others affected by anti-trafficking legislation.

This report summarizes the presentations, discussions, and recommendations made at a two-day dialogue organized by CREA, NSWP and OSI held on 11-12 December, 2008 at Tarrytown, New York.

Common Understandings

When was there a word as loaded as ‘trafficking’? In a ‘free association’ exercise that began the Donor-Activist Dialogue, participants listed a range of words and ideas related to trafficking: migrants, victims, slaves, prostitution, female, borders, clients, underworld, police, pimps, smuggling, HIV/AIDS, politics, false promises, innocence, exotic, male domination, broken families, exploitation, illegal, increasing, organized crime, drugs, arms, media, rights, violence, rape, voluntary return, virginity, marriage, distortion, opportunity, naïve, mobility, sex work, rehabilitation, morality, sex slaves, sexual regulation, sex tourism, poverty, minors, children, trade, deportation, detention, problem, work, red-light district, coercion, sex, psychological trauma, rescue.

Trafficking: Earlier Understandings

Early understandings of trafficking emerged in the late 19th century, at a time when European social purity movements were trying to eliminate social ills and moral vices. Abolitionist struggles were simultaneously challenging ‘white slavery’: the enslavement of white women in prostitution even as slaves of African descent had been freed. As these concerns played into each other, trafficking and prostitution started getting interlinked. Countries began adopting mechanisms of surveillance and deportation and treating female mobility with suspicion. Some governments profiled and restricted the movement of young female migrants;¹ Greece, for example, passed legislation forbidding women under 21 to travel abroad without a special permit.²

These policies also carried other turn-of-the-century pre-occupations: racial and class biases and purities, concerns around preserving female chastity, and protecting national borders.

These understandings of trafficking, which are rooted in ending ‘white slave traffic, show up in early international agreements and conventions, including those passed by the League of Nations.³ All these linked trafficking only to prostitution, saw it as limited to women, or women and children, and deemed consent immaterial. “Whoever, in order to gratify the passions of another person, has procured, enticed, or led away *even with her consent*, a woman or girl under age, for immoral purposes, shall be punished,” declared the 1910 Convention. The same language was used in the 1949 Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others.

¹ ‘Each of the governments undertake to have a watch kept, especially in railway stations, ports of embarkation, and en route, for persons in charge of women and girls destined for an immoral life (Article 2, p1, 1904 International Agreement for the Suppression of the White Slave Trade).

² Jo Doezeema, *Who Gets To Choose? Coercion, consent and the UN Trafficking Protocol* p. 5 (Gender and Development, Volume 10, Number 1, March 2002).

³ These agreements and conventions are the:
1904 International Agreement for the Suppression of the White Slave Trade;
1910 International Convention for the Suppression of White Slave Traffic;
1921 International Convention for the Suppression of Traffic in Women and Children; and the
1933 International Convention for the Suppression of the Traffic in Women of Full Age.

Trafficking: Current Understandings

The **2000 Palermo Protocol** embodies the current international understanding of trafficking. It represents significant conceptual advances in recognizing that:

- All people - men, women and children - can be trafficked (not just women and girls).
- Trafficking can occur into all labor sectors (not just into prostitution).
- Force, coercion or deception must be present (as opposed to consent, but , consent is deemed irrelevant in the case of children.)

Under this Protocol, trafficking is understood to take place only if three elements are present:

- Acts (recruitment, transportation, transfer, harbouring, or receipt of persons);
- Means (threat, use of force, coercion, abduction, fraud, deception, abuse of power, and vulnerability); and
- Purpose (exploitation)⁴.

The Protocol's distinction between the 'exploitation of prostitution' and 'prostitution' has enabled many countries to sign it. Signatories include the Netherlands, where prostitution is legal, and the United States of America, where prostitution is mostly illegal.⁵ The Protocol's reframing of trafficked people as 'victims,' rather than as 'criminals' who illegally cross borders or break other laws, is another strength. Although the Protocol focuses on cross-border trafficking, countries are encouraged to enact national laws to address domestic trafficking.

Despite these strengths, the Palermo Protocol has some limitations. First, its focus is on crime control at the expense of victim protection. Although it offers protection to victims and urges that they be given services, it does not mandate services. As part of a Convention to end organized transnational crime,⁶ it details international cooperation mechanisms to tackle cross-border crime. These include strengthening border security and controls, police patrols, and surveillance, and increasing information exchange between nations. The Protocol however, offers little human rights protection for trafficked persons,

⁴ The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, known as the Palermo Protocol, defines trafficking as: '*Trafficking in persons*' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

⁵ [Nevada](#) is one of only two [U.S. states](#) that allow some legal [prostitution](#); in most of its rural counties [brothels](#) are legalized and heavily regulated. In [Rhode Island](#), the act of sex for money is not illegal, but operating a brothel, pimping, and street prostitution are illegal. See Nevada Revised Statutes 244.345 (<http://www.leg.state.nv.us/nrs/NRS-244.html#NRS244Sec345>), accessed April 24, 2009. See Rhode Island General Laws, Chapters 11-34 (<http://www.rilin.state.ri.us/Statutes/TITLE11/11-34/INDEX.HTM>), accessed April 24, 2009.

⁶ The Trafficking Protocol is one of two supplementary Protocols to the United Nations Convention Against Transnational Crime. As of 2003, 117 of the 192 member states of the UN had signed the Trafficking Protocol.

an element which is made optional, rather than binding. Second, while it does not equate trafficking to prostitution, prostitution remains a marked category.

Trafficking and Prostitution: Understanding the Difference

There is enormous confusion between the *human rights abuse of trafficking in persons* and the *human occupation of prostitution, or sex work*.

Sex trafficking involves one individual or group coercing or tricking (or both) another individual into entering the sex trade for purposes of exploitation. As such, it entails a gross abuse of human rights. But trafficking in persons occur in other contexts, too- for example -men, women and children are also trafficked routinely into household and farm labor as well as sweatshop manufacturing. A narrow focus on sex trafficking results in these other forms of trafficking being ignored, and denies help and protection to all the men, women and children forced into and trapped in abusive working situations in other labor sectors. Whether the persons involved are trafficked for sex or other types of labor, however, they are all purposely exploited by others for the others' gain.

In contrast, coercion and exploitation are absent in the human occupation of prostitution, or sex work, Sex workers include men, women and transgendered persons who offer sexual services in exchange for money. The services may include prostitution (sexual intercourse) and other services such as phone sex. Sex workers engage in this for many reasons, but the key distinction here is that they make a decision of their own accord to engage in sex work and they are not coerced into sex work.⁷ Equating sex work and sex trafficking both ignores the realities of sex work and endangers those engaged in it.

Exploitation: Moral or Economic?

The conflation of trafficking and prostitution has resulted in the problematic assumption that prostitution is inherently exploitative.⁸ Historically, the concept of 'exploitation' is rooted in 19th-century discourses of poverty, where economic exploitation was defined as the act of owning the profits of another person's labor. When prostitution is conflated with trafficking, however, the term becomes associated with moral exploitation, such that the act of prostitution itself is termed 'exploitative,' whether or not economic exploitation exists for individual sex workers.

Understanding exploitation as 'economic' versus 'moral' brings forth different responses. Economic or labor exploitation evokes responses of unionization, workers' organizing, and articulations of workers' rights. Moral exploitation brings forth raids, sweeps, rescues,

⁷ *Trafficking and Prostitution: Understanding the Difference* by Melissa Ditmore
<http://www.rhrealitycheck.org/blog/2008/05/05/sex-work-trafficking-understanding-different>.

⁸ The 1949 convention is named the United Nations Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others. The 2000 Palermo Protocol uses the same phrase: 'Exploitation, shall include, at a minimum, the *exploitation of the prostitution of others* or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.'

and rehabilitation, and dislocates the concept of consent; consent is deemed irrelevant, ludicrous, or immaterial in situations of extreme moral exploitation.⁹

Defining prostitution as moral exploitation not only obscures economic exploitation within the sex trade, but also excludes it from the discourse on labor exploitation. Selling is a key input in capitalist economies - where everyone sells something to survive, everyone has the potential to be exploited at different degrees and levels. The obsession with sexual exploitation detracts attention both from everyday labor exploitations and from the extreme exploitation of forced labor.

The legislative responses to the moral and economic exploitation inherent in trafficking are not the same and do not require the same response as responses to economic exploitation that may exist in various sex work sectors. In India, the Immoral Trafficking Prevention Act of 1956 defines women in prostitution as exploited victims and does not seek to punish them. It sees those living off the earnings of prostitution as ‘exploiters’ and punishes brothel-keepers and pimps.

Many other countries also do not criminalize the selling of sex, but criminalize the economic circle around it, following the approach of the 1949 Trafficking Convention. Some of these relationships may be economically exploitative; others are not. But given the abolitionist aura of moral exploitation surrounding prostitution, certain relationships – such as the one between pimps and sex workers – are only, always, and inevitably viewed as exploitative.

In the dominant public discourse on prostitution, sexual exploitation is seen as not just different,¹⁰ but as more degrading than any other kind of exploitation. In the popular imagination, prostitution is inevitably forced, and akin to slavery in extreme cases. There is a public perception that a prostitute sells her *body*, a concept akin to that of slavery, where a person is sold and ownership exchanged. Sex workers refute this formulation, noting that what is actually sold in a commercial sexual transaction is sex, while the worker continues to retain ownership of his or her own body.

If trafficking is conflated with sex work, it is also conflated with smuggling. It is important to clarify that smuggling - or illegal, undocumented entry - is an act that can take place consensually, with or without exploitation or trafficking. A migrant who consents to someone else helping him or her to illegally cross an international border or one within the same country is smuggled; if he or she is exploited in a low-paying job during this process, this is a labor violation. Only when force, coercion, or deception is involved in this labor movement does it become ‘forced labor’ or trafficking.

Like smuggling, exploitation takes place across many labor sectors, both in the presence and absence of trafficking. Undocumented migrants are particularly vulnerable to

⁹ Recent anti-pornography debates have also deemed consent by adults immaterial.

¹⁰ According to the UN Interpretive Note, the terms ‘exploitation of the prostitution of others’ and ‘sexual exploitation’ were intentionally left undefined so that each state can decide for itself how to deal with laws regulating adult voluntary sex work or prostitution.

exploitation, given their tenuous legal status, but international and domestic laws on trafficking do not often address the labor exploitations that most migrants and working populations experience daily .

Agency: Beyond the Force/Choice Binary

Trafficking and sex work have typically been framed in binaries of force and choice. In this debate, the term choice refers to the notion of a liberal, individualistic free choice that arises from 'free will, while force is coercion, and is understood to be non-consensual.

Neither of these positions describe the complexity of the choices and negotiations that people doing sex work undertake to secure their survival. Many women say they neither chose nor were forced into prostitution; that they merely took the best possible option in their context. They are not able to define specific points or moments in their lives that correspond to the concepts of 'force' and 'choice'.

Rather than aiding in the framing of appropriate laws and policies on this issue, the emphasis on the force/choice dichotomy as a framework for understanding prostitution serves to deflect attention from the ordinary contexts and circumstances in which men and women craft the best possible option for survival from those available to them.

The notion of 'agency' offers a way to cut through the overpowering force/choice binary. Within the dominant discourse on prostitution, agency is often mistakenly conflated with free choice, but agency can more usefully be thought of as 'contextualized choice,' where the choice is framed by structural contexts that could include class, citizenship, gender, and access to education.

The concept of agency allows for the consideration of economic contexts within which individuals navigate their lives. For example, a landless labourer has agency when he or she migrates to a city in search of work, as does someone who does sex work, either as a full time worker in a brothel, or as someone who does so episodically to make ends meet.

Real-life Consequences

The conflation of sex work and trafficking takes place at multiple levels – in media representation, popular opinion and the public domain, in law and policy, and in programs and interventions. This has real-life consequences for sex workers, persons who are trafficked into the sex sector, and their families.

Media Representations

The media plays a critical role in creating and perpetuating the notion that all sex work is trafficking. The visual narrative of sex work is often that of the ‘diseased brothel,’ a landscape peopled by innocent girls and traumatized women, visited by bad men, and surrounded by crime, squalor, and illegality. Not only do such visual representations conflate trafficking and sex work, they also frame these in a way that simultaneously legitimize missionary impulses to save, rescue, and rehabilitate. Framing sites of sex work as ‘dangerous’ and sex workers as ‘unfit mothers’ has real-life consequences: in several countries, including the United Kingdom, social service authorities have the power to remove sex workers’ children, who are typically seen to be in ‘moral danger’.

In some European countries, posters and print advertisements depict trafficking into the sex sector through images of small female figures trapped in gigantic cages, held in giant fists, dangling from oversized puppet strings, or groups of naked women packaged as chicken legs or ‘meat.’ Typical captions include: ‘You are not a commodity’; ‘You will be sold like a doll’; ‘You only pay with your dignity, your health and your freedom.’

**Steady jobs available abroad
No qualifications necessary**



**You only pay with your dignity,
your health, and your freedom.**

Everywhere, across the world, women are put in these situations, and sold into slavery. Why would anyone want to give you a job abroad? Because the real job is prostitution. There's a lot of money to be made in prostitution. But not for you. Your part will be violence, coercion, isolation and humiliation. And who will protect you? No one. You will be a stranger in a strange land. Please don't be a good girl. Please don't be a slave.

This is a document from the International Organization for Migration (IOM). It is a document that is not a document. It is a document that is not a document. It is a document that is not a document.



Although these depictions aim to stop trafficking into the sex sector, they often do not succeed. Trafficked women are unable to identify with these dramatic images, which are also sensationalized, sexualized and exploitative. Regrettably, such mass media images inform real-life conceptions of ‘trafficked women.’

Even though trafficking occurs in many labor sectors, media representations focus on the trafficking of women and children into the sex sector. Two sets of myths are perpetuated in the process: one, that men are not trafficked, and two, that all trafficking is trafficking into the sex sector. As a result, trafficking situations involving men are just not part of public or policy consciousness. Every time television channels broadcast hidden camera footage of celebrities entering brothels to “rescue these sex slaves from the pimps and madams who illegally own them,” they reinforce several myths that have real-life consequences. Perhaps the biggest is the myth that trafficking takes place only within the sex sector and is a form of ‘modern-day’ slavery. “Today’s slaves are women and children, forced against their will to have sex with as many as 40 men per day.”¹¹

Raids, Rescues and Rights Violations

Increasing raids on red-light districts is one of the real-life consequences of media distortions. In 2005, an international Christian non-profit group called Restore International¹² launched a raid on a red-light district in Sangli, India. About 60 policemen, 17 female police constables, and eight police officers carried out the raids; 35 women and girls and 13 brothel-keepers were picked up, including two schoolgirls visiting their families. The courts released most of those arrested, since they were adults (only minors can be rescued as per the law). Six months later, hundreds of women in prostitution publicly protested against Restore International for harassing and terrorizing them, loudly proclaiming ‘Save us from saviors!’¹³

Such raids occur as the media continues to conflate trafficking, sex work, sexual exploitation, and sexual violence. All these are held to be the same and it is assumed that ‘slaves’ must be rescued from all of these in the same breath. Several human rights violations occur during these raids, including physical violence, violation of privacy, and violation of due process rights. These violent raids are often neither seen nor challenged as rights violations. In any other context, raids – which are often carried out without official warrants – would be seen as unlawful entry and as violating individual access and right to due process. In raids on establishments where women sell sex, rights are overlooked in the name of doing good.

Legal Exceptionalism

¹¹ http://www.amw.com/features/feature_story_detail.cfm?id=1299

¹² Restore International’s Christian roots are explicated on its website

www.restoreinternational.org: “Christ’s mandate to care for the widow and orphan, heal the sick and bring justice for the oppressed. Living out these commands shapes our lives and actions.”

¹³ Press release 24 November 2005 from SANGRAM, a non-government organization in Sangli, which has collectivized more than 5500 women, men, and transgender persons in prostitution and sex work since 1992.

Raids and rescues are possible because they are often a result of legal exceptionalism, in which the legal rights of some or all people are suspended in the name of furthering the greater common good. The most famous paradigm of legal exceptionalism is that of nations suspending the rule of law when they are under threat of attack or dissolution. In recent times, several countries have enacted anti-terror legislation that does not require investigating authorities to follow due process, because ‘terrorism’ is seen as a crisis that merits an exception. Legal exceptionalism also occurs when nations declare states of emergencies, suspend the rule of law, and declare martial law. Although there may be moments when the rule of law should be suspended, there should be clear principles and procedures relating to the justification and application of derogation provisions. The abuse of legal exceptionalism can lead to significant human rights abuses and the long term suspension of civil liberties.

Raids and rescues, which are usually undertaken by police, are often characterized by instances of legal exceptionalism. These can include, but are not limited to, police entering a residence without legal warrants, the suspension of habeas corpus, extrajudicial detention, and even deportation without due legal process. The notion that global sex trafficking is assuming ‘alarming’ proportions provides the ‘crisis’ that justifies suspending the rule of law.

Border Controls

Anti-sex trafficking discourses and State agendas around immigration and borders often play into, synergize, and strengthen one another. Law enforcement officials may not know how to stop trafficking, but they know how to raid brothels. When such raids are counted as successes in preventing both ‘infiltration’ and ‘trafficking,’ they strengthen both discourses.

Any consideration of anti-trafficking policies and programs merits a simultaneous examination of the overall role of the State. How can trafficking be prevented without violating the rights of sex workers and trafficked persons? It is critical to understand how existing border control regimes strengthen anti-trafficking impulses and vice-versa. It is also important to understand the contradictions within border control discourses: while these are an essential apparatus of State security, nations keep enough space at the borders for cheap, exploitable labor to slip in and out.

Funding and Civil Society

In some countries, the increasing resources dedicated to anti-sex trafficking efforts is skewing civil society priorities. In the Balkans, one women’s rights organization turned its shelter for victims of domestic violence into a shelter for trafficked women and girls, since more funding was available for the latter. Although few victims of trafficking use this shelter, women experiencing domestic violence continue to use it informally. In India, state-run semi-defunct Child Welfare Committees are reinventing themselves through the anti-trafficking funding stream and turning their attention to the trafficking of minors. While this is a positive, there are negative consequences: committees are turning their attention away from other child rights issues and focusing only on trafficking because it has a funding stream.

In these and other ways, NGOs and community-based organizations are increasingly negatively influenced by larger political agendas that they cannot shape. Civil society groups are implementing State agendas, rather than prioritizing their own, leading to breakdowns in NGO integrity and devaluation of their own assessments of the needs in their communities. As more and more ‘anti-trafficking’ proposals are submitted, donors cite the large numbers of proposals as evidence of the increase in trafficking in the region, rounding off a self-fulfilling prophecy.

Laws, policies, and practices

Several laws, policies and practices at international, regional, national and local levels continue to conflate sex work and trafficking and adversely affect sex workers’ daily lives, including their ability to access fundamental rights. These include:

- *Policies that criminalize demand* of sex work by penalizing sex workers’ clients. Sweden, Finland, and Norway currently follow this practice; England & Wales and India are considering similar provisions. Although this is ostensibly meant to protect vulnerable women and children from being trafficked, sex workers’ rights groups say there is no evidence that this is the result. Instead, criminalizing clients adversely affects the livelihoods of sex workers. It also pushes sex work underground, makes sex workers harder to reach, and decreases their access to health services.
- *Funding conditionalities.* The United States’ President’s Emergency Fund for AIDS Relief (PEPFAR) and the 2003 Trafficking Victims Protection Reauthorization Act require non-government organizations inside and outside the US to sign an ‘anti-prostitution pledge’ as a pre-condition to funding.¹⁴ The anti-prostitution pledge requires organizations that receive federal HIV/AIDS or anti-trafficking funds to adopt an organization-wide policy opposing both prostitution and sex-trafficking. Such conditionalities create resource constraints for those who refuse to comply and lead to cutbacks in services and facilities for some sex work communities.
- *Non-recognition of sex work* as work means that sex workers do not get the same labor rights and protection as other workers.
- *Migration laws.* These are often used in the name of anti-trafficking to prevent entry to foreigners. Brazilian women going to Spain are turned back at the border if they ‘look’ like they might be in prostitution.¹⁵
- *Deportation policies* are sometimes used to send trafficking survivors back to their countries of origin. Humane voluntary return policies are disregarded.¹⁶

¹⁴ http://www.pepfar.gov/new.vawnet.org/category/index_pages.php

¹⁵ This example was given by Zoe from GAATW.

¹⁶ According to the International Organization for Migration (IOM), voluntary return is a key strategy in ensuring humane and orderly movement of migrants. It is a more dignified, cost-effective and sustainable alternative to forced return as it takes account of the person's decision, allows the returnee to prepare for the

- *Surveillance mechanisms and technologies* including phone taps, undercover agents, and decoys that were earlier restricted to terrorist activities are now used in anti-trafficking operations, according to participants. These mark a further erosion of rights, particularly the right to privacy.
- *A strict law enforcement approach to preventing trafficking* rather than a strong emphasis on victim protection, including the protection of the rights of sex workers who find themselves in coercive situations at sex work sites. In some countries, those who are trafficked into the sex sector are seen as eligible for state protection and services only if they give up sex work; those who decide to go back to sex work are no longer able to access services. They are doubly victimized, first by being trafficked, and then by losing access to needed services.¹⁷

The conflation of trafficking and sex work often leads to schizophrenic policy environments. In India, the Ministry of Health supports the empowerment of sex workers as a central strategy in HIV/AIDS prevention efforts, while the Department of Women and Child Development supports a proposal to criminalize sex workers' clients (www.un.uz) The diverse arms of the United Nations exhibit similar confusions, leading to an absence of coherent policies on ending trafficking or promoting the rights of sex workers.

Stigma and discrimination result in sex workers not having access to the full range of human rights: from basic housing, water, education, health, and voting rights to freedom from violence and harassment and the right to dignity. Anti-sodomy laws still in place in many countries impact men having sex with men, including male sex workers.

The implementation of HIV/AIDS policies pushing mandatory testing and 100% condom use violate sex workers' rights when these are brutally enforced. In February 2008, Cambodia outlawed prostitution as part of a new law addressing human trafficking called The Suppression of Human Trafficking and Sexual Exploitation Law.¹⁸ In August 2008 the Cambodian government stipulated that there must be 100% condom use among sex workers in Cambodia;¹⁹ as the country with the highest rate of HIV/AIDS infection in the region, condom use is key to health in Cambodia.

However, the implementation of these laws has since left sex workers vulnerable to arbitrary detention and human rights abuses. Sex workers and their allies have drawn

return, and avoids the stigma of deportation and its negative repercussions for successful reintegration.
<http://www.iom.md/resettlement.html>

¹⁷ In the United States, a person who is trafficked into the sex sector gets services, etc. If they are undocumented, they can get 'conditional stay' and permission to work and other services. Since prostitution is illegal in most of the US, they would be vulnerable to arrest if they continued to work in prostitution.

¹⁸ http://www.sexworkeurope.org/site/index.php?option=com_content&task=view&id=218&Itemid=1

¹⁹ <http://us.oneworld.net/issues/justice-and-crime/-/article/357121-condoms-cambodia-a-double-edged-sword>

attention to the brutality of the police crackdown that followed the prohibition of prostitution. Many police are now arbitrarily detaining anyone carrying a condom on the alleged grounds that they sell sex. Sex workers arrested are sent to “rehabilitation” centers that are basically prisons, where women are held in communal cells with no bathrooms or running water, hardly receive food or water, some are beaten and raped, and are denied anti-retroviral drug treatment for HIV positive women.²⁰

Existing models

In many countries, anti-trafficking policies, programs and interventions are accompanied by rights violations of sex workers and those trafficked into the sex sector. In this context, three existing models that approach sex work from a rights-based perspective to promote anti-trafficking efforts were examined and analyzed:

- An institutional anti-trafficking framework from the European Union;
- A sex worker-led anti-trafficking initiative from India; and
- An empowerment model from the United States of America.

An institutional anti-trafficking framework from the European Union

This model aims to ensure that countries within the European Union integrate a human rights perspective to any analysis, planning, policies, and measures addressing trafficking. It sees multidisciplinary cooperation and coordination between all involved actors and stakeholders, including civil society and labor market organizations, as crucial to the process. It requires all such interventions within the EU to:

- Adopt standards from international human rights instruments;
- Uphold the principle of non-discrimination;
- Recognize trafficked persons as subjects and holders of rights;
- Ensure participation, empowerment and social inclusion of the affected; and
- Integrate a gender and child rights perspective.

The institutional model defines eight key stages at which rights must be protected:²¹

- *Identification* of trafficking. Authorities must understand the nature of exploitation in trafficking to eliminate prejudices and identify those actually trafficked into various labor sectors.
- *Cooperation* between governmental bodies and non-government organizations must ensure that migrants with irregular status can be presented as valid claimants of services; trafficked persons need access to service providers without facing deportation.
- *Support and protection* must be tailored to meet individual needs and provided at any stage of the trafficking cycle at which victims are identified. Shelters must be based on international human rights standards; many shelters are more like prisons than safe houses. Presumed victims of trafficking must be allowed time in a safe environment before they are subjected to questioning.

²⁰

<http://www.groundreport.com/World/Cambodia-Sex-workers-100-Condom-Use-and-Human-Righ>

²¹

Minimum legal standards related to these are not defined in international law.

- *Repatriation and social inclusion*, including long-term integration and inclusion programs, must be provided after appropriate support and protection services have been provided.
- *Residence regimes* should not be conditioned on the ability or willingness of victims to act as witnesses. Apart from providing access to temporary housing, States should grant residence permits, consider third-country resettlement options for trafficked persons and their families, and not preclude them from seeking asylum on their territory.
- *Data protection* is of increasing importance. Since several countries store personal data on trafficked persons, there is a need to ensure that is done with consent and made accessible to him or her. An individual must be informed about the use of his or her data.
- *Victim/witness protection* is needed for individuals and their families, who are often vulnerable to threats and retaliation for cooperating with law enforcement. This may need to be in place before, during, and after legal proceedings.
- *Confiscation/compensation* should ensure that individuals have access to salaries and remuneration they have earned while being trafficked.

A Sex worker-led Anti-trafficking Initiative from India

In the Indian context, migration is a livelihood strategy through which people have traditionally moved from villages to cities and from one country to another to improve their living conditions. Trafficked persons are often migrants who end up being abused and exploited in the informal and unprotected sectors of the economy.

Labor exploitation, including trafficking, is rooted in the lack of establishment or enforcement of minimum standards, particularly in the unorganized or informal labor sectors. Providing effective labor rights protection in the sex industry and ensuring safe migration are effective ways to combat trafficking.

A sex-worker led strategy to stop trafficking has been operational in several red-light districts where DMSC has a presence in West Bengal, India. DMSC – or Durbar Mahila Samanwaya Committee - is a forum of 65,000 sex workers and brothel owners based in West Bengal, India.²²

The sex-worker led organization aims to stop trafficking in 30 of the red-light districts where it works. Its main motivation in doing so is to dissociate ‘sex work’ from ‘crime.’ The strategy rests on the knowledge that sex workers are uniquely positioned to know of trafficking in their neighborhoods – and is carried out through a Self-Regulatory Board in each red-light district. Each Board consists of 15 members – eight sex workers and seven non-sex workers from that area; the non-sex workers typically include local government representatives, doctors or public health officials, women’s rights activists, lawyers, and members of women’s commissions and social welfare boards.

²²

DMSC sees sex work as a contractual service negotiated between consenting adults. The organization is against any force exercised against sex workers by clients, brothel keepers, room owners, pimps, local goons, the police, traffickers or anyone else.

Every new woman or girl who comes into a red-light district may voluntarily present herself before the Self-Regulatory Board. If she is an adult who says she came to sex work without force or coercion, the rules are explained and she carries on working; if she is a minor or not a consenting adult, members of the board counsel and work to remove and re-integrate her into her family. Not all brothel keepers are cooperative in the process of releasing minors or non-consenting adults; in some cases, when women have to be 'rescued,' this is done with the help of the social welfare department, without involving law-enforcement officials.

The overall approach is to end trafficking by:

- Actively involving sex workers and their organizations in partnerships with other government and non-governmental organizations.
- Making it non-viable for madams and brothel owners to recruit underage or trafficked persons as sex workers by insisting that all new women and girls in a red-light district are brought before the Self Regulatory Board.
- Using do-no-harm policies, humane, non-threatening approaches and helping an adult to exert his or her agency in deciding whether or not to stay in sex work.
- Enabling an adult to establish control over his or her body, instead of focusing on 'rescues' or physical/geographical removal from a red-light district.

DMSC started working in red-light areas in Kolkata in 1992. Preliminary data indicate that the proportion of minors has declined from 25% in 1992 to 3% in 2001 in the red-light districts where DMSC works, and that the median age of sex workers has gone up from 22 to 28 in the same period. Even so, the organization's own assessment pinpoints these challenges: catching or punishing traffickers; obtaining political support; and re-entries of trafficked women and girls into prostitution even after being removed from brothels.

Building on this, anti-trafficking interventions need to:

- Look into the broader arena of labor rules, policies, and practices that essentially support and sustain forced labor and slavery-like practices irrespective of the type and nature of work or industry.
- Respect the agency of the men and women who are victims or potential victims of trafficking, be they in the sex industry or in other organized or unorganized sectors
- Address issues not from a 'protectionist approach' but from one that focuses on the needs and rights of vulnerable individuals and groups.

Placing the rights of trafficked persons at the center of such initiatives also means:

- Linking anti-trafficking to migrants' rights;
- Defending women's rights to migrate;
- Ensuring that a trafficked person has the right to exert his or her agency during and after a rescue; and
- Recognizing the rights and entitlement of labor.

An empowerment model instead of a victim-centered approach

Many anti-trafficking initiatives aim to bring together government, law enforcement, and service providers to work with the trafficked person in the center to meet his or her needs.

In practice, this does not always work for several reasons: turf battles among law enforcement; information-sharing issues between different agencies; adversarial, rather than cooperative, work styles and methods. The constant negotiation with different agencies is overwhelming for trafficked persons.

Law enforcement has little time or interest in trafficked persons who do not meet the typical ‘innocent victim’ stereotype of a young woman forced into a brothel. An empowerment model that focuses not on the type of victimization or what industry the person was forced to work in, but on the coercive behavior of the perpetrator is more effective in addressing trafficking and protecting the rights of sex workers. The issue is not what labor someone was forced to perform, but how they were abused and victimized. Perpetrators exhibit similar behavior across labor sectors, forcing their victims to do what is of greatest benefit to the perpetrators.

By shifting the focus to the actual abuse and exploitation, the empowerment model addresses trafficking and protects the rights of sex workers. It allows sex workers to be seen as workers in need of workplace protection, regardless of the nature of their work. The approach targets only those who are actually being trafficked, rather than all sex workers.

In recognizing a ‘continuum of exploitation,’ empowerment models protect the rights of all workers. In this continuum, trafficking is not seen as the only form of exploitation; rather, exploitation is seen at different levels and points in the labor sector. Trafficking is seen as an extreme form of exploitation that occurs at one end of the continuum.

Discussion

A discussion on rights-based approaches to trafficking highlighted the following issues:

State and community-based mechanisms are needed to end trafficking while upholding the rights of undocumented migrants, including those who engage in sex work. State and migrant agendas are often in conflict with one another; while the State’s impulse is to repatriate, the migrant’s interest is in remaining there. Many men and women do not want to go back to the world that they have left behind in search of better lives, even if they have been trafficked. However, men and women who say they have been trafficked but would like to continue in sex work are often not believed. How should advocates respond in such situations to ensure that migrants – documented, undocumented, or trafficked – are able to exercise their rights?

The ability of migrants and victims of trafficking to access services and have their desires respected and fulfilled varies significantly from one country to another. For instance, migrants working on the borders of the United States may be able to access health services – but they are unable to secure work permits, labor contracts, or social security in the absence of a residence permit or proof of citizenship. Trafficked persons, however, in the U.S. would be able to work and receive services.

On the other hand, many sex workers from Bangladesh now live in India. Because they look similar to Indians, they merge with the population and access many of the same rights

and services as Indian citizens: health, education, housing, etc., even though they do not have formal citizenship status.

The absence of information regarding rights of migrants, services migrants can access, and legal recourse makes migrants vulnerable to trafficking, but policymakers do not take this into account. Nation-states around the world rely upon cheap labor, which is often a result of undocumented migration. Fighting for the recognition of rights for undocumented migrant sex workers still remains a political challenge

Recommendations

The following gaps, opportunities and priorities were identified to help advocates support and implement anti-trafficking efforts that affirm the rights of sex workers:

- *Change public perceptions*

All around the world, there is an unreached middle ground of people who are confused about the difference between trafficking into the sex sector and prostitution, and who may assume that both are one and the same. There is an urgent need to ‘speak to the middle.’ Pro-active public education strategies need to be devised to deconstruct and frame these complex issues simply, but not simplistically. These issues need to be brought into the public domain in clear, accessible language that lay people can understand. Images of sex workers that represent sex workers as ‘active agents’ rather than as ‘passive victims’ are a critical aspect of public education.

- *Strengthen the understanding of sex workers’ rights*

Even though the Universal Declaration of Human Rights asserts the universality of human rights, sex workers are not always seen being entitled to the same human rights and dignities as others. In this context, the human rights discourse offers a valuable platform to strengthen the understanding of sex workers’ rights.

- *Influence policymakers*

Policymakers across many levels and sectors of governance need to understand the distinctions between human trafficking, trafficking into the sex sector, and sex work, and how policies impact these separate issues. It is critical to ensure that good information reaches those in a position to determine policies that impact trafficking and/or the rights of sex workers.

- *Build bridges with other progressive movements*

The sex worker rights movement should proactively engage with other movements such as those working on labor or immigration rights. Sex workers and their advocates need to be present at conferences and consultations on labor exploitation. There is an ongoing need to engage with the women’s movement; while many feminists support the rights of sex workers, others continue to conflate trafficking into the sex sector and sex work. Further, many working to combat violence against women have not supported sex workers in their efforts to decrease violence in the sex sector, often perpetrated by state authorities.

- *Get accurate data and evidence through rigorous, ethical research*

There are as yet no reliable estimates of the numbers of men and women who are trafficked. Research is needed to establish the efficacy or inefficacy of anti-trafficking initiatives and policies, such as recent policies to criminalize demand. Research claims about program effects cannot be measured in the absence of baseline data. Sex workers must participate in research efforts related to trafficking into the sex sector, and have a voice in ensuring that research protocols are not just rigorous, but ethical and meaningful.

- *Document the harms of anti-trafficking initiatives that are not rights-based*

There is a need to document and monitor specific human rights violations related to anti-trafficking initiatives.

- *Advocacy and program agendas should place the voices and priorities of those most affected by trafficking and/or anti-trafficking initiatives at the center*

Migrants, trafficking victims, and sex workers know their own needs, concerns, realities, issues, and priorities, even as they continue to work in stigmatized, criminalized, and discriminatory settings in many parts of the world. These communities need to be supported with adequate funding, translation, and other resources to effectively participate in international, regional, national, and local meetings, consultations, and conferences on trafficking, migration, and sex work.

- *Increase funding to groups advocating for sex workers' rights*

Sex workers' groups, networks and movements need to be empowered. Sex work cuts across and fits into many funding categories: poverty, migration, gender, stigma, health, HIV, LGBT rights, etc. Donors have used funding principles of empowerment, economic justice, self-determination, public health, human rights, violence against women, harm reduction, and sexual rights to fund sex workers' rights.

Sex Work and Trafficking: A Donor / Activist Dialogue on Rights and Funding
11-12 December 2008, Tarrytown, USA

Agenda

Thursday, 11 December 2008

9:00 - 9:30am	<i>Welcome and Introductions</i>
9:30 - 10:00am	<i>Introduction to the meeting</i>
10:00 - 11:00am	<i>Word mapping: Sex work and trafficking</i>
11:00 - 11:15am	BREAK
11:15 - 12:30pm	<i>Clarifying and defining sex work, trafficking and rights. Why do these terms matter? Implications on the ground.</i>
12:30 - 1:30pm	LUNCH
1:30 - 3:00pm	<i>Representation of sex work and trafficking</i>
3:00 - 3:30pm	BREAK
3:30 - 5:00pm	<i>Existing models that approach sex work from a rights-based perspective to promote anti-trafficking efforts</i> Small group in-depth discussion
5:00 - 5:30pm	<i>Recap and close</i>

Friday, 12 December 2008

9:00 - 9:45am	<i>Mapping of policies that effect sex worker rights</i>
9:45 - 11:00am	<i>Connecting the dots: Opportunities and challenges for advocacy</i>
11:00 - 11:15am	BREAK
11:15 - 12:30pm	<i>Donor discussion on sex worker rights funding issues: Challenges, barriers and strategies</i>
12:30 - 1:30pm	LUNCH
1:30 - 3:00pm	<i>Upcoming opportunities and resources for impacting this field</i>
3:00 - 4:00pm	<i>Open discussion on next steps</i>

Sex Work and Trafficking: A Donor/Activist Dialogue on Rights and Funding
CREA, Network of Sex Work Projects (NSWP),
and the Sexual Health and Rights Project (SHARP) of the Open Society Institute (OSI)
December 11 – 12, 2008
New York, NY

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