



**Trafficking in Women**  
**Forced Labour and**  
**Slavery-like Practices**

*in Marriage*  
*Domestic Labour and*  
*Prostitution*

Marjan Wijers · Lin Lap-Chew

*Trafficking in Women  
Forced Labour and Slavery-like Practices*



# Trafficking in Women *Forced Labour and Slavery-like Practices*

in Marriage, Domestic Labour and Prostitution

Marjan Wijers  
Lin Lap-Chew



Foundation Against Trafficking in Women  
Global Alliance Against Traffic in Women

1999

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## Preface

This report presents the results of an international investigation on trafficking in women, forced labour and slavery-like practices in the context of marriage, domestic labour and prostitution, carried out by the Dutch Foundation Against Trafficking in Women (STV) and the Global Alliance Against Traffic in Women (GAATW). A preliminary version of this report was presented to the United Nations Special Rapporteur on violence against women, Mrs. Radhika Coomaraswamy, to inform her of the current situation and debates on the issue of trafficking in women, forced labour and slavery-like practices.

Many people co-operated in compiling this report. We would like to express our gratitude to the members of the Advisory Committee – Lesley Roberts, Gail Pheterson, Roelof Haveman, Siriporn Skrobanek and Welmoed Koekebakker – for their unfailing, critical and warm support and for sharing with us their knowledge and experience. Roelof Haveman and Gail Pheterson also assisted in the final writing of this report. Roelof Haveman supported us in writing chapter 2 and 5, Gail Pheterson wrote the summary (chapter 10). Special thanks are due to our consultants in the various continents: Yamila Azize-Vargas, Florence Butegwa, Lisa Kois, Johanna Bond, Jyoti Sanghera, Sarah Johnston and Siriporn Skrobanek. Without their expertise, enthusiasm and above all hard work this report would not have been possible. We also thank Trees Mom, our research consultant. Kamala Kempadoo and Jo Doezema read the first draft and gave us their careful and valuable comments. Marjolein Sol processed the data of the questionnaire and kept the office going. In the last phase of the report she was replaced by Corine van Reeuwijk. Without their support we would have been lost in chaos.

Last but not least, we thank all the organizations and persons who are actively addressing the issue in their local situations and who were willing to share with us their information and experiences by sending us reports and other documents and by making the effort to complete the questionnaires. This certainly was not an easy job given the complexity and extent of the questionnaire.

The whole project, including the work of the regional consultants, was made possible through the generous financial support of the Dutch Ministry of Foreign Affairs, Directorate General Development Co-operation (DGIS), the Dutch development organizations NOVIB, ICCO, HIVOS and BILANCE, the Dutch feminist fund Mama Cash, and the Danish development organization KULU.

Finally, we thank the Special Rapporteur, who provided the unique and valuable opportunity to compile such a global report on a form of violence against women which many people consider inconceivable in the twentieth century.

This report is written in the hope that it will contribute to the development of new conceptual frameworks and strategies to combat trafficking in women, forced labour and slavery-like practices, which are based on the legal and social recognition of women as autonomous individuals in all spheres of life and work.

Marjan Wijers and Lin Lap-Chew  
International Report Project Research Team  
*February 1997*

## **Preface second edition**

During 1998 the report got sold out. Since STV still received many requests for the report, it was decided to make a reprint. Apart from changes in language and lay-out and a change in the structure of the chapter on strategies, no fundamental modifications in the contents of the report have been made. In the annexes, the ‘Standard Minimum Rules for the Treatment of Victims of Trafficking, Forced Labour and Slavery-like Practices’ have been replaced by a newer, revised version, entitled ‘Human Rights Standards for the Treatment of Trafficked Persons’.

This reprint was made possible through the financial support of NOVIB.

Marjan Wijers  
*December 1999*

# Chapter I

## Introduction to the report

### Introduction

At the end of the UN Decade for Women the Forward Looking Strategies, adopted by the 1985 World Conference on Women in Nairobi, identified violence as a major obstacle to the achievement of the objectives of the UN Decade for Women: Equality, Development and Peace.

The Commission on the Status of Women (CSW) and the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) put gender violence on their agenda. The CSW completed a draft Declaration on the Elimination of Violence Against Women in 1992. Women's organizations globally lobbied for new and better instruments to address violence against women.

In June 1993, the World Conference on Human Rights in Vienna acknowledged that violence against women in all its multiplicity of forms constituted a serious violation of the human rights of women. In December 1993, the Declaration on the Elimination of Violence Against Women was adopted by the UN General Assembly. One of the forms of violence against women included in the Declaration was 'forced prostitution and trafficking in women'.

In April 1994, a Special Rapporteur on violence against women, Ms. Radhika Coomaraswamy, was appointed by the Commission on Human Rights for a period of three years. She received a broad mandate within the framework of international human rights agreements to investigate the 'causes and consequences' of violence against women and to recommend ways to eliminate its causes and to remedy its consequences. In 1995 Ms Coomaraswamy presented her first (preliminary) report to the Commission on Human Rights. In 1996 she presented her second report, which focussed on violence against women in the private (family) sphere. In 1997 she presented her third report, which addressed the different forms of violence against women in the public sphere, including trafficking in women.

## **1 The International Report Project: double objectives**

The International Report Project (IRP) was initiated in 1995 in response to the invitation of the UN Special Rapporteur on violence against women, its causes and consequences, to prepare for her a global report on trafficking in women and forced prostitution in the framework of her 1997 report to the UN Commission on Human Rights.

The project had a double objective. Next to providing the Special Rapporteur with information for her report to the Commission on Human Rights, the project aimed at furthering the work of NGOs by strengthening and mobilizing contacts in the field and bringing together information and networks. This second objective made it imperative to organize the investigation in a manner that involved as many people as possible, and set in motion a process of regional and international consultations which would contribute to network-building on the local, regional and international level.

This report presents the results of the project. The investigation was carried out between October 1995 and February 1997 by the Foundation Against Trafficking in Women (STV), based in the Netherlands, in collaboration with the Global Alliance Against Traffic in Women (GAATW), based in Thailand. A preliminary version of the report has been presented to the Special Rapporteur in October 1996.

## **2 Organization of the research**

During the first phase of the project, the sources of information were determined, as well as the agents of action and change at all levels. Around the world individuals and organizations were contacted who could supply information, were actively addressing the issue or who were interested to initiate action. At the same time consultants were identified in Asia/Pacific, Africa, North America and Latin America & the Caribbean, in order to coordinate research and networking in their respective continents.

An important aim in this first phase was to clarify the analytical framework of the report through a process of consultation and discussion with the members of the Advisory Committee, international women's human rights experts and NGO workers. This was necessary as one of the fundamental problems in addressing trafficking in women is the lack of a clear and unambiguous definition based on women's interests and perspectives. This consultative process resulted in the formulation of the working definitions as described in chapter 2. The definitions are based on the working experience of the authors of the report, the current developments in the international debate, and the extensive input

of the various experts mentioned above. For analytical reasons, two separate working definitions were developed. This made it possible to address deceptive and coercive brokerage practices – defined as trafficking in women –, as well as exploitative and coercive working and living conditions – defined as forced labour and slavery-like practices –, both in the public and private domain. The basic principle underlying both definitions is the (human) right of women to be in control of their own body and life.

In the second phase, a questionnaire (annex 1) was devised, based on the working definitions as developed in the first phase. The questionnaire concentrated on trafficking, forced labour and slavery-like practices in the contexts of prostitution, domestic labour and marriage. It was distributed among a variety of organizations whom we expected to have actual and specific information on their own local, national or regional situation. In addition, a separate questionnaire was sent to international organizations and to embassies (annex 2 and 3).

During this period of data-gathering, the consultants paid visits to organizations in their respective continents and/or organized meetings in order to collect information, do in-depth studies, strengthen networks and stimulate new initiatives. This resulted in the production of regional reports on the situation in Asia, Latin America & the Caribbean and Africa, addressing the specific issues and concrete steps which need to be taken in the respective continents. The research team in the Netherlands attended various national and international meetings in Europe with the same objective. At the same time secondary sources, including reports from non-governmental organizations (NGOs) and governmental organizations (GOs), were researched.

The third phase consisted of processing and analysing the responses to the questionnaire along with the other information collected: documents that respondents sent along with the questionnaire, the reports compiled by the consultants, the various NGO and GO documents collected by the Dutch research team and the consultants, and the information resulting from the literature research. During this phase, a two-day meeting of the research team, the consultants and the Advisory Committee was organized in order to analyse the findings, discuss the drafts for the report and formulate recommendations.

In the fourth phase, starting from December 1996, a number of conferences were organized in the respective continents by the consultants in collaboration with the research team to present both the reports of the consultants on the situation in the various continents and the results of the international report. The consultations aimed to share and discuss the findings of the research, to strengthen the regional networks, to plan follow-



up action and to build up an international campaign for the adoption of human rights standards for the treatment of victims of trafficking in women, forced labour and slavery-like practices by the United Nations.

### 3 The questionnaire

The objective of the questionnaires was to obtain an overview of the following issues:

- the nature and extent of contemporary manifestations of trafficking in women, forced labour and slavery-like practices in prostitution, domestic labour and marriage, as defined in the working definitions;
- the existing national legislative and political instruments to combat trafficking in women, forced labour and slavery-like practices;
- the strategies of governmental and non-governmental organizations addressing the issue in their respective countries.

In a separate introduction to the questionnaire the framework of the report, the working definitions and their underlying principles were presented. Respondents were asked to use these definitions in completing the questionnaire.

The questionnaire for NGOs consisted of four sections:

- A. Organizational information;
- B. General questions on trafficking in women, forced labour and slavery-like practices in prostitution, domestic labour and marriage;
- C. Specific questions on trafficking in women, forced labour and slavery-like practices in prostitution;
- D. Specific questions on trafficking in women, forced labour and slavery-like practices in domestic labour.

All respondents received sections A and B. Sections C and D were sent to selected respondents, as these sections contained questions requiring more specific knowledge of the respective situations. Due to the general lack of research on trafficking, forced labour and slavery-like practices within the context of marriage, it was not possible to draw up a separate questionnaire in relation to marriage.

Since the aim was to obtain information as reliable as possible on a country basis, respondents were selected according to the following criteria:

- being actually involved in activities aimed specifically at some aspect of trafficking in women, forced labour and slavery-like practices in the areas of our concern, e.g. running shelters, counselling, advocacy work etc.;

- being involved in research on the issue;
- being involved in policy making and/or networking at national and/or international level.

The respondents in Asia & Australia, Africa, North America and Latin America & the Caribbean were selected in consultation with the regional consultants. Being well connected in various regional networks, they were in the best position to know where material would be available and whom to ask for information. The European respondents were selected by the Dutch research team.

About 200 questionnaires were sent to NGOs in as many countries as feasible. The purpose was to have at least one questionnaire returned per country. Sixty-five organizations completed and returned the general sections (section A and B), of which 61 were valid (4 questionnaires were completed in such a way that it was not possible to process the answers). In addition, 46 organizations filled in the specialized section on prostitution (section C), and 17 the section on domestic labour (section D) (see annex 4 for the list of NGOs which returned the questionnaire).

The highest response was received from NGOs in Europe (20) and Asia (19). From North America and Canada 5 organizations responded, from Africa 8, from Latin America & the Caribbean 7 and from Australia 2. In total, respondents came from 41 countries. Many NGOs sent documents related to their work and the situation in their country along with the questionnaire. Some organizations didn't fill in the questionnaire but sent us their annual reports or other documents related to the issue. In general, responses came mainly from those who have been working on a grass-root level on the issue for a number of years. In most cases they stated that their information was based on their own observations or research obtained in the course of their work.

In addition to the NGO questionnaires, separate questionnaires were sent to 77 international organizations. Of these, 13 returned a completed questionnaire. Furthermore, 111 questionnaires were sent to embassies, asking for figures, laws and government activities on the issue. Only 8 embassies returned a completed questionnaire or sent documents (see annex 4 for the list of international organizations and embassies which returned completed questionnaires).

## 4 Limitations and methodological problems

It appeared to be virtually impossible to find reliable statistics on the extent of trafficking in women, forced labour and slavery-like practices in the three areas of our concern: marriage, domestic labour and prostitution. Similarly, it appeared impossible to find figures about the number of women who pressed charges or the number of court cases or convictions.

Several reasons explain this dearth of statistics. Firstly, there is a significant lack of systematic research. Moreover, if research has been done, the issues investigated differ widely due to the lack of a precise, consistent and unambiguous definition of the phenomena at hand. Secondly, many of the practices described in this report are – at least in theory – illegal, clandestine or criminal, and thus more or less hidden. Thirdly, the issue has been widely neglected by governments and international organizations, because in many countries prostitution is considered an illegal or criminal activity, while marriage and domestic labour are considered private issues. Lastly, very little statistics, research or documentation exist on informal sector activities, including domestic work and prostitution.

If figures are available, they generally concern the overall number of national or migrant domestics, the number of national or migrant prostitutes or the number of bi-national marriages, without any indication as to the occurrence and/or extent of trafficking and/or forced labour and slavery-like practices.

It appeared even more difficult to obtain figures relating to the number of criminal cases and the number of suspects prosecuted or convicted. Cases are hardly registered and, if they are, it is often not clear to which offence they refer. As will be shown in chapter 7, national laws differ widely. This means that in one country a case may be registered as ‘procuring’ or ‘living off the avails of prostitution’, whereas in another country similar cases may be registered as ‘trafficking’.

Most of the forthcoming information was related to trafficking in women in the context of prostitution, due to the fact that most of the organizations addressing trafficking tend to do so exclusively in relation to prostitution. Prostitution appears to be the most accessible, visible, emotive and therefore most researched field. Details, statistics and documentation on the other areas of our concern are much more sparse and fragmentary. Contacts and information on the situation of domestic workers are difficult to obtain since they work in private homes. The same applies to trafficking for marriage and the issue of servile marriages.

It is significant to note that the information available varies greatly from country to country and region to region. In some regions, like Asia, Latin America and Europe, there is relatively much information available, due to the range of NGOs that have been working with the women concerned for a considerable period of time. In other regions, such as Africa, North America and Canada, the issue has received little public attention until now; organizations working directly with the women are much more difficult to identify and factual information on the situation of the women involved is more difficult to gather. A large part of the documentation with regard to the situation in North America did not become available until the last phase of the project, because of the difficulties in finding relevant organizations and information sources. As a result, this information could be processed only to a very limited extent. Other countries, like the ones in the Middle East, are so ‘closed’ that it was not possible to collect any information within the scope of this report. This should be seen as a major deficit.

The results of the questionnaire are processed throughout the report. However, it must be kept in mind that they reflect the perception and assessment of the respondents, thus showing trends and not ‘facts’ in the strict sense of the word. It should also be emphasized that discourse and terminology are relative. For example, the term ‘frequently’ used by a Thai respondent in the context of Thailand may mean something completely different from ‘frequently’ as used by a Canadian respondent in the Canadian context and experience.

It must also be noted that respondents were requested to complete the questionnaire according to the working definitions. Because of the varying interpretations and definitions of the concept of ‘trafficking’ in each national context, respondents therefore needed to ‘translate’ their information into a different framework, which inevitably presents certain difficulties.

In spite of the limitations described above, the results of the questionnaire in combination with the other sources used, such as legislation, governmental and non-governmental reports, research reports and other publications, yielded important and valuable information.

Finally, due to limitations in time it has not been possible to include a more extensive analysis of the relevant international legal instruments on forced labour and slavery-like practices, on the protection of migrant workers, and on the protection of human rights and women’s rights, and their value from the perspective of the analytical framework and definitions as developed in this report.

## 5 Choices and deliberate omissions

In accordance with the context of this report, the choice was made to focus exclusively on women. This does not mean that trafficking, forced labour and slavery-like practices do not occur in relation to men. However, notwithstanding clear indications that men too fall victim to the practices described, it is evident that the overwhelming majority of victims are women.

Secondly, although we are aware that trafficking in children – girls and boys – occurs extensively and with devastating effects on those affected, this report does not address trafficking, forced labour and slavery-like practices in relation to children, since these practices take place in a different legal context and need different approaches and strategies. It is difficult, however, to make a very strict distinction between adults and children given the fact that the legal age may differ in various countries. Moreover, many women are trafficked when, by international standards, they are still children and may stay for many years, long into their adulthood, in a situation of forced labour or slavery-like conditions. Nevertheless, where possible, we have focused on women of eighteen years and over.

Thirdly, although the working definitions as developed in chapter 2 cover all ‘work or services’, in this report we have concentrated on trafficking, forced labour and slavery-like practices in the contexts of marriage, domestic labour and prostitution. The knowledge and experience of those engaged in the issue indicate that trafficking and slavery-like practices occur predominantly in these fields. However, a number of respondents indicated the occurrence of slavery-like practices and forced labour in other fields, such as sweatshops and the garment industry. Closer investigation into these areas is urgently needed. Fourthly, the term migration is generally used in the broad sense, referring to migration within a country, for example from rural to urban areas, as well as to intra-regional and international migration.

## 6 Contents of the report

In *chapter 1*, an introduction to the report is given and some methodological problems are examined.

*Chapter 2* contains an overview of the different definitions of ‘trafficking in women’ and their historical development. On the basis of an analysis of the trends and themes that emerge from this historical overview, working definitions are developed and the choices and principles underlying these working definitions are clarified.

In *chapter 3* the occurrence of trafficking in women, forced labour and slavery-like prac-

tices is put within the broader context of traditional female roles, a gendered labour market and the increase of female labour migration, followed by a general overview of the contributing factors.

*Chapter 4 to 6* describe the contemporary manifestations and trends of the exploitation of women's work within marriage, domestic work and prostitution under conditions of force or deceit (forced labour and slavery-like practices, as defined for this report), as well as the recruitment for work or services under conditions of force or deceit (trafficking in women, as defined for this report).

In *chapter 7* the various laws and State policies on prostitution are examined as well as the extent to which they prevent, address, sanction or legitimize trafficking, forced labour and slavery-like practices in this area. The different legal systems are analysed in terms of prohibitions and regulations aimed at the distinctive activities and parties involved, and their impact on the living and working conditions of women working in prostitution. Since it appeared impossible to make a similar analysis in relation to domestic work and marriage, due to the limitations in both time and available information, this chapter focuses solely on prostitution.

In *chapter 8* the current strategies employed by both NGOs and GOS are examined in the light of the working definitions as developed in chapter 2. Strategies are analysed from the perspective of the distinctive dominant conceptualizations of the problem to be solved: morality, public order, criminality, (illegal) migration, human rights and labour conditions.

In *chapter 9* conclusions and recommendations are formulated.

*Chapter 10* contains a summary of the report.



## Chapter 2

### Towards new definitions

#### Introduction

A fundamental problem in responding to the issue of ‘trafficking in women’ is the lack of a precise and unambiguous definition.<sup>1</sup> Although the term was mentioned as early as the end of the last century, there is a persistent confusion as to what is exactly meant by it, in other words, which practices precisely should be combated. This confusion is reflected today in the various, sometimes contradictory, definitions and concepts used in national legislation and international conventions, as well as in the ongoing international debate. Theoretically, the lack of a clear and internationally accepted definition is not surprising. ‘Trafficking in women’ is a complex phenomenon that touches various, often extremely sensitive issues, such as sex, money and migration. Yet the issue of definition is anything but an academic question. Depending on how the problem is defined, different measures to prevent and combat ‘trafficking’ will be proposed: each definition generates its own solutions.

Without a clear definition, attempts to deal with the problem will remain wishful thinking at best. At worst they will cause repercussions that have repressive instead of emancipatory effects on the already precarious situation of the women concerned. The fact that, today, we still need to grapple with the definition of ‘trafficking in women’ is in itself indicative of at least part of the failure of past policies, based as they were on vague or conflicting concepts.

In the first part of this chapter the different definitions of ‘trafficking in women’ and their historical development are examined. Within this historical context, a number of trends and themes can be identified, which in turn are reflected in the current debate and policies on ‘trafficking’. These trends are analysed in the second part of this chapter, illustrating how each definition carries a different identification of the problem and, consequently, of its solutions. This analysis forms the basis for the last part of the chapter. Following the conclusion that effective strategies on behalf of women require new definitions that

1. For clarity reasons, the term ‘trafficking in women’ is in quotation marks until it is well defined. Where in the remainder of the report ‘trafficking’ is used in the meaning of the working definitions as developed throughout this chapter, no quotation marks are used. Where it has a different meaning or where its meaning is unclear, as is e.g. the case in many laws or policy documents, it will be put in quotation marks.



clearly pinpoint violence against women within the scope or intent of what has been referred to as ‘trafficking’, new working definitions are proposed in order to distinctly cover deceptive and coercive brokerage practices (defined as trafficking), as well as exploitative and coercive working and living conditions (defined as forced labour and slavery-like practices) in both public and private spheres.

## 1 Historical developments

### 1.1 Pre-war treaties

The first international conference on ‘trafficking in women’ was held in 1895 in Paris, followed by one in London and one in Budapest. In 1904, sixteen states were represented at an international meeting in Paris, which resulted in the first international agreement against ‘white slavery’. ‘Being desirous of securing to women of full age who have suffered abuse or compulsion, as also to women and girls under age, effective protection against the criminal traffic known as the White Slave Trade’<sup>2</sup>, the 1904 *International Agreement for the Suppression of the White Slave Trade* aims to combat the procuring of women or girls for immoral purposes abroad. In view of the preamble, the convention is restricted to compulsive forms of procurement (insofar it concerns adult women) and does not address those situations in which there is no apparent compulsion or abuse. Six years later this agreement is followed by a new convention, broadening its scope to include the ‘traffic in women’ within national boundaries. The 1910 Convention obliges States to punish:

Any person who, to gratify the passions of others, has by fraud or by the use of violence, threats, abuse of authority, or any other means of constraint, hired, abducted or enticed a woman of full age for immoral purposes.<sup>3</sup>

Again, the requirement of constraint does not apply to minors. Both conventions are explicitly restricted to the process of recruitment, that is, the process up to the moment the woman is actually handed over. Coercive conditions inside the brothels are not addressed, as the closing statement of the 1910 Convention makes clear:

The case of the retention, against her will, of a woman or girl in a house of prosti-

2. Preamble International Agreement for the Suppression of the White Slave Trade, signed in Paris, May 18 1904.

3. International Convention for the Suppression of the White Slave Trade, signed in Paris, May 4 1910.

tution could not, in spite of its gravity, be included in the present Convention, because it is exclusively a question of internal legislation.

‘Being anxious to secure more completely the Suppression of the Traffic in Women and Children’, an additional convention is drafted in 1921.<sup>4</sup> The most important addition is the inclusion of traffic in boys (‘traffic in children of both sexes’).

In 1933 a new international agreement is signed in Geneva, in which the requirement of constraint is removed, but solely with regard to the international ‘traffic in women’. Art. 1 obliges State Parties to punish:

Any person who, in order to gratify the passions of another person, procures, entices or leads away, even with her consent, a woman or a girl of full age for immoral purposes to be carried out in another country.<sup>5</sup>

With regard to the ‘traffic in women’ within borders, the requirement of constraint is left intact. A State can thus tolerate on a national level what it condemns on an international level.

## 1.2 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)*

In the years to follow, the League of Nations – later the United Nations – supports the idea to integrate the previous international conventions into one new convention. In 1949 the General Assembly of the United Nations adopts the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*<sup>6</sup>, which replaced all the preceding treaties. Whereas, according to the preamble, ‘prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community’, art. 1 of the new convention obliges State Parties to punish any person who ‘to gratify the passions of another’:

4. International Convention for the Suppression of the Traffic in Women and Children, Geneva, September 30 1921.
5. International Convention for the Suppression of the Traffic in Women, Geneva, October 11 1933.
6. UN General Assembly Resolution 317/IV, 2 December 1949, UN Treaties Series, Vol. 96, p. 271, no. 1342. The Convention came into effect on July 25 1951.

1. Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;

With this paragraph the previous distinction between international and national ‘trafficking’ disappears: in both cases ‘trafficking’ is punishable now, even when the woman concerned gives her consent. Moreover, in the following articles the scope of the convention is broadened to include the exploitation of prostitution by calling State Parties to punish anyone who:

2. Exploits the prostitution of another person, even with the consent of that person;
3. Keeps or manages, or knowingly finances or takes part in the financing of a brothel;
4. Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

However, many of the States which signed earlier conventions do not sign this one. This is partly due to the fact that procurement is now extended to the commercial gain from prostitution. In fact, the 1949 convention has been ratified by less than half of the UN member States (66 out of 160). The grounds which are indicated for the refusal to ratify vary from constitutional incompatibility to criticism of the basic assumptions of the text (Van Hemeldonck 1996). One of the reasons is that many national governments permit highly regulated forms of prostitution and are not willing to sign a treaty that requires its elimination.

### *1.3 Post-war developments in the UN*

After a period of silence, ‘trafficking’ becomes a topic again at UN as well as European level during the 1980s. Different reasons may be given for the resurfacing of ‘trafficking’ on the political agenda, such as the strength of the women’s movement and the feminist concern with questions of female exploitation and/or the global concern with the spread of AIDS.<sup>7</sup>

Next to several initiatives of organizations such as the United Nations, the International

7. Many other reasons may have played a role as well, such as the fear of the western States for migration flows from developing countries. An analysis of the factors that made ‘trafficking’ a concern in the first place and why it resurfaces on the political agenda in the 1980s, would require more research.

Organization for Migration (IOM) and the International Labour Organization (ILO), the issue is discussed during a number of world conferences.

*United Nations General Assembly and Commission on Human Rights*

In the early eighties ‘trafficking in women’ makes its come back on the agenda of the United Nations. In 1991, the prevention of ‘traffic in persons and the exploitation of the prostitution of others’ is the main topic at the 16th session of the Working Group on Contemporary Forms of Slavery. This results in a Draft Programme of Action for the Prevention of Traffic in Persons and of the Exploitation of the Prostitution of Others.<sup>8</sup> In its 48th session (1992) the Commission on Human Rights endorses the need to launch a concerted programme of action and decides to transmit the Draft Programme to Governments and other concerned organizations for their comments.<sup>9</sup> However, only a few replies are received and no further action is taken by the Commission either in its 49th session (1993) or in its 50th session (1994). Eventually, in April 1996, the Draft Programme of Action is adopted by the Commission on Human Rights.<sup>10</sup> An explanation for the lack of enthusiasm towards the adoption of the Draft Programme of Action could be the lack of innovative elements, as compared with the contents of the 1949 Convention (Zegveld 1995).

Meanwhile, in 1994, the UN General Assembly adopts a resolution on ‘traffic in women and girls’, which condemns:

The illicit and clandestine movement of persons across national and international 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 the 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.<sup>11</sup>

In his report to the 50th session of the General Assembly in 1995 the Secretary-General refers to this resolution, commenting that:

8. E/CN.4/Sub.2/1991/41, annex I.

9. Commission on Human Rights Resolution 1992/36.

10. Draft Programme of Action for the Prevention of the Traffic in Persons and the Exploitation of the Prostitution of Others (E/CN.4/Sub.2/1995/28/Add.1), adopted by the Commission on Human Rights in its Resolution 1996/61 entitled ‘Contemporary Forms of Slavery’.

11. Resolution 49/166 of the General Assembly of the United Nations (UN Doc A/Res/49/166), adopted December 23 1994.

While focussing on international dimensions of trafficking, the Assembly goes beyond a narrow view of trafficking only for the purpose of prostitution to incorporate other aspects of forced labour and deceptive practices.<sup>12</sup>

Continuing in paragraph 17:

Trafficking across international borders is by definition illegal [...] The question must be asked, however, whether trafficking is the same as illegal migration. It would seem that the two are related, but different. Migration across frontiers without documentation does not have to be coerced or exploitative. At the same time, persons can be trafficked with their consent. A distinction could be made in terms of the purpose for which borders are crossed and whether movement occurs through the instrumentality of another person. Under this distinction, trafficking of women and girls would be defined in terms of ‘the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations’ and the fact that it is done ‘for the profit of recruiters, traffickers and crime syndicates’.

At about the same time, in 1994, the Chair of the Human Rights Commission announces the appointment of Mrs. Radhika Coomaraswamy as Special Rapporteur on violence against women, including its causes and consequences, for a period of three years.<sup>13</sup> Her mandate includes ‘traffic in women and forced prostitution’.

In 1996, the Commission on Human Rights adopts a resolution, calling on governments to implement the Platform for Action of the 1995 Fourth World Conference on Women by ‘considering the ratification and enforcement of international conventions on trafficking in persons and on slavery’ and by:

Taking appropriate measures to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages and forced labour in order to eliminate trafficking in women.<sup>14</sup>

12. Traffic in women and girls, Report of the Secretary General (A/50/369), 24 August 1995.

13. Commission on Human Rights, Resolution 1994/45, ‘The question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women’.

14. Commission on Human Rights, Resolution on Traffic in Women and Girls (E/CN.4/1996/L.29), adopted April 19 1996.

*Convention on the Elimination of All Forms of Discrimination Against Women, 1979*

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women specifically deals with the human rights of women and obliges State Parties to take all appropriate measures to eliminate all forms of discrimination against women.<sup>15</sup> The Women's Convention is a broad non-discrimination treaty, structured to commit governments to remove obstacles and provide conditions for women to exercise all their human rights in all fields (Miller 1995). Embedded in this broader non-discrimination principle, article 6 contains a provision with respect to 'traffic in women' and prostitution, requiring States 'to take all appropriate measures to suppress all forms of traffic in women and exploitation of prostitution of women'.

An important issue in the drafting of article 6 was the question whether prostitution as such should be combated or merely the exploitation of prostitution. However, according to the *Travaux Préparatoires*, the rejection of Morocco's proposals to include the combat of prostitution in all its forms, makes clear that the intention of the adopted text of article 6 is not to combat prostitution as such, but rather forms of exploitation of prostitution (Haveman & Hes 1994). A definition, however, of what should be understood by 'traffic in women and the exploitation of prostitution' is lacking.

*World Conference on Human Rights, Vienna 1993*

Undoubtedly, one of the important results of the 1993 World Conference on Human Rights – following years of intensive lobbying by women's organizations – is the recognition of women's rights as human rights and thereby the extension of State accountability to violence against women in the private sphere. As the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, states:

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights.<sup>16</sup>

The Declaration urges the elimination of violence against women in both public and private spheres. It addresses 'international trafficking' as a form of gender-based violence and calls for its elimination through international co-operation in economic and development fields and through national legislation.

15. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979.

16. Report of the World Conference on Human Rights, Vienna, 14-25 June 1993 (UN Doc A/Conf.157/24).

#### *Fourth World Conference on Women, Beijing 1995*

Whereas the Forward Looking Strategies of the third World Conference on Women in 1985<sup>17</sup> confine themselves to ‘traffic in women for prostitution and forced prostitution’ as a form of slavery, the Platform for Action of Beijing in 1995 goes beyond the notion of ‘trafficking’ for purposes of prostitution only, and incorporates other contemporary forms of ‘trafficking and slavery-like practices’. Under ‘actions to be taken’, governments of countries of origin, transit and destination as well as regional and international organizations are called upon to:

[...] take appropriate measures to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages, and forced labour in order to eliminate trafficking in women, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punish the perpetrators, through both criminal and civil measures.<sup>18</sup>

Both documents call for the elimination of ‘traffic in women and forced prostitution’, and not for the elimination of prostitution as such. Yet, the texts still contain ambiguities. For example, paragraph 122 of the Platform for Action stresses the need to review and strengthen the implementation of the 1949 Convention.<sup>19</sup> Both documents implicitly solely focus on the ‘traffic of women’ across international borders, giving no special attention to equivalent practices within national borders.

#### *1.4 Post-war developments in Europe*

##### *European Parliament*

In April 1989 the European Parliament adopts its first resolution on ‘the exploitation of prostitution and the traffic in human beings’.<sup>20</sup> The resolution condemns both prostitution as such and ‘trafficking’ for prostitution and calls for measures to eliminate both practices. Since then, two more resolutions have been adopted, which, unlike the 1989 resolution, distinguish between ‘trafficking’ and prostitution as such. The first resolution, adopted in September 1993, addresses ‘traffic in women’ for prostitution, calling for inter-

17. Forward Looking Strategies, paragraph 290 and 291, Nairobi 1985.

18. Beijing Declaration and Platform for Action of the Fourth World Conference on Women, China 1995, Strategic Objective D 3, paragraph 130b (UN Doc A/Res/49/166).

19. *Ibid.*, Section D: Violence against Women, paragraph 122.

20. Resolution on the Exploitation of Prostitution and the Traffic in Human Beings, OJ C 120, May 16 1989, p. 352.

national co-operation and the improvement of the position of victims.<sup>21</sup> In the second resolution, adopted January 1996, several new developments and trends are reflected.<sup>22</sup> Here, for the first time, the European Parliament goes beyond the traditional concept of ‘trafficking’ for purposes of prostitution only, taking the term ‘trafficking in human beings’ to mean:

The illegal action of someone who, directly or indirectly, encourages a citizen from a third country to enter or stay in another country in order to exploit that person by using deceit or any other form of coercion or by abusing that person’s vulnerable situation or administrative status.

Considering that ‘the offences of the traffic in women are not always clearly defined in national legislation or international conventions, thereby leading to confusion which makes it more difficult to fight these crimes’, the resolution calls on member States to:

Provide a clear definition of the concept of trafficking in human beings, and to identify trafficking as a violation of human rights and a serious crime.

Acknowledging ‘force’ as the crucial factor, the European Parliament calls upon the Commission and the member States to:

Take action at an international level to draft a new UN convention to supersede the obsolete and ineffective Convention on the Suppression of Traffic in Persons and of the Prostitution of Others (1949); any new convention should focus on coercion and deception.

With regard to internal preventive measures a link is made with the informal labour sector. Paragraph 14 of the resolution welcomes:

The ILO and the WHO initiatives to draw up standards for the informal economy and believes it is advisable to draw up legislation on unregulated work in the Union, too, in order to reduce the vulnerability and lack of rights of persons working in this sector, and to ensure access to health care, social services and insurance.

21. Resolution on Trade in Women, OJ C 268, October 4 1993, p. 141.

22. Resolution on Trafficking in Human Beings, January 1996, OJ C 32, February 5 1996.



### *Council of Europe*

At about the same time the Council of Europe takes up the issue. In 1991 a seminar on ‘Forced Prostitution and Trafficking as Violations of Human Rights and Human Dignity’ is held in Strasbourg. It is the first time (!) that – although very limited – a number of representatives of prostitutes’ organizations is invited to participate in the debate at a governmental level.

Following the conclusions of the seminar, the Steering Committee for Equality between Women and Men (CDEG) establishes a Group of Specialists to draw proposals for action to be taken in member States within the framework of the Council of Europe.<sup>23</sup> On the basis of the recommendations made in the final report of this working group, the CDEG asks an outside expert consultant to draw up a plan of action against ‘traffic in women and forced prostitution’. In the resulting Plan of Action the following definition of ‘trafficking’ is proposed<sup>24</sup>:

There is trafficking in women when a woman is exploited in a country other than her own by another person (natural or legal) for financial gain, the traffic consisting of organizing (the stay or) the legal or illegal emigration of a woman, even with her consent, from her country of origin to the country of destination and luring her by whatever means into prostitution or any form of sexual exploitation (Hirsch 1996, p. 11).

‘Forced prostitution’ then would be,

The act, for financial gain, of inducing a person by any form of constraint to supply sexual services to another person (Ibid., p. 23).

Based on the Plan of Action and other inputs, a document is prepared for the oncoming meeting of the Presidents of Steering and other Committees of the Council of Europe.<sup>25</sup> However, ‘given the fact that the distinction between prostitution and forced prostitution seems to create some problems in the different member States’, the Secretariat chooses ‘to limit the document to questions related to trafficking in human beings, with special

23. See for their final report: Final report of the Group of Specialists on action against traffic in women and forced prostitution (EG-S-TP) with amended appendices, June 1994 (S:\equality\cdeg94\ecdeg31.94)

24. Plan of Action against traffic in women and forced prostitution, by Ms. Michèle Hirsch, EG (96)2, Strasbourg, 9 April 1996.

25. Steering Committee for equality between women and men, 11th meeting, CDEG (96)6 rev., Strasbourg 10 May 1996.

emphasis on trafficking in women for sexual exploitation'. In the section on 'definition and causes of trafficking in women', reference is made to the fact that:

Trafficking in human beings, of which trafficking in women for prostitution or various forms of other sexual exploitation is an important part, [...] takes various forms, from the recruitment of individuals to work in degrading conditions (e.g. in the building industry, domestic work, etc.) to forced marriages, and involves both women and men; however, it concerns predominantly women being used for purposes of prostitution and pornography.

Subsequently the definition of 'traffic in women', as formulated in the Plan of Action is accepted, yet stating in a footnote that the 'CDEG should discuss and possibly amend this definition'.

#### *European Commission*

In 1996 the European Commission, in collaboration with the International Organization for Migration (IOM), takes the initiative to organize a European Conference on Trafficking in Women in Vienna<sup>26</sup>, resulting in a Communication from the Commission to the Council and the European Parliament on Trafficking in Women for the purpose of Sexual Exploitation.<sup>27</sup> The Communication is limited to 'trafficking in women' for the purpose of sexual exploitation, defined as:

The transport of women from third countries into the European Union (including perhaps subsequent movement between member States) for the purpose of sexual exploitation.

Continuing,

Trafficking for the purpose of sexual exploitation covers women who have suffered intimidation and/or violence through the trafficking. Initial consent may not be relevant, as some enter the trafficking chain knowing they will work as prostitutes, but who are then deprived of their basic human rights, in conditions which are akin to slavery. The Communication does not however seek to address the question of women who are not put under duress by a third party to travel to

26. See: European Commission Report of the Conference on Trafficking in Women, 10-11 June 1996, Vienna (CAB./183/96-EN).

27. Communication from the Commission to the Council and the European Parliament on Trafficking in Women for the Purpose of Sexual Exploitation, Brussels 20 November 1996 (COM (96) 567 final).

work as prostitutes over borders, nor does it address the questions of black market labour in other sectors of the European Union.

### *1.5 Developments in other regions*

At the (inter)governmental level, most regional developments concerning ‘traffic in women’ seem to take place in Europe. In 1992, however, a South Asia Regional Workshop on Protecting the Rights of Women and Children with special reference to ‘international trafficking and migration’ is held in Dhaka. ‘Trafficking’ is here defined as:

All acts involved in capture and acquisition of persons for trade and transport with the intent to sell, exchange or use for any illegal purpose.

### *1.6 International Organization for Migration (IOM)*

In the 1990s, under the influence of increasingly restrictive immigration policies of the more affluent countries, ‘trafficking in women’ becomes more and more an issue of illegal or ‘unorderly’ migration. This development is particularly evident in definitions originating in Western Europe, the United States and Canada, which tend to equate ‘trafficking in women’ with the ‘smuggling of aliens’, also called ‘aliens trafficking’ or ‘trafficking in migrants’.

This development is reflected in the IOM taking up the issue of ‘trafficking’. In his statement for the Preparatory Meeting on Traffic in Women<sup>28</sup> in December 1995, Mr. Marco Gramigna addresses the definitional issue as follows, after having referred to the 1949 Convention:

Since the adoption of the Convention, migrant trafficking has not only grown in scale, but also taken a greater variety of forms, such as forced marriage and labour. [...] NGOs typically define trafficking in women in very broad terms and focus on abuses suffered by trafficked women, while immigration and police authorities generally focus more on trafficking as an organized crime problem involving sophisticated criminal networks (IOM 1995c, p. 1).

Whereas the IOM is in the process of refining their definition to ‘adequately reflect the

28. Preparatory to the European Conference on Trafficking in Women in Vienna, June 1996.

reality of trafficking in women', Gramegna remarks that there first is a need for more clarity as to what constitutes migrant trafficking as such:

As it relates to international migration, we consider 'trafficking' to exist if:

- an intermediary – the trafficker – is involved
- money (or another form of payment) changes hands
- an international border is crossed
- entry and/or stay in the country of origin or destination is illegal.

However, we also realise that trafficking in women has some special characteristics that are not commonly found in other forms of migrant trafficking. For example, kidnapping of persons for purposes of trafficking them and selling or trading migrants into prostitution or forced marriage commonly occur within the context of trafficking in women. Therefore we tentatively define trafficking in women as any illicit transporting of migrant women and/or trade in them for economic or other personal gain. This may include the following elements:

- facilitating the illegal movement of migrant women to other countries, with or without their consent or knowledge
- deceiving migrant women about the purpose of the migration, legal or illegal
- physically or sexually abusing migrant women, or financially exploiting them en route and/or in the country of destination
- kidnapping or coercing migrant women for the purpose of trafficking them
- selling women into, or trading in women for the purpose of, employment, marriage, prostitution or other forms of profit-making abuse (IOM 1995c, p. 1 ff.).

The same trend is reflected in the already mentioned final conference in Vienna, June 1996, organised by the European Commission in collaboration with the IOM. An overwhelming number of documents prepared by governments and international organizations are headed 'trafficking in migrants' or 'trafficking in aliens' (although what is understood by these terms vary) and predominantly address questions of illegal migration.<sup>29</sup>

### 1.7 *International Labour Organization (ILO)*

Until recently the International Labour Organization has not been very active in the field

29. For example, the pleading for a European Convention on Prevention and Suppression of Alien Smuggling (see: Austria 1994).

of ‘traffic in women’, in the narrow meaning of ‘trafficking’ for prostitution. However, over the last few years the ILO has taken some initial steps to include women’s work in the informal labour sector as part of its mandate. An illustration can be taken from their studies on the situation of foreign domestic workers and entertainers (Weinert 1991; Colectivo Ioé 1991).<sup>30</sup>

## 2 Developments and themes

A review of the various definitions and their historical development reveals a number of trends and themes. Some of them run parallel, others merge.

### 2.1 From ‘recruitment’ to exploitation

The traditional concept of ‘traffic in women’, as expressed in the earliest treaties at the turn of the century, limits ‘trafficking’ exclusively to the (forced) recruitment and transport of women for prostitution (‘entices or leads away’). Underlying concern is the protection of ‘innocent’ women from being lured into brothels. Coercive conditions inside brothels (‘the case of the retention, against her will, of a woman or girl’) are explicitly not addressed, as this is a ‘question of internal legislation’.

The 1949 Convention, for the first time, links ‘trafficking as procurement’ with ‘prostitution as exploitation’. Whereas the first article addresses the enticing and leading away of women and girls – and in that sense only summarizes the previous treaties – the two following articles broaden the scope of the treaty to include the ‘exploitation of prostitution’, defined particularly by financial management or rental of premises for the purpose of prostitution. Although still addressed in separate articles, ‘trafficking’ and ‘exploitation of prostitution’ are mentioned in the same breath; the distinction between the two more or less disappears. Illustrative are the various national laws that are drafted pursuant to the 1949 Convention. For example, contrary to what its title suggests, the Indian *Immoral Traffic (Prevention) Act* targets the exploitation of prostitution rather than ‘trafficking’.

This disappearance of the distinction between ‘trafficking’ and ‘exploitation of prostitution’ is also shown by other post-war international definitions. While some contemporary definitions address predominantly the procurement aspect similar to the traditional con-

30. This trend has continued, as exemplified by the recent publication of *The Sex Sector, The economic and social bases of prostitution in Southeast Asia*, Lin Lean Lim (ed.), International Labour Office, Geneva 1998

cept of ‘trafficking’ (e.g. the IOM definition, though the emphasis here is on illegal migration), other definitions include the situation in which women end up, be it by coercion or with their consent. In many definitions the merging of ‘trafficking in women’ and ‘exploitation of prostitution’ leads to confusion; it is not clear which situations are exactly being addressed and how these should be characterized.

## 2.2 From ‘coercion’ to ‘even with her consent’

The first treaties are clearly restricted to compulsive forms of procurement and do not address situations in which no coercion, abuse or deceit is involved. In this sense the 1910 Convention can be considered a ‘minimum agreement treaty’: although individual States are allowed to penalize non-compulsive forms of procurement, international agreement obliges punishment only in cases of ‘fraud or the use of violence, threats, abuse of authority, or any other means of constraint’. It is only in 1933 that the condition of restraint is abandoned, if initially only with regard to the international ‘traffic in women’: from then on procurement is a punishable offence ‘even with her consent’. This trend continues after World War II. The 1949 Convention explicitly addresses all forms of procurement and exploitation for the purpose of prostitution, with or without the consent of the woman involved. The distinction between national and international ‘traffic in women’, which was made previously, disappears.

In the 1980s, the question of consent resurfaces on the political agenda. A number of the more recent definitions re-introduce coercion or force as a crucial element in the definition of ‘trafficking’, such as the 1996 resolution of the European Parliament. However, to what ‘force’ or ‘consent’ exactly refer is another permanent source of confusion. Relatively clear is the view in which ‘force’ refers to both the conditions of recruitment and the conditions of work. In this view the central question is under what conditions one may speak of forced recruitment or forced working conditions, as distinguished from conditions of recruitment and work based on mutual agreement. ‘Forced prostitution’ in this view is the equivalent of forced labour in prostitution.

A more traditional – but still very common – interpretation of the free/forced dichotomy is the one in which ‘free’ and ‘forced’ is understood as referring to the recruitment process only. Forced in this interpretation does not address working conditions, but merely the way a woman came to be a prostitute: as a result of her own decision or forced by others. ‘Force’ here refers to forcing ‘innocent’ women into prostitution. ‘Forced prostitution’ in this view is the equivalent of forced recruitment. From this perspective, once a woman works as a prostitute, the conditions under which she is working are of no importance.

‘Force’ defined in this way excludes those women who agree to work as prostitutes, but who are subject to force in the course of their work, or who are promised other working conditions than those in which they find themselves. As put by Jo Doezema:

The abuses she undergoes are considered to be the natural consequences of her willingness to be a prostitute. It is her own fault. Underlying is the idea that it is wrong to force an innocent woman to be a prostitute, but a guilty one can be mistreated with impunity (Doezema 1996, p. 65).

Yet others view the institution of prostitution itself as a violation of human rights, akin to the institution of slavery. Within this view any distinction which refers to the will or consent of the woman involved is irrelevant, as no person, even an adult, is believed to be able to give genuine consent to engaging in prostitution. Neither do the conditions of recruitment and/or work bear any relevance as a criterion of ‘force’. Any distinction between forced and free prostitution is considered to be a false one, as prostitution is, by definition, ‘forced’.

The difference between the distinctive views may become more transparent when a comparison is made with the discussion about domestic labour. In the case of domestic labour, the activity as such is never regarded as inherently exploitative or ‘forced’. It is the way the work is organized – in terms of recruitment as well as working conditions – that can make domestic labour ‘forced’ (as is the case in all modern forms of slavery-like practices). However, in the case of prostitution it is the nature of the activity as such that in the eyes of some makes it ‘forced’.

To complicate the debate, it is often unclear which of these views is underlying a particular discussion about ‘traffic in women’ or ‘exploitation of prostitution’.

### 2.3 From ‘violence against women’ to ‘violation of human rights’

The last two decades have shown a move from the conceptualization of women’s problems solely as a private issue or as violence against women, to the perception of violence against women as a violation of human rights for which States are accountable, not only as far as the public sphere is concerned but also in the private sphere. Illustrative of this development are the 1993 UN World Conference on Human Rights and the 1979 *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).

However imperative it is to approach ‘traffic in women’ and ‘forced prostitution’ as a violation of human rights, again it is of crucial importance how the issue is defined. An example may be taken from the report of J. Fernand-Laurent (1983), UN Special Rapporteur on

the suppression of the traffic in persons and the exploitation of the prostitution of others. In his report Fernand-Laurent approaches ‘traffic in women’ and exploitation of prostitution from a human rights perspective. Yet for him this implies that prostitution itself is a form of slavery. Referring to prostitutes, the report states:

While it is true that not all are tortured, all are nevertheless subjected to the most degrading and destructive form of slavery (Fernand-Laurent 1983, p. 17).

In addition, he argues that it is important that States co-operate with social organizations, including organizations of prostitutes, that is, as long as ‘they do not call for prostitution to be recognized as a profession’ (Ibid, p. 22).

This view exemplifies the confusion between the nature and the conditions of labour. For Fernand-Laurent, the nature of the activity as such and not the working conditions makes it a form of slavery. Compared to other forms of slavery, this creates a unique situation. The abolition of slavery did not deal with the abolishment of a certain type of work, but with the abolition of a certain type of power relationship – namely ownership of one individual over another individual -, which is considered a violation of human rights. After the abolition of slavery, people still work in the cotton-fields and domestic work is still being done. It is only when prostitution is discussed, that the aim becomes the abolishment of the activity as such, rather than the abolishment of certain power relationships. Precisely the comparison with other (modern) forms of slavery makes it clear that it is not the activity as such, but the conditions under which the activity takes place, that make it a violation of human rights.

#### 2.4 From ‘trafficking in women’ to ‘illegal migration’

In some of the more recent definitions, particularly in those that are strongly influenced by the western-European countries in their attempts to counteract migration, ‘trafficking in women’ is equated with the smuggling of aliens, also called aliens trafficking or trafficking in migrants (e.g. the IOM definition). In other definitions illegal entry or stay are at least considered a necessary component of ‘traffic in women’.

Although it is a documented fact that in a substantive number of cases of international ‘trafficking’ women are brought into the country illegally or lack a valid residence permit, just as many cases are known in which women enter the country in a completely legal way, e.g. as tourists, brides, maids or artists. Their stay in the country may also be completely legal, that is, as long as they do not remove themselves from the power of their husbands



or employers, as in many countries the staying permit of migrant women is dependent on the husband or employer. This makes clear that as far as international ‘trafficking in women’ is concerned, the illegal crossing of borders is not necessarily a component of ‘trafficking’, nor are the two the same. Of course this is self-evident when ‘trafficking’ takes place within national borders, for instance from rural to urban areas. Then there is no border-crossing at all, let alone the illegal crossing of a border.

However, the greatest objection to these types of definitions possibly is that they move the focus from violence against women to the issue of illegal migration. When ‘trafficking’ is defined by illegal migration or residence, the element of violence and abuse as well as the gender specific character disappear. The crime then becomes illegal entry or residence, i.e. infraction of State laws, rather than violence against women, i.e. violation of woman’s rights. In this perspective, the State rather than the women, is the ‘victim’, namely of migrants who want to enter the country illegally and of smugglers who help these migrants. The women concerned are thus transformed from victims into outlaws or collaborators and become thereby subject to detention, penalization and expulsion, regardless of the risk to their safety and livelihood. Here, the essence of the problem is not the fact that women are forced, abused or deceived, but the fact that people migrate, legally or illegally.

When ‘trafficking in women’ is equated with trafficking in aliens, measures will primarily aim at combating illegality and illegal aliens, thus protecting the State instead of the women. Rather than preventing and combating violence against and abuse of women, such measures risk – even if they primarily target the recruiters and exploiters – further marginalization and criminalization of the women concerned.

Another confusing element resulting from the equation of ‘trafficking in women’ and smuggling of aliens arises in the context of consent. It is true that many women choose of their own accord, within the options available to them, to migrate from one country to another or from rural to urban areas. If one equates ‘trafficking’ with (illegal) migration, one may say that ‘a woman is trafficked with her consent’. However, although she may consent to migrate for work or marriage (legally or illegally), this obviously does not mean that she consents to violence and abuse.

## 2.5 From ‘prostitution’ to ‘(informal and unregulated) labour’

Over the last fifteen years new manifestations of ‘trafficking’ have become visible, such as the trade in domestic workers and the trade in women in the context of the (commercial) marriage market. This development is reflected in a number of more recent definitions,

which go beyond the view of ‘trafficking’ for the purpose of prostitution only, and incorporate other contemporary forms of ‘trafficking and slavery-like practices’, whether this be in prostitution, domestic labour, marriage or in other situations (see e.g. the 1994 UN GA Resolution and the Beijing Platform for Action).

A common element in all manifestations is the aspect of forced labour and deceptive practices: women and girls are recruited by means of deception, violence or abuse of authority and subjected to slavery-like conditions, in which they are denied fundamental human rights and freedoms.

A second common element in the contemporary forms of ‘trafficking and slavery-like practices’ is that they invariably occur in those areas that are traditionally, and even still today, considered ‘women’s work’: domestic labour and sexual services. Moreover, they are not only considered women’s work, but they are in fact in many cases the only areas in which work is available to women, and even more so during times of economic deprivation. These are the activities to which millions of women are relegated to earn an income. As stated by Coomaraswamy in relation to prostitution:

A discussion of prostitution must accept the premise that prostitution as a phenomenon is the aggregate of social and sexual relations which are historically, culturally and personally specific. The only common denomination – shared by the international community of prostitutes – is an economic one: prostitution is an income generating activity, marked by a degree of commercial indifference between client and worker (Coomaraswamy 1994, p. 49).

Women’s work in the informal sector is mostly invisible, and because it takes place on the verge of the private and public domain, even today is often not considered an area of State responsibility. Consequently, women’s work did (and still does) not develop parallel to the sectors of labour in which men traditionally work. Labour laws and regulations, as they have evolved from the beginning of this century until the present day, pertain in particular to what is considered to be men’s work, which consequently has become normal and regulated labour. Women’s activities, despite generating income for millions of women and their families, are often not regarded as work, and even when considered as such, labour laws and regulations only apply in very restricted ways. Significantly, ‘trafficking’ and slavery-like practices predominantly occur in these informal, unregulated and unprotected labour sectors: prostitution, entertainment, domestic labour and, related to this, the (commercial) marriage market.

## 2.6 Summary: multiple meanings

From the turn of the century until the present, the debate on ‘trafficking in women’ is characterized by a continuous confusion about the concept of ‘trafficking’. A range of different definitions is offered. The first definitions in international treaties a hundred years ago limit ‘traffic in women’ to the ‘procuring, enticing or leading away’ of a woman by coercion for the purpose of prostitution. In the succeeding years, ‘trafficking’ is linked to the exploitation of prostitution, and coercion as a restraining condition is abandoned, as exemplified by the 1949 *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*.

In the 1980s, the discussion on ‘trafficking’ re-opens. A diversity of definitions shows up in the various national and international bodies, such as the European Parliament, the Council of Europe, the United Nations, the International Organization of Migration and the International Labour Organization. No definition is the same; each definition emphasizes another aspect. Some definitions focus on (the exploitation of) prostitution as such, others on coercion, on (illegal) migration, on (informal and unregulated) labour or on human rights’ violations. Significantly, all definitions reflect different interests, often mixing the issue of ‘trafficking in women’ with other (State) agendas, such as the interest of the more affluent countries in immigration control.

In addition, the discussion becomes even more complicated because some (restricting ‘trafficking’ to prostitution) argue that it is the activity of prostitution itself that makes ‘trafficking’ a violation of human rights, rather than the conditions under which women are recruited and/or forced to work.

## 3 Starting points for new definitions

In order to discuss ‘trafficking in women’ in an effective way, a clear and common definition is needed. This is especially important when thinking about ‘solutions’, i.e. measures to prevent or combat the problem. Any choice of policies depends to a great extent on the definition of the problem. Each definition produces its own solutions and related policies. Moreover, every policy in fact serves a particular interest, e.g. that of the State or of the women involved, and will affect – whether intentionally or unintentionally – the interests of other parties. When developing new definitions of ‘trafficking in women’, it is therefore essential to clarify the underlying ideas and interests. The next section will outline the starting points for a new definition.

### 3.1 *Perspective of women*

An essential question is the choice of perspective. As illustrated above, ‘trafficking’ not only affects the women involved but is at the same time closely connected to different State interests, such as the interest to restrict or promote labour migration, the interest to combat organized crime or the interest to regulate female sexual behaviour or to control prostitution.

However relevant the various State interests are, ‘trafficking’ should first and foremost be defined by the interests and perspectives of the women involved. Basic principle in this context is the (human) right of every individual to have control of her (his) own life, body and mind. Secondly, each proposed solution has to be examined in terms of its effects for the women concerned, the interests which are being served, whose problems are addressed and whether or not the solution might produce more problems for the women concerned rather than solve them.

At this point, it should be added that in this report the concept of ‘trafficking in women’ will be used rather than the gender neutral ‘trafficking in persons’. Although cases are known of boys or men who have been subject to ‘trafficking’, the overwhelming majority of the victims are women. Substitution of ‘trafficking in women’ by ‘trafficking in persons’ suggests a gender neutrality which in reality does not exist. A more practical argument is that, by using the term ‘trafficking in women’, the risk of confusing ‘trafficking in women’ with aliens smuggling is minimized.

### 3.2 *(Informal) labour*

The different definitions of ‘traffic in women’ as put forward over the last fifteen years illustrate that the notion is no longer restricted solely to prostitution as it was in earlier days. It is increasingly acknowledged that prostitution has much in common with other activities that are traditionally considered ‘women’s work’. It is not coincidental that ‘trafficking in women’ and slavery-like practices predominantly occur within these areas: prostitution, entertainment, domestic labour and, related to this, the (commercial) marriage market. It is in these unprotected and unregulated sectors of the labour market that millions of women earn an income for their families and themselves.

Following this development, the next logical step – insofar as it has not already been done – is to broaden the concept of ‘trafficking’ to include any work or services, instead of limiting it to prostitution. However, within the context of this report, we will restrict ‘work and services’ to prostitution, domestic work and marriage.

### 3.3 *Coercion*

Taking the experiences and interests of the women concerned as the point of departure, the crucial element of any definition must be ‘force’. From the perspective of the women involved the work or services or (illegal) migration as such are not necessarily the problem, but rather the conditions of coercion, deceit and abuse they are subjected to. It is the element of ‘force’ which turns recruitment and work or services rendered into ‘trafficking in women’ and ‘forced labour’ or ‘slavery-like practices’. It is in the institutionalized unequal power-relation between men and women that the core of the problem has to be found and not in the activities in which women are involved as such.

### 3.4 *Migration, crossing of borders, illegality*

All other elements mentioned in the different definitions – such as illegal entry or stay – may be elements of ‘trafficking’, but need not necessarily to be so. Both abusive recruitment practices and slavery-like working and living conditions are possible without the crossing of borders (legally or illegally), and with or without the woman concerned in the possession of a legal staying or working permit. In the case of illegal entry or stay, this illegality is not necessarily a problem for the women involved, as long as it does not serve as a means of coercion. On the contrary, illegal entry, stay or work may well be the only possibility for women to escape from slavery-like situations.

### 3.5 *Recruitment vis-à-vis living and working conditions*

For the purpose of this report a distinction will be made between the aspect of recruitment on the one hand and the aspect of living and working conditions on the other. This is not merely important for analytical reasons, but also because measures to prevent or combat abusive recruitment practices are not necessarily the same as measures to prevent or combat slavery-like working and living conditions. The two aspects are connected – abusive recruitment practices leading to slavery-like situations – but not identical. Both aspects need to be described and addressed.

## 4 Conclusion

### 4.1 Working Definitions

Based upon the previous analysis, the following working definitions have been developed in order to cover deceptive and coercive recruitment and brokerage practices, as well as exploitative and coercive working and living conditions, occurring in both public and private spheres:

*Trafficking in Women:* All acts involved in the recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion.

*Forced Labour and Slavery-like Practices:* The extraction of work or services from any woman or the appropriation of the legal identity and/or physical person of any woman by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion.

### 4.2 Explanation

As has been concluded in the preceding sections, the core of the problem is not the work or services as such, but rather the deceptive and abusive conditions under which women are recruited and forced to work. This implies that both forced labour and slavery-like practices, and the way women are brought into such situations need to be addressed.

Since none of the past or present documents specific to ‘trafficking’ offer a clear definition that is unambiguously in women’s interest, the working definitions go back to three well established international agreements: i.e. the 1926 League of Nations *Slavery Convention*, the 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery* – which condemns all slavery-like practices, including debt bondage<sup>31</sup> and forced marriage<sup>32</sup> – and the 1930 ILO *Convention concerning Forced or Compul-*

31. Article 1a of the Supplementary Slavery Convention prohibits debt bondage, 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 reasonable assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined’.

32. Article 1c of the Supplementary Slavery Convention prohibits ‘any institution or practice whereby a woman

*sory Labour*. These conventions are widely accepted and clearly describe the situations at hand. It is worth noting that such clarity exists only in conventions that do not address gender-specific behaviour and are therefore not gender-biased.

Fundamental to slavery is the concept of ‘ownership’. Art. 1 of the 1926 *Slavery Convention* defines slavery as:

The status or condition of a person over whom all or any of the powers attached to the right of ownership are exercised.

In the international praxis, slavery is not only understood to mean the exercise of all or any powers attached to ownership, but also the de-facto destruction of the legal personality of a person.

Slavery-like practices are prohibited by the 1956 UN *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices similar to Slavery*. The Convention itself does not contain a definition of slavery-like practices, but merely lists a number of practices and institutions that constitute slavery-like practices, i.e. debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents. However, two common criteria can be derived from the listed practices and institutions:

- the infringement of the formal or de-facto legal status of a person, resulting in a serious and far-reaching deprivation of fundamental civil rights, in combination with
- the one-sided economic exploitation of the person through the abuse of long-term relations of dependency.

In general, slavery-like practices are understood to refer to modern forms of slavery in which the person is not literally ‘owned’ – as in the classic sense of losing his or her legal status/personality -, but in which the actual effects on the person concerned amount to – or are equal with – slavery in its classic form.

Forced or compulsory labour is defined in article 2 of the ILO *Forced Labour Convention* no. 29 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.

without the right to refuse, is promised or given in marriage on payment of a consideration in money or kind to her parents, guardian, family or any other person or group’, or whereby ‘the husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise’.

Whereas the concept of forced labour in the ILO Convention predominantly refers to the relation between the State and the individual, article 4.1 of the Convention takes it to the private domain, ruling on State accountability with regard to forced labour situations between individuals:

The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

*Trafficking in women, forced labour and slavery-like practices*

The working definitions make a distinction between trafficking – which comprises all processes involved in the recruitment and transportation of women under deceptive or coercive conditions – and the actual conditions of life and work women end up in and which may amount to forced labour or slavery-like practices. Although closely related, they do not necessarily go together. Trafficking can be a means to bring women into slavery-like situations, but this does not always have to be the case. On the one hand, women can be recruited and transported under conditions of coercion but not end up in a forced labour or slavery-like situation. On the other hand, women may find themselves in forced labour or slavery-like situations without having been trafficked.

Secondly, the distinction clarifies the relation between abusive brokerage practices (defined as trafficking) and slavery-like exploitation of women (defined as forced labour and slavery-like practices). As long as the latter practices are allowed to exist, recruiting agencies, intermediaries and other profit-seeking individuals and organizations will seize the opportunity to ‘deliver’ new recruits, aware of the fact that once women are brought into a slavery-like situation, escape is hardly possible. To draw an analogy: without the existence of slavery, the slave-trade could never have existed either.

*By means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion*

The crucial element in both definitions is coercion, which can take various forms, including, but not limited to:

- violence or threat of violence, including deprivation of freedom (of movement, of personal choice);
- deception with regard to, among other things, working conditions and/or the nature of the work to be done;
- abuse of authority or dominant position, which can range from confiscation of personal documents in order to place another person in a dependent position, to abuse of



- one's dominant social position or natural parental authority or abuse of the vulnerable position of an individual without legal status;
- debt bondage, i.e. pledging the personal services or labour of oneself or another individual as security for a debt, if the value of those services or labour as reasonable assessed is not applied towards the liquidation of the debt, or the length and nature of those services or labour are not limited and defined.

#### *Work or services*

Work or services include all domestic, sexual, reproductive or other services rendered under the above-mentioned conditions of coercion, regardless of whether or not those services are recognized as work, take place under a work contract or under a marriage contract and regardless of whether or not they are considered socially normative or illegitimate.

This report will concentrate on trafficking in women, forced labour and slavery-like practices in the field of prostitution, domestic work and marriage, since these are the most commonly researched and described situations. However, the definitions are not limited to these fields, leaving open the possibility to address any such practices occurring in other areas of work or services.

#### *The appropriation of the legal identity and/or physical person*

This refers to the concept of partial or total ownership as used in the Slavery Conventions. The word 'appropriation' is used to denote the act of claiming ownership of a person, acting as if one owns the person. The appropriation of one's legal identity can range from confiscating one's identity papers or supplying a woman with a false identity, to the loss of one's legal personality under the marriage contract.

## Chapter 3

# Contemporary manifestations and trends

### Introduction

The following chapters will examine the contemporary manifestations of forced labour and slavery-like practices ('the extraction of work or services under conditions of force or deceit' as defined in chapter 2), and trafficking in women ('the recruitment for work and services under conditions of force or deceit') within marriage, domestic labour and prostitution.

In chapter 3 the contemporary manifestations of trafficking, forced labour and slavery-like practices are put in the broader context of traditional female roles, a gendered labour market and female labour migration, followed by a general overview of the prevalence of these practices in the three areas of our concern and a general analysis of the contributing factors.

In chapter 4 tot 6 each area will be reviewed separately, examining the specific characteristics, contributing factors and manifestations in the particular contexts of marriage, domestic labour and prostitution. Each chapter ends with an overview of the constraints women face when they want to escape or change their situation, the factors which hinder them to report or to press charges, and the manner in which complaints are dealt with by the authorities.

Some of the limitations which have been mentioned in chapter 1 are endemic here: a comprehensive analysis of the extent of trafficking, forced labour and slavery-like practices is not possible, since reliable figures are lacking. Moreover, information on specific trends and manifestations varies greatly from country to country and region to region. It has therefore only been possible to highlight some general trends and exemplary cases. The mere fact that the number of examples for one region exceeds that of another does not imply that such practices occur less in other regions. Thirdly, restrictions of time and of materials in combination with the fundamental choice for a woman's perspective implied a very limited treatment of the criminal organizations involved. The character and scope of such organizations, their different ways of operating and their intertwinement with other types of crime, such as drug trafficking, are not dealt with.

The results of the questionnaires have been processed from this chapter on.<sup>1</sup> A total of 61 NGOs, operating in 41 different countries, completed the general sections (sections A and B) of the questionnaire. In addition, 46 NGOs filled in the specialized section on prostitution (section C), and 17 completed the section on domestic labour (section D). The absolute number of respondents is recorded per diagram. Respondents were requested to fill in the questionnaire according to the working definitions as developed for this report.

It should be emphasized that the given percentages reflect the perspective and experiences of the respondents, which in turn represent just part of the organizations working in the field. In addition, it must be remembered that terms such as ‘frequently’ may mean something totally different in Thailand than in Canada. In this sense, absolute significance cannot be attached to the figures: they show trends and not ‘facts’. Nevertheless, in combination with the other sources employed, the figures can be assumed to represent relevant trends.

Since it appeared to be impossible to indicate more than trends, the original six categories (very frequently/frequently/occasionally/rarely/not/don’t know) were reduced to four categories; the categories ‘very frequently’ and ‘frequently’, and ‘occasionally’ and ‘rarely’ have been combined. For the same reason, percentages were rounded off. Percentages do not always add up to 100 per cent due to incomplete questionnaires.

## 1 General Framework

### 1.1 *Traditional female roles*

Housekeeping, caring for husbands (also sexually), children, extended family members and the aged are traditionally reproductive tasks assigned to women in all societies. In addition, women – especially in rural communities – may spend many hours each day growing food and keeping livestock for family consumption and selling their own surplus produce at the market. Although these activities have considerable economic significance, they are generally not considered as a contribution to the cash economy.

Significantly, female labour is rarely recognized as work. In most societies, woman’s role and identity as wife and mother are considered biological rather than economic and social. The work women have always done and continue to do, is considered a ‘natural’ aspect of being female, respectively as a ‘natural part’ of women’s responsibility to supplement family subsistence. Expectations and socialization – including religious tenets

1. A copy of the questionnaires can be found in annex I. For more information on the use of the questionnaires and the (methodological) limitations: see chapter I.

circumscribing the role of women – oblige girls and women to fulfil their ‘duties’ as daughter, wife and mother. Thus, the work that women do every day is not considered work, but as the fulfillment of their natural role (Afshar 1985).

## 1.2 Gendered labour market

The same cultural and political mechanisms relegate women to certain sectors of waged labour:

Girls are educated on a lower level than boys and have fewer opportunities for work in skilled professions. The occupations open to them are often limited to those considered ‘suitable work’ for women, such as domestic services, factory work and prostitution (GAATW 1996, p. 13).

In general, women have less access to the formal, regulated labour markets, in both the poor and the industrialized countries. They are greatly dependent on work in the informal and unregulated labour sectors. In the Dominican Republic, for example, it is reported that two-thirds of the economically active women work in the services sector or as domestic worker. These are the lowest paid jobs with hardly, if any, occupational protection (Ferreira 1996).

Labour markets do not value male and female labour independently of gender. They operate not only to exclude women from skilled jobs, but also to down-grade jobs when they are performed by women. As Afshar points out:

It is the sex of those who do the work, rather than its context, which leads to its identification as skilled or unskilled (Afshar 1985).

Both the delegation of women’s work to the realm of ‘nature’ and the down-grading of women’s work have been questioned by feminists at the beginning of the century (Hamilton 1909) and, with intense vigour, during the past three decades. Women in domestic service, who have been called maids or house-girls or servants, have organized to improve their labour conditions as domestic workers. Likewise, prostitutes organize to demand labour rights as sex workers. Wives remain the most isolated and unorganized group. There are great regional differences in the plight of women, but the patterns that refuse worker status to women who perform sexual, domestic and reproductive services continue to reign throughout the world.

### 1.3 *Feminization of migration: female labour migration*

Women and children are particularly vulnerable to the present global malaise of increasing economic and social inequality, rural economic failure, rising unemployment and the growing gap between the rich and poor countries. The decline in the former socialist countries is illustrative of its impact on women. The breakdown of national economic and political systems has precipitated the hitherto unknown phenomenon of unemployment, which has stricken women first and foremost. Women were the first to lose their jobs while at the same time social services, education, and medical care stopped to be free. As stated in a report of the Polish Feminist Association:

The growing unemployment among Polish women, the lack of vocational retraining programmes, the very low social benefits (less than US \$ 100, when the rent of a single room varies from US \$ 100 to 200) and the increasingly common necessity of paying for education – it is for these reasons that ever younger women decide to try to find work in the West or in prostitution in Poland (Limanowski 1995, p. 60).

In Poland and other countries the responsibility for the sustenance and care of dependent family members is increasingly borne by women, and by women alone in case of absence of husbands due to migration, abandonment or death. Many women find themselves in the paradoxical situation of being responsible for the family income, whereas they neither have access to the same employment opportunities that men have, nor to equal opportunities for legal labour migration.

At the same time, social and political developments have in general raised expectations of what the world outside one's own communities may offer. Women everywhere aspire a better life than that of their mothers and grandmothers. They seek opportunities to escape from traditional gender and family constraints and to find the means for an independent life. As described in a report on violence against women in China:

Economic reform opened the gate to a new world not only to men but also to women. Suddenly appearing before women was a world that was fast, new and exciting. Human kind's natural desire for a better life and the instinct to pursue freedom led more and more women to aspire to leave the kitchen stove and kang, from which they had served generation after generation, and to leave the villages and the fields that had been their entire lives. More and more women left the path that had been set for them by their families and chose rather to elope [...] One may say that these women who wish to say farewell to the old world and go search for a new life are brave [...] The movement of women from their homes and the bur-

geoning desire on the part of the women to change themselves are first steps forward for women and historically significant steps at that (Harvard, 1992, p. 5 ff).

Not only in China women seek to take their lives in their own hands:

Another factor which draws Polish women to Western Europe is the myth of independence and emancipation supposedly awaiting them in the West. After the communist regime in Poland came to an end, the new authorities, prodded by the Roman Catholic Church, have been promoting the conservative traditional model of the family, in which the only proper role for a woman is that of mother and housewife. Women are pushed away from decision making and into the margins of life. In these conditions, along with prevailing violence and alcoholism within families, women may connect their plans for a better future with employment in the West. They are drawn there not only by the myth of prosperity, but also of career opportunities, of independence and the partnership model of the family in which she will be equal to her male partner. It is not by chance that the only countries to which more Polish women than men emigrate are those countries that are considered the most 'women-friendly': The Netherlands, Germany, Belgium, and the Scandinavian countries, including Denmark (Kootstra 1996, p. 26).

In addition, the general belief in countries of the South that envisions Europe, the 'mother country', as the ideal of development and progress – an image promoted throughout years of colonial domination and, more recently, by the globalization of communication – functions as another factor influencing women to leave their home-countries and find work abroad (Lim 1996).

As a consequence, the number of female migrants in search of work, a better life and opportunities to support their families has increased dramatically during the past twenty years. Currently, nearly half of the migrants world-wide are women, although in official policies women are still primarily considered as dependants of male labour migrants. This trend is described by the IOM in its report on trafficking to the EU States:

One factor is the changing nature of female labour migration. Traditionally female migrants have tended to emigrate with their families or after the male head of the family has emigrated. Today, however, given the rise in single parent families, women increasingly have sole responsibility for their families and have a stronger incentive to emigrate in order to send back remittances to their children (IOM 1996d, p. 6).

According to a report of the International Labour Organization, approximately 1.5 million Asian women are working abroad, both legally and illegally:

The countries of origin report an aggregate outflow of 800,000 female migrant workers per year, and the number is increasing steadily [...] In the Philippines women account for about 60% of legal migrant workers (excluding seafarers) and this figure rises to 94% for those destined for Asia, excluding the Middle East [...] In Thailand, women account for only about 25% of the recorded workers leaving the country for overseas employment, but clandestine female emigration is increasing faster than that of men (ILO 1996, p. 16).

Migration patterns reflect this labour division, whether it be on the national, the intra-regional or the international level. Yet:

Gender remains by and large a neglected area in the field of international migration studies. Evidence from limited inquiries into the situation of female migrants in a number of OECD countries, suggested that whether legally or illegally recruited, many female migrant workers tend to be deployed in a narrow range of occupations shunned by the local female population (entertainers, sexual services, domestic workers, and semi-skilled service occupations in restaurants and hotels). Apart from the service occupations, migrant women are also engaged in floor processing lines, garments and textiles. Service occupations filled by migrant women tend to fall in the domain of sex-affective services, care taking and social maintenance of labour, commonly referred to as reproductive labour (Truong 1995, p. 2).

Wherever women go, they find extremely restricted kinds of paid work: 'unskilled' work on the assembly line, cleaning, cooking and caring work – either in private houses as domestic workers or in restaurants and hotels -, or as entertainers and prostitutes, usually in the 'boom industry' of the 20th century: tourism with its attendant sex services (Lim 1996). An airport survey in Sri Lanka, for example, revealed that 84 per cent of the migrant workers were female; of these women 94 per cent were domestic workers (Lim 1996). Ironically, many women also opt to leave their country altogether in the ultimate women's role of 'bride', in the hope to find economic and social security, only to find themselves in the same gender-bind of family and home care from which they had hoped to escape.

Within a gendered labour market, sexual and domestic work are two of the few income generating activities available for women, especially for women from poor countries or regions. Many women consciously enter into prostitution or domestic work and move in and out of a particular activity during their lifetime. In the Latin American region, for

example, sex and domestic work have traditionally been established as ‘women’s work’ and as legitimate ways in which women earn a living, and many women move around the region and abroad in search of this type of engagement. In this sense, prostitution should be understood as an activity which for centuries has been an integral part of Afro-Caribbean female survival strategies (Azize-Vargas 1996). In the same way, Asian organizations caution ‘not to equate prostitution with trafficking, as for some women sex work is a valid choice and they should be given the same rights as workers in other occupations’ (GAATW 1996, p. 33).

At the same time, it are these unregulated and unprotected labour markets, including the commercial marriage market, where abusive and exploitative practices flourish. As observed by the ILO:

While migration provides productive labour and an economic lifeline for millions of Asian women, the dramatic plight of unprotected female migrant workers has become an increasing source of public concern as evidence of abuses mounts (ILO 1996, p. 16).

Although there is a clear demand for these types of work in the countries of destination, there are few legal and independent ways for women to migrate within this informal labour market, and these possibilities decrease even further in view of the increasingly restrictive immigration policies of the wealthier countries. Owing to the nature of the work and the forms of migration open to them, female migrants are compelled to make use of the services of dubious agencies and middlemen proliferating to meet that demand. Migrating women are thus placed in an extremely vulnerable situation.

Poor or lacking legislation and labour standards in combination with the partially illegal or semi-legal character of the work concerned create the basis for suppressive and exploitative working conditions, varying from humiliating treatment, low payment and extreme working hours to outright forced labour and slavery-like practices. Women, caught in clandestine and informal sectors, are hardly in the position to protest or claim their rights.

In the case of international migration, the right of residence is usually linked to the employer or the husband and subjected to various restrictions. Foreign domestic maids in a number of Asian countries, for example, are not allowed to change jobs within two years of their employment contract. Migrant women workers are prohibited from marrying local citizens. They are not allowed to become pregnant, and some countries can even subject them to pregnancy tests every six months. Domestic service and entertainment are usually not covered by labour laws or social security regulations, but even when they are, enforcement of workers’ rights is difficult (Lim 1996). Even in countries where prostitu-



tion is more or less legalized, national policies often do not allow migrant women to work in the sex-industry. In the case of marriage, the wife's right of residence is usually fully dependent on the husband for a considerable number of years, a bind which allows the man to have almost complete power over his wife.

In its *World Labour Report 1993* the ILO describes the present day occurrence of forced labour and slavery in the tin mines, sugar plantations and forestry estates in some Latin American countries. The following characteristics of these modern forms of forced labour or slavery-like practices, can be derived from the different cases presented:

- confinement;
- no pay or insufficient pay;
- debt bondage: parents are pre-paid for their children or workers are offered an advance that has to be paid off from future earnings, but the debt is extremely difficult to pay off and often increases;
- recruitment with promises of good wages and working conditions, but on arrival workers are told that wages are lower than promised. They have to pay for transport and buy food from the recruiters at higher prices than normal, all adding to the 'debt' they have to repay;
- physical punishment and sexual abuse for attempts to escape, sometimes amounting to killings;
- belongings are kept by employers;
- due wages are withheld for all kinds of arbitrary reasons;
- workers have no control whatsoever of their daily lives.

Although there is no specific reference to women in this ILO report, the mechanisms described are similar to those employed to coerce and control women within the sectors of our concern.

## **2 General overview of trafficking in women, forced labour and slavery-like practices in marriage, domestic labour and prostitution**

### *2.1 Prevalence of forced labour and slavery-like practices*

A quarter of the respondents to the questionnaire report with regard to the situation in their respective countries that forced labour and slavery-like practices do occur (very) frequently in marriage and domestic labour. About half of the respondents report these practices to occur (very) frequently in prostitution. Table 1 shows the reported prevalence of forced labour and slavery-like practices within the three areas of our concern.

TABLE 1 *Do forced labour & slavery-like practices take place in your country in the following situations:*

	(very) <i>frequently</i>	<i>occasionally/ rarely</i>	<i>not</i>	<i>don't know</i>
Marriage	26%	33%	12%	25%
Domestic labour	25%	54%	2%	15%
Prostitution	54%	33%	3%	10%

Number of respondents: 61

Although this report focuses on contemporary forms of forced labour and slavery-like practices in marriage, domestic labour and prostitution, similar conditions occur in other fields, as is indicated by several respondents. Groups that are mentioned by respondents include foreign exotic dancers, factory workers, garment workers, Free Trade Zone workers, restaurant workers, daily wage earners, agricultural labourers and gold and coal mining labourers (men and women). An illustration is the case of 68 Thai garment workers, most of whom women, who were freed in August 1995 from a sweatshop in Los Angeles. They had been deceived about working conditions and were working sixteen hour days for less than US \$ 1 an hour in a closed compound under armed guard (GAATW 1996, p. 32).

## 2.2 *Prevalence of trafficking in women*

Though a distinction is made between trafficking for the purpose of marriage, domestic labour or prostitution, in practice the dividing lines are less clear. Women, for example, may be recruited for marriage but after a certain period of time be sold into prostitution by their husband.

Trafficking may take place within national boundaries as well as across borders. Although most attention until now has been paid to international trafficking, a considerable percentage of respondents report the prevalence of trafficking within national borders for marriage as well as for domestic labour and prostitution. Table 2 shows the reported prevalence of trafficking in women within national borders.

TABLE 2 Does trafficking in women take place **within** your country:

	(very) <i>frequently</i>	occasionally/ <i>rarely</i>	<i>not</i>	<i>don't know</i>
For marriage	13%	30%	18%	26%
For domestic labour	18%	30%	15%	23%
For prostitution	43%	28%	3%	15%

Number of respondents: 61

At the same time trafficking may occur across borders. In relation to trafficking across borders more than 60% of the respondents mention their own country as a sending country, about 70% as a receiving country and about 45% as a transit country.

When these figures are analysed in relation to the various purposes of trafficking, the following patterns show:

TABLE 3 Does trafficking in women take place **to** your country:

	(very) <i>frequently</i>	occasionally/ <i>rarely</i>	<i>not</i>	<i>don't know</i>
For marriage	13%	33%	15%	20%
For domestic labour	15%	38%	15%	12%
For prostitution	43%	23%	5%	12%

Number of respondents: 61

TABLE 4 Does trafficking in women take place **from** your country:

	(very) <i>frequently</i>	occasionally/ <i>rarely</i>	<i>not</i>	<i>don't know</i>
For marriage	18%	28%	16%	23%
For domestic labour	16%	25%	20%	21%
For prostitution	36%	25%	12%	16%

Number of respondents: 61

TABLE 5 Does trafficking in women take place **through** your country:

	(very) frequently	occasionally/ rarely	not	don't know
For marriage	2%	15%	20%	39%
For domestic labour	8%	21%	16%	30%
For prostitution	16%	34%	8%	21%

Number of respondents: 61

According to respondents trafficking also occurs for other purposes, such as factory labour, farm work or exotic dancing. Almost equal percentages of respondents report that trafficking occurs within, to and from their countries.

There is no simple ‘one way’ pattern to be discerned in international trafficking. Many countries are simultaneously countries of origin, destination and transit. Others started originally as sending countries but developed into destination countries, like Thailand. Women are trafficked from China to Hong Kong, from Vietnam to China, from Burma to Thailand and from Thailand to Japan (GAATW 1996). Women can be trafficked through other countries as transit points, for example from Thailand to Malaysia with Japan as the final destination, or from several South East Asian countries to Singapore with Australia as the final destination (AFP 1995).

### 3 General overview of contributing factors

Trafficking in women and slavery-like practices are not recent phenomena. Letters and police reports from the end of the 19th century relate the kidnapping and selling of women and girls from small Jewish ‘Shtetles’ (villages) in Galicia and other parts of Central and Eastern Europe to the brothels of the world, mainly in South America, but also in Africa, East Asia and North America (Staudacher 1996). In the Latin American and Caribbean region, in particular Argentina and Brazil, news of such practices dates back to the 1860s. As Donna J. Guy and others have described:

At the end of the nineteenth century Buenos Aires had a terrible international reputation as the port of missing women, where kidnapped European virgins unwillingly sold their bodies and danced the tango [...] By the 1860s the Continental Press reported frightening stories of women lured away by strangers with false

promises of marriage or work, only to be trapped in some sordid house of ill repute [...] According to a Budapest newspaper, they arranged transportation and promises of marriage for women, then sold them as prostitutes in Buenos Aires [...] In fact, verifiable cases of white slavery were infrequent, but they did involve a system of forced recruitment by lovers, fiancés, husbands, and professional procurers [...] European prostitutes in Buenos Aires, for the most part, came from poverty stricken families and worked out of desperation. Marginalized by the industrial revolution, driven from their homelands by hunger or by family, political or religious persecution, they saw immigration to a new land or even a new continent as the key to survival (Guy 1995, p. 5ff).

Since this recorded history more than a century has passed, but many of the factors mentioned by Guy are still current. At the same time new factors have emerged and old factors, such as poverty, have taken new forms.

As contributing factors in countries of origin respondents mention above all:

- poverty/unemployment (mentioned by 89% of the respondents as contributing ‘(very) frequently’);
- corruption of authorities (48%);
- globalization of the economy (48%);
- development strategies, e.g. tourism (43%);
- laws and policies on migrant labour (23%);
- laws and policies on prostitution (23%);
- national or local conflict/military presence (20%);
- cultural and religious practices (20%);
- migration laws and policies (18%).

As contributing factors in destination countries respondents mention:

- immigration laws and policies (43%);
- laws and policies on migrant labour (39%);
- globalization of the economy (38%);
- labour legislation (31%);
- laws and policies on prostitution (31%);
- development strategies, e.g. tourism (25%);
- poverty and unemployment (23%);
- corruption of the authorities (21%).

In addition, the low status and subordinate position of women in many societies and the potential to earn substantial profits from these practices were mentioned as overall contributing factors.

The following section will examine more closely some of the contributing factors. ‘Globalization of the economy’ will not be discussed as a separate factor. However, aspects thereof will be addressed in the sections on poverty and unemployment, development strategies, and demand and supply.

### *3.1 Poverty and unemployment*

In a recent report on trafficking in women to countries of the European Union the IOM mentions a combination of factors as the cause of trafficking:

Root causes are poverty, lack of opportunities, the disparity in wealth between rich and poor countries, and the marginalization of women in the latter countries (IOM 1996d, p. 6).

Information from NGOs as well as testimonies provided by the women concerned – not surprisingly – confirm that the absence of viable employment opportunities in their home situation coupled with the urge to improve their economic situation is one of the main reasons why women seek opportunities to work abroad.

The creation of export processing zones in countries like the Dominican Republic, Brazil, Mexico and other countries in Latin America by no means constitute real economic options for women, as pointed out by among others Azize-Vargas in her report on trafficking in women in Latin America and the Caribbean (1996a). Low salaries, poor working conditions and instability are among the most frequent conditions faced by women in this sector. This applies not only to the situation in Latin America. In her paper on women as migrants and workers in developing countries Zlotnik notes that:

Despite the new employment opportunities created by the growth of export oriented manufacturing in many developing countries, too many unskilled migrant women are still likely to end up working as domestic servants in the informal sector. Furthermore, even when they manage to work in the formal sector, their positions are far from secure (Zlotnik 1995, p. 12).

At the same time, the economic burden of women increases as male unemployment rises. In many cases, reductions in demand for male labour, due to economic slowdowns in receiving countries, spur female migration, especially since the demand for maids and nurses continues to increase (Lim 1996). Data from 1990 show that Latin America shares with Eastern Asia the highest percentage (21%) of female headed households among developing countries (UN 1995b, p. 6). The Caribbean region even has the highest rate of female headed households in the world: 35%. It is estimated that women in the urban zones in the Dominican Republic constitute 40% of heads of households (Ferreira 1996). According to Safa, the changes occurring in the role of women as economic providers in the Dominican Republic and Puerto Rico have altered the role of men in such a way that it can be argued that what is left is just ‘the myth of the male breadwinner’ (Safa 1987). In her report on Latin America, Azize-Vargas too notes that gender roles are shifting and traditional patterns of migration initiated by men have changed:

In addition, the economic crisis has pushed more women into the informal sector activities like commercial trading and sex trade. In this sense, the search for economic survival and autonomy is the structuring principle for women’s entering into the sex trade, domestic work or other working activities. Ways and strategies used by women to achieve their autonomy are becoming more flexible and varied [...] Sex work appears therefore as a strategy for many women to cope with painfully economic consequences of global capitalism [...] At another level we need to understand how global capitalism creates conditions for women to sell sexual services at far better rates of pay than the sale of another form of labour (Azize-Vargas 1996a, p. 14).

The same mechanisms apply to other regions, such as South East Asia, where large numbers of women support their extended family with their earnings. Because of the foremost priority of earning money, family or friends rarely inquire about the conditions of their work as this is the only means to improve their position within their country (GAATW 1996).

### *3.2 Development strategies*

A number of reports point out the use of tourism as an economic strategy to boost the economies of developing countries – often encouraged by international banks – as a contributing factor to trafficking in women for prostitution:

Although a clear difference should be established between sex tourism and trafficking in women for prostitution, several factors have been identified as fostering the relationship between tourism and trafficking of women. For instance, the transit of wealthy European tourists to poor, ex-colonial territories, where women have been portrayed by agencies as an essential part of the tourist package and sexualized exotic products, are elements identified by organizations as ways of facilitating trafficking operations (Azize-Vargas 1996, p. 12).

Butegwa mentions the same mechanism regarding Kenya:

Kenya, with its flourishing tourism industry, has not escaped the global racket of trafficking in women for purposes of prostitution. Regarding the situation of trafficking it has already been noted that young women from Uganda are lured into Kenya to serve as prostitutes for the millions of tourists who constantly flock into Kenya. There are also reports of other young women who are lured from India allegedly to work as performing musicians in Kenya, only to end up as prostitutes (Butegwa 1996, p. 4).

Other development strategies can have similar devastating consequences for women. Human rights activists in Indonesia point out that the focus of the government's policy to speed up economic growth through industrialization, has changed vast areas of agricultural land into industrialized areas. As a consequence, peasant women have lost their jobs and income in rural areas and are pushed into poverty. Illegal agents come to rural areas and promise women jobs as domestic worker, secretary, and the like (Handayani 1996). In Sri Lanka the new economic policies of the government, which form part of the conditions to receive loans from international financial institutions, include opening up new sectors of the economy and reducing the State sectors, a move which has raised the level of unemployment. The most vibrant sectors of the economy at the moment are the Free Trade Zones, established by the government, and migration for employment. Women constitute the majority of the labour force in both sectors:

When one looks at the nature of work in both these categories, they are traditionally 'women's tasks' and highly labour intensive. When one looks at the conditions of work, they are slave-like for both categories and the women are themselves extremely vulnerable to all forms of physical and sexual abuse (De Silva 1996, p. 1).



### 3.3 Demand and supply: laws and policies on migration and migrant labour

While the number of female labour migrants is growing, the opportunities for legal migration, especially to Western Europe, North America and Canada, have decreased. A great number of destination countries claim that they are no longer immigration countries. Measures have been effected to tighten asylum procedures, to reinforce border control and to reduce labour permits for foreign workers. However, although official policies of these countries hold that they do not allow more labour immigrants, these statements can hardly be maintained when it is clear that there is an apparent demand in economic terms for certain types of jobs, especially in the informal labour market, and that these jobs sustain their economies. An illustration formed by the market for domestic workers in Europe:

Throughout Europe there has been a massive increase in demand for private domestic services, including child care and care of the elderly. In Spain it is estimated that there are over 600.000 domestic workers, and in France the Federation of Employers of domestic workers now has 900.000 members. These services are increasingly being provided almost exclusively by migrant women and, in France, by their descendants. According to migrant women's groups it is now the only employment available for migrant women in Italy, Spain, France and Greece (Anderson 1996a, p. 3).

Given the demographic shift in the EU<sup>2</sup> and the decline of State provision of services for care of children and the elderly in Northern Europe, migrant women play an increasingly important role in providing services which were formerly provided by the State or the extended family:

The employment of the foreign domestic worker is the new 'solution' to the difficulties arising from social and economic changes in the Union. Those workers who are providing 'live-in' care in the growth areas of care of children and the elderly are increasingly women without legal status in the country where they live. Thus the work involved around 'personal services' continues to be invisible and those workers are vulnerable to exploitation in the form of low wages, job insecurity and excessive working hours (Ibid., p. 3).

2. According to a report published by the European Commission in March 1996, Europe is set to experience a massive demographic shift, with a 50% increase in the number of people over 60 in the next 30 years and an 11% decrease in the under 20.

In this sense the growth of migrant domestic workers provides a unique insight into the relationship between the developed and the developing world:

With the ease of communication, of transport and of money transfer, emigration is becoming part of family survival strategies. While the woman migrates to do domestic service, other female members of her family, her mother or sisters, do her domestic chores and child care responsibilities unpaid. As other female family members follow the original migrant abroad, those remaining at home take on more and more domestic labours. So, the strategies of female employers in Europe to enter the labour market fully, have implications for the family structures and strategies throughout the world (Ibid., p. 11).

The increasingly repressive immigration policies of the wealthier countries have significant negative effects for female migrants. On the one hand, they reduce the already extremely restricted possibilities for women to organize their migration independently, as Spring describes with respect to the trade of striptease dancers and prostitutes in Switzerland:

Border crossing presents no problem, particularly when experienced organizations are behind them, because they know exactly which stipulations have to be complied with. Women who attempt to enter the country under their own steam are frequently refused entry. They are at the mercy of these organizations (Spring 1992, p. 18).

On the other hand, they make working and living conditions more precarious. As observed by Del Rosario:

The circumstances of female migrants in the European Union countries are becoming even worse due to these countries moving towards a common, repressive immigration policy (Del Rosario 1994, p. 4).

Whereas labour migration from developing countries, and recently the CEECs, in the majority of the Northern countries is subject to massive restrictions, most of these countries have an absolute ban on prostitution by migrants, even if local women are allowed to work. In reality, entertainment and prostitution represent one of the few sectors in which migrant women are tolerated to work, whether this is the official policy, as in Switzerland<sup>3</sup>, or everyday practice like in the Netherlands.

3. See for the trade with striptease dancers: Kathrin Spring *Gekauftes Unglück, Frauenhandel in der Schweiz*, 1992.

According to the IOM, in many countries within the EU the number of migrant prostitutes is higher than the number of local sex workers. In Germany it is estimated that 75 per cent of those involved in street prostitution are migrants. In Milan, Italy, 80 per cent of the streetworkers are migrant women. In Vienna, a similar percentage of the women working as dancers/hostesses in sex clubs come from the Central and Eastern European countries. In the Netherlands, it is estimated that about one-third of the prostitutes comes from countries outside the EU, and this percentage rises to 50 per cent or more in the large cities (IOM 1996d). These women work for cheap money, do not lay a claim on social security or benefits and generate significant revenue for the State (for example, through the imposition of taxes on brothels), private individuals and criminal organizations (Wijers 1995). The economic importance of this sector is impressive: the profit from the sex industry in Japan, for example, is estimated to be 4.2 trillion Yen annually (Yunomae 1995).<sup>4</sup> Though figures from other countries are not available, it may be assumed that these will be comparable.

At the same time, the work these women are doing is not recognized as work and the women involved are without any legal protection, either from labour laws, civil laws or immigration laws. The illegal nature of their work, the resulting social, political and legal stigmatization and their status as irregular, undocumented, dependent or illegal migrants can be applied against them at any moment. In countries where prostitution is prohibited, the act itself is sufficient ground for the authorities to remove a foreign woman. However:

Even when no such prohibition exists, the foreign women's illegal status automatically gives authorities of the country of migration the ground for immediately deporting her. The question of trafficking may not even be raised in any of these circumstances, thereby removing the possibility of any redress for the victim. While traffickers virtually remain unprosecuted and free to continue with their trade, migrant women not only face exploitation by their traffickers but become wide open to racist immigration and police control in destination countries (Del Rosario 1994, p. 4).

It is this glaring incongruity between the official no-migration policies of receiving countries and the day to day practices of prostitution, mail-order brides and domestic workers, which creates the gap that is filled by organized crime.

However, not all destination countries deter immigration. Some of them even have an active labour import policy for certain types of labour, as Truong (1995) cites for Japan:

4. 100 Yen is approximately 1.19 US \$, exchange rate January 1997.

‘The evidence suggests that Japan has been opting for the import of foreign brides to solve female labour shortage in agriculture, and entertainers for its service sector’. But even then, this does not mean that the women involved are protected by law. They are rather seen as needed but undesirable aliens.

From the perspective of sending countries, the export of (female) labour has become an increasingly crucial source of foreign exchange. Government policies may actively encourage labour migration for economic profit and unemployment reduction, as is the case in Indonesia, the Philippines, Thailand and Sri Lanka. As stated by GAATW:

There is a demand for migrant labour from richer countries, but the benefit accrues also to poorer countries in remittances from overseas workers (GAATW 1996, p. 34).

In the Philippines, for example, overseas workers are required to send home a minimum percentage of their pay. If they do not, the government can withdraw their permission to travel abroad (Enloe 1989). In the Dominican Republic, the more than 100,000 women working as prostitutes in foreign countries form one of the most important sources of foreign exchange.

The increasing rate of unemployment and poverty as well as the large debts of the majority of the labour exporting countries are, among others, engendered by what Enloe refers to as ‘international debt policies’:

International debt policies has helped create the incentives for many women to emigrate, while at the same time it has made governments dependent on the money those women send home to their families. The International Monetary Fund, which serves as a vanguard for the commercial banking community by pressuring indebted governments to adopt policies which will maximize a country’s ability to repay its outstanding loans with interest, has insisted that governments cut their social service budgets. Reduction of food-price subsidies are high on the IMF’s list of demands for any government that wants its financial assistance. Keeping wages down, cutting back public works, reducing the number of governments employees, rolling back health and education budgets – these are standard IMF prescriptions for indebted governments (Enloe 1989, p. 184).

Receiving and sending countries thus share a common interest in maintaining a cheap labour force and therefore both have an interest in preserving the status quo.

In spite of all this, poor unskilled women have few opportunities to travel independently and to work legally in the destination countries. They are heavily dependent on recruiting agencies and brokers, and thus at risk of falling victim to criminal networks. In this manner restrictive immigration policies work indirectly in favour of traffickers, who will always find ways to circumvent laws, as they only make migrant women more dependent on their services.

In general, trafficked women (either for domestic labour, prostitution or marriage), are first and foremost considered undesired aliens, regardless of a repressive immigration policy or an active labour import policy of the countries of destination. The fact that a woman is a victim of trafficking or slavery-like practices is subordinate or even irrelevant to the current aliens' policies of most countries. In this situation it is almost impossible for migrant women to ask for protection in case of violence or abuse.

### *3.4 Corruption of authorities*

Numerous reports attest to the incidental and structural, small and large scale involvement of officials in trafficking and slavery-like practices on both the local and the international level.<sup>5</sup> This is a theme that runs through all reports. Below a few examples from the report on trafficking in Nepal, India, Bangladesh, Hong Kong, Taiwan and Japan, compiled by GAATW:

On the Bangladesh/India border the price paid to immigration officials is reportedly around 50 Rps (US \$ 2,63). Honest officers are transferred away from the border (GAATW 1996, p. 3).

Many women report being recruited by officials, like 19 year old Yai:

Yai worked in a department store in the south of Thailand. She was promised a job in a clothing factory in Taiwan where she would make good money to save for her future, much better money than she could ever earn working in her current job. Her recruiter was a high ranking Malaysian police officer. She arranged her passport and gave it to him as he was to arrange her visa for Taiwan. As they were landing in Taiwan he gave her a fake Malaysian passport with her photo in it and told her to use it. She never saw her Thai passport again. After she passed through

5. See for a more structural review of involvement of officials in trafficking and slavery-like practices in prostitution chapter 7.

immigration a Chinese man met her in the arrivals hall and drove her to the hotel. That night she was raped by this man. She was then forced into prostitution serving ten to twenty clients a day. There was no way for her to leave and she was threatened with beating. She never received any money that was paid for her [...] Among Yai's customers were high ranking local Taiwanese policemen who received free services in return for protection (Ibid., p. 16).

NGO workers in Nepal tell of the necessity to pay the local police in order to prosecute a case of trafficking. Traffickers are protected on all levels of authority, including a judiciary that is not independent and corrupt politicians. In Japan, NGO workers relate that once the women are in the country they are basically ignored by the police, apart from two or three symbolic brothel raids each year (GAATW 1996). In the Philippines, BATIS reports that corrupt officials conduct marriage ceremonies even without the husband presenting a certificate of legal capacity, thus permitting foreigners to practice serial marriages (BATIS 1996b).

### 3.5 *Traditional practices*

Several respondents report the low social value given to girls to be a contributing factor to trafficking and slavery-like practices, as the following quote of a father in Nepal illustrates:

We are very happy to have a daughter. Once she is grown up she will go to Bombay to earn money. Why are the Nepalese police having headaches for sending or selling our daughters? Why do they prosecute or imprison us? What have we done wrong to the government? (Poudel 1994, p. 5)

Trafficking and slavery-like practices may be encouraged by or may even be part of traditional and/or religious practices. A series of representations submitted to the Working Group on Contemporary Forms of Slavery by Anti-Slavery International documents various forms of ritual slavery, such as the devaki, devadasi and trokosi systems (ASI 1995a/b). In India for example, women are married to the gods through the Devadasi system, which makes them unable to marry a man. They are used by the priests of the temple and go into prostitution to survive economically. Young girls who are devadasis are sometimes sold to brothels by the priests. A similar practice is the Deukis or Devaki system in Nepal: women are endowed to a patron God in exchange for requests for favours. Recent practice is that rich families buy a young girl from a poor rural family and adopt her as 'daughter' in order

to offer her to the temple. The girls involved cannot marry anymore, which means that only a life as 'kept' (kept wives) or prostitutes remains for them. Many government officials working in the area keep them as 'kept' and leave them behind when transferred. Parents who refuse to sell their daughters will not be hired as wage labourers and have to face various accusations before court or police. In 1992, an estimated number of 17,000 girls was endowed as Deukis in Nepal (Poudel 1994).

Especially with regard to marriage and religious practices, there are strong undercurrents of tension between cultural obligations, sanctioned by the concerned community, and trafficking in women and slavery-like practices, as illustrated by the situation in China. Although women in China have officially enjoyed the legal right to free marriage for 40 years now, the institution of arranged/forced marriages as an economic transaction is still a widely accepted and legal practice, rooted in feudal traditional culture. Though the law prohibits the kidnapping and sale of women as a wife, it does not prohibit arranged marriages and its related violence:

In fact these arranged marriages are the disguised sale of women. It is just that this sale is at this time in China legal. This legal practice prepares the ground and provides public support for the illegal activities of slave traders (Harvard 1992, p. 13).

Reports (HRIC 1995; Harvard 1992) document that the most common form of violence against women in China occurs in relation to arranged marriages or within marriages. Yet, society, including women, considers this type of violence a private family matter and perfectly normal.

### *3.6 High profits*

Trafficking and slavery-like practices hold relatively few risks but generate considerable financial gain. Its illegal nature and attractive financial benefits encourage involvement of well-established criminal syndicates. In Japan e.g. links with the Yakuza have been reported and in Hong Kong Triad connections by NGOs and newspapers (GAATW 1996). In Europe, criminal groups from Central and Eastern European countries have entered the business (HBF 1996; IOM 1996d).

Profits can be huge. In Poland, the police estimate that for each Polish woman delivered to a brothel, the trafficker receives 1.000 DM (US \$ 700). In Berlin, the police calculate that a foreign woman in a brothel earns 500 DM (US \$ 350) a day, of which she is eventually allowed to keep 20 DM (Wall Street Journal 1996). A 1988 assessment of the Australian Fed-

eral Police estimates that at least 200 Asian women work illegally as prostitutes in Australia at any one time.<sup>6</sup> Calculations based on 200 prostitutes grossing A \$ 4.800 per week each, suggest possible overall cash flows of up to A \$ 900.000 per week. A substantial part of this money is forwarded overseas. Financial investigations in 1994 identified 280 transactions, totalling over A \$ 1.3 m. related to movements of funds to South-east Asia. These funds reflect both the forwarding of prostitutes' earnings to their country and the payment to organizers and facilitators in these countries (AFP 1995).

In general penalties are fairly light. Although sentences may be pronounced incidentally, it is extremely difficult to obtain successful convictions. In the case of international trafficking, most countries simply expel migrant women before they even have the opportunity to report or give evidence against the offenders. Few of the victims are prepared to testify since no protection or only very limited protection is guaranteed to them. Moreover, in many countries women risk arrest should they dare to turn to the police for help.

### 3.7 *Civil and military conflicts*

Military conflicts and civil wars may be contributing factors in several ways. An illustration is the situation in Burma, where throughout the country people are forced by the Burmese military to work as 'porters' or to perform other forms of forced labour. Women forced to serve as porters in military columns are raped or forced to serve as sexual partners for the soldiers. Under these conditions many women prefer to leave the country to work and earn some money in the sex industry in Thailand, rather than serving the SLORC soldiers without payment.<sup>7</sup> Others go to work as sex workers in Thailand in order to earn money for their families so they can buy-off forced labour by paying 'porter's fee' to the SLORC authorities (Images Asia 1995/6). However, in Thailand they risk arrest, detention and expulsion as prostitutes and illegal immigrants. Many fear arrest on return to Burma because they left the country illegally, not to mention the social stigma of having worked in a brothel. If they are found to be HIV positive, they risk prosecution by the Burmese government. It is in this context that trafficking of Burmese women, especially women from minority groups, to Thailand and their exposure to conditions of forced labour must be understood (Simm 1996).

6. It must be kept in mind that the fact that a woman works illegally, does not necessarily mean that she works under coercion.

7. SLORC: State Law and Order Restoration Council.





## Chapter 4

# Trafficking in women, forced labour and slavery-like practices in marriage

### 1 Characteristics

It is a documented fact today that families are not an undisputed safe haven for women and children. In her report to the Commission on Human Rights in 1995 the Special Rapporteur on violence against women presented the many forms of violence that take place in the family context (Coomaraswamy 1995). A pattern which places the wife at a disadvantage in relation to the husband is present in both traditional and modern forms of marriage – a position which embodies potential dangers of slavery-like practices as well as trafficking in women for marriage.

In her study on servile marriages Taylor (1993) identifies a number of factors, which in certain combinations, may be said to constitute a servile marriage. These are marriages, in which the wife:

- enters marriage in exchange of goods or money with significant economic as well as ritual value over which she has no control, especially where virginity carries an economic price;
- is not consulted about the choice of the spouse and may not refuse to marry him;
- is a minor when she marries, especially where her husband is older, or where she is expected to reside with her in-laws;
- is prevented by her husband or his kin from controlling her fertility;
- has reduced parental rights over the children of the marriage;
- has less control of, access to, or rights to inherit family income or property;
- is subject to being raped, beaten or murdered without recourse to law or society for protection or redress;
- is subject to arbitrary authority and routine humiliation by her husband, which is condoned by society, on the basis of her assumed inferiority;
- is secluded, prevented from earning an income, or otherwise restricted in her behaviour according to rules which do not apply to her husband;
- is intimidated by threats of violence, divorce or the withholding of food or money in order to make her work more hours than her husband;
- is forbidden to leave the marriage or intimidated into staying by violence, threat of violence, threat of penury, or extreme social disapprobation.

Under such conditions, the husband effectively ‘owns’ the wife. Such a servile marriage relationship can be termed ‘slavery’ to the extent that the husband exerts his power as ‘owner’ within the marriage. During each stage of the marriage, from beginning to end, the woman is subjugated to the will of those controlling the whole process: mostly the husband and other male members of the family, but often also with the complicity of her mother, who herself is probably party in a servile marriage.

Regardless of how a woman has entered such a marriage, she is likely to be subjected to exploitation, intimidation and seclusion, comparable with slavery. Furthermore she can be made to work without pay, may not decide the number of children to have and is threatened with the loss of her children if she disobeys. She is threatened physically or emotionally and punished for not complying to the wishes of her husband, she is kept dependent on her husband and his family, she is forbidden to leave the marriage or to earn an independent income outside the home, or, if she does earn, is not allowed to dispose of it.

Servile forms of marriage predominantly take place in societies where the status of women is low. The wife-to-be tends to be viewed as a chattel by her own family, as a source of potential costs and benefits, to be controlled by them while under their jurisdiction and disposed of as they see fit. Once she is married, the young wife is seen as a source of labour and children by her husband and his kin. Here too, she is viewed as someone who must be controlled to ensure that she continues to labour and to produce the appropriate number (and sex) of offspring. If she fails to perform these duties, she may be punished or be disposed of as he or they see fit (Taylor 1993).

## **2 Contributing factors**

One of the crucial factors determining the position of women is women’s right to property. According to a study on servile marriages, conducted in Nepal, Pakistan, Tanzania, Gambia and Lesotho, the issue of property and inheritance rights is fundamental to women’s autonomy. Denying women the right to property, and in particular land, amounts to far more than economic discrimination. It may deny women independence, mobility and legal autonomy (Yudkin 1996).

Another related factor is the legal identity of women. In many countries all over the world (married) women have no full legal status or are considered minors under customary, religious or secular law. This implies that a woman possesses no independent legal capacity to enter into contracts, is not able to sue or to be sued in her own name, to enter into employment contracts or to start a business of her own. She is unable to acquire property

or to have access to credit unless assisted. This makes her totally dependent on the cooperation of her husband or a male guardian (Yudkin 1996).

In addition, laws on marriage, separation and divorce can put women at risk of abuse and violence. In Uganda and Kenya, for instance, a court will not consider a petition for divorce within the first three years of marriage. Even after this period, a woman petitioning for divorce or judicial separation must have proof of grounds for divorce in accordance with the terms laid down by the *Divorce Act*. In casu, the woman must prove that her husband has committed adultery and deserted her for at least two years or committed adultery and has been cruel. Many women who are trafficked for marriage are kept as virtual prisoners and are unlikely to get evidence of adultery, which is the key to being permitted a divorce. Moreover, divorce may not be the solution since the right of residence in the country is often dependent on the marriage (Butegwa 1996).

These conditions, which form the basis for a continuing pattern of servitude of women, range from diverse forms of traditional servile marriages to contemporary forms of forced or arranged marriage. Manifestations vary from the direct buying and selling of women between individual men or agents and their family members to the organized match-making business.

### 3 Contemporary manifestations and trends

The scope of this report does not allow a comprehensive overview and analysis of the different contemporary manifestations of trafficking, forced labour and slavery-like practices in marriage. However, from the available material a number of patterns can be discerned:

- kidnapping and sale of women for marriage;
- forced/arranged marriages;
- pretended marriages;
- the mail-order bride system.

We will shortly discuss these patterns and present some exemplary cases.

#### 3.1 *Kidnapping and sale of women for marriage*

Reports (Harvard 1992; HRIC 1995) from China document that since the mid-1980s the incidence of kidnapping and sale of women as wives has extraordinarily increased in certain rural areas. Although official statistics have always been kept secret, public security

offices from all over China reported 11,698 cases of kidnapping and sale of human beings in the first ten months of 1990. These numbers are probably not complete and a conservative estimate, since public security officials in the single province of Shandong found 13,958 women who had been bought and sold, freed 3,966 enslaved women and children and arrested 1,690 people on charges of slave-trading in that same year. In some villages kidnapped and sold women are estimated to account for two-thirds of all young married women in the village (Harvard 1992).

Several reasons are given for this increase. One of them is the shortage of women across the nation, but especially in the rural areas. The majority of women are sold as wives to men who live in remote and poverty stricken parts of the country. Another contributing factor is the traditional Chinese belief in maintaining the family line, which means families want their sons to marry, no matter what. Those who have difficulty in finding a wife – as well as the poor and elderly, the ill-favoured, the sick, the disabled and the mentally retarded – might consider buying a woman as the easiest way of getting a wife. Furthermore, it is cheaper to buy a wife than to marry one, due to the still prevailing practice of betrothal gifts:

Despite a great deal of criticism in the official press of lavish weddings and betrothal gifts, these are very popular and even required, especially in the country side. This exchange also reflects the traditional view of women as property for whom payment is made (HRIC 1995, p. 13).

Most of the trafficked women come from rural areas and are generally abducted when they are travelling away from their native places. Some of them leave their village to escape arranged marriages, others want to see the world and are in search of a new life. Traffickers approach these young women under the pretence of showing them the way, getting them jobs as domestics or nannies, offering them training in technology or handicrafts, finding them good husbands, or being their travelling companions. Many women who are kidnapped and sold are beaten and raped, or gang-raped, while in the hands of slave traders. Most of the cases of kidnapping by gangs involve the repeated sale and resale of each woman (Harvard 1992).

After sale many of the women suffer cruel and inhuman treatment from the men who purchased them as wives. Extreme violence may be exercised to prevent women from running away and to punish them for doing so:

Because in the past many women had escaped from slavery or committed suicide the farmers in the county locked up or tied up their women during the daytime. In

the evening, after venting their sexual desire, they removed all of the women's clothing so that they could not run away. A young woman named Wu Yan was sold to a forty year old man. She could not endure her mistreatment and ran away. She was caught, brought back, strung up and beaten [...] Other women who are caught trying to run away are not only beaten but are burned or cut. In some cases their ears are cut off [...] Some who tried to run away had the tendons in their feet cut (Harvard 1992, p. 8).

Twenty-two years old Tang was sold for 2.900 yuan to a man who locked her into a room for eight months to prevent her from running away. His mother and sister took turns watching Tang, and she was not even allowed to leave the room to use the toilet. Desperate Tang attempted suicide three times and repeatedly tried to escape which resulted in fierce beatings. When she was rescued, Tang's body was covered with scars (HRIC 1995, p. 10).

Although the Chinese government has paid considerable attention to the problem of kidnapping and sale of women and has put some effort into fighting the practice, the results have been scanty and short-lived:

Until recently, the authorities have not prosecuted men who purchase women as wives; thus the trade has continued unabated. Official action to rescue victims of trafficking is generally initiated only if a complaint is made by the woman or her family. Local officials turn a blind eye, even formally register marriages into which the woman has been sold (China Human Rights Fact Sheet 1995, p. 5).

Similar practices of kidnapping and selling women into marriage are reported in other countries in Asia, Africa and Europe. In Taiwan poor farmers, the handicapped and the elderly are reported to pay intermediaries around \$ 3.000 for a young Vietnamese wife (News Report February 1996). In Vietnam there is a growing traffic in smuggled brides on the Vietnamese border; ethnic Chinese girls from dirt-poor North Vietnam cross into China to marry men from women-starved villages (Newsweek August 1996).

In Mozambique, refugee women from the war-torn countryside are sold as concubines and wives to South African men. Referred to simply as 'stock' by the traders, the girls/women are lured over the border with offers of work, and then sold to men in the townships (Taylor 1993). In Italy over 5.000 Nigerian prostitutes, aged between sixteen and thirty, are reported to have been sold as wives to farm workers in the south of the country (Taylor 1993).

### 3.2 *Forced/arranged marriages*

Though officially women in China have the legal right to free marriage, the institution of mercenary arranged marriages is still a flourishing and legal practice. Figures indicate that depending on the county/village 30 to 90 percent of the marriages are forced marriages (Harvard 1992). Such arranged or forced marriages can take different forms:

- the exchange of wives: the family of the prospective groom pays a bride price (money or other goods) to the family of the prospective bride in the marriage arrangement;
- the extended exchange of wives: the exchange of unmarried daughters between two or more families as brides for their sons.

The latter type of marriages are based on the exchange of brides that are ‘equal’, which means that if one marriage fails all the marriages involved fail. Therefore the women in this kind of marriages are more or less hostages. Families are not likely to allow women to run away or file for divorce:

On New Years Day 1989 in Linsu County in Shandong Province, sixteen years old Liu Xuelan was married to a man twenty-six years her senior. After the wedding she tried to run away, but each time was caught and tied up and beaten by her husband. He drove needles under her fingernails. She was bruised and bloodied from head to foot and her arms were swollen to the size of her thighs. When people from the county women’s federation arrived to save Liu, her husband ran out and yelled ‘What do you think you are doing? She is mine. I got her in exchange for my little sister (Harvard 1992, p. 10).

Very few options are open to women who find themselves in the conditions described. They may try to run away, risking even more severe violence when caught and brought back. They may try to file for a divorce, but even in cases of severe abuse the court may deny them divorce. And if they run off with another man, they commit bigamy and risk prison sentence:

Jin Fengqin, a peasant woman of 39, was sentenced to two year-jail for bigamy. When she had filed for divorce, the court had Jin and her husband go through three different counselling sessions, during each of which Jin showed her wounds to court officials, and each time her husband beat her even more severely when they got home. He stripped off her clothing and forced her to kneel, almost unconscious from the pain, on broken light bulbs. She lost the use of one of her arms but still was unable to win her divorce. In the end she ran away and moved in with a man who did not beat her (Harvard 1992, p. 24).

The practice of forced or arranged marriages is not restricted to China. In her study on servile marriages Taylor (1993) describes various traditional forms of arranged marriages in a number of African countries, such as Nigeria, Senegal, Burkina Faso and Gambia. Similar practices are described by Butegwa (1996) in relation to Kenya. Indian women are brought into Kenya for marriages that have been negotiated without their consent. Once negotiations are completed, they are sent to Kenya to meet their husbands and new in-laws. Their husbands impound their passports which in effect prevents the women from leaving the country should the marriage fail. Hindu women are kept in bondage which is reinforced through their children, whom they are not willing to leave behind. Forced marriages are not rare in Kenya, especially within pastoral communities, where young pubescent girls are married off without their consent.

A somewhat different practice is reported in Japan. Journalists describe how women from Sri Lanka are recruited as computer trainees, but then are forced into mass marriages:

Priyani, 27, from Sri Lanka, answered an advertisement for computer training, but found herself trapped in a forced marriage with a Japanese businessman. Upon arrival in Japan the women who applied as trainees were forced to attend group matchmaking after having their passport taken away from them. They were told that if they refuse to marry Japanese men they would have to pay airfares and other expenses, too high for her (Asahi Evening News February 1991; International Herald Tribune April 1991).

Sometimes the law in fact encourages forced marriages. In Iraq e.g., the provision of the law that outlaws forced marriages actually promotes rape of unwilling brides by ruling that ‘marriage under duress shall be null and void if consummation has not taken place’ (Taylor 1993).

### 3.3 *Pretended marriages*

A slightly different but related practice is found in Bangladesh. Here agents known as Ghataks (match-makers) roam the rural areas in search of girls as wives for Indian men. Many of these marriages appear to be fake since they take place without compliance with the necessary conditions of Muslim marriage, such as registration:

It is learnt that agents of both Bangladesh and India reach a prior agreement over a fake marriage and share of money thereof. The man who wants to purchase a Bengal girl in the guise of bridegroom agrees to pay a certain amount after much



bargain. According to agreement the four parties share the amount, one portion goes to the local agent, another to the Indian agent, a third one for the female ghatak who arranges the fake marriage and manages to allure girls and their parents, and a fourth to the border agents who manage safe crossing of the border by bride and bridegroom (ACD 1995, p. 11).

When everything is settled, the pretended bridegroom comes over, completes the ‘marriage’ ceremony and takes the girl across the border. At the place of destination the girl is forced to live a life under slavery-like conditions with her ‘husband’:

They just procured young girls to work in bangle factories and with their earnings they drink, gamble and spend a life of enjoyment. The girls had no liberty, but there was every possibility of being kicked out of the house on the slightest plea or if they disobeyed their so-called husbands. Once out of house their only alternative was to accept the life of a sex worker in a brothel (ACD 1995, p. 20).

Often the woman is transferred from one owner to another, if the husband decides to sell his wife to another man or a brothel.

### *3.4 Mail-order bride system*

Recent years show an increasing demand for women as wives in the industrialized countries:

Another striking feature of female international migration today is multi-cultural marriages involving a high degree of commercialization of matchmaking such as mail-order brides (MOBs), often loaded with fraudulent practices (Truong 1995).

According to Taylor (1993) the majority of women involved in the mail-order bride business are at present Filipinas, but there is a growing trade in women from Eastern Europe, Colombia and several other South-East Asian countries. The agencies operate on the West European, Japanese, Chinese, Australian, Canadian and North American market. In Japan, for example, there are more than 700 marriage brokers who import Asian women to Japan. Matchmaking fees run as high as \$ 20,000. In the USA, there are hundreds of companies which offer mail-order bride services and which an estimated 2,000 to 5,000 American men successfully use each year to find a wife (Amirrezvani 1996). Despite the remarkable growth of this industry over the last five to ten years and the potential for

abuse, there is virtually no governmental regulation with regard to these types of businesses.

The industry primarily focuses on women from developing countries. Although marriages that are arranged in this way may be successful, several reports document cases in which women end up in violent marriages or in marriages in which the sole expectation of their husbands consists of the provision of domestic labour and/or sexual services. Under such circumstances, the wife is usually not in a position to obtain help from the authorities or to leave an abusive husband, both for fear of being deported and as a result of the lack of support systems.

The vulnerability of women in mail-order bride marriages is generally increased by her legal status as a migrant on a temporary resident's permit, which is dependent on the continuance of the relationship or the sponsorship of the 'fiancee'. Separation or divorce may lead to her deportation:

Given their vulnerability as temporary migrants, there are many reports of Filipino MOBs who have virtually become sex slaves or nurse-maids for their foreign husbands but have remained in those marital situations for fear of possible deportation. Some western husbands have been known to use this vulnerability as a weapon for threatening, even getting rid of, their Asian wives (Del Rosario 1994a, p. 9).

In the same way, Japanese men are reported to use the threat with deportation to keep their Filipina wives in a constant state of stress, intimidation and insecurity (BATTIS 1996a).

In the USA immigrant spouses are granted a conditional resident status for two years after the marriage. At the end of this two-year period the couple must file a joint petition to the Immigration and Naturalizations Service as proof that the marriage is bona fide. If they fail to prove this, the immigrant spouse will be deported unless she can prove that one of several exceptions apply. Those exceptions include the proven existence of domestic violence. Under such circumstances, the immigrant spouse may apply for a waiver of the joint filing requirement. She can thus file a self-petition without relying on the abusive spouse. Yet, despite the exception for domestic violence, there is a lingering fear among immigrant brides that they will be deported if they report violence. This fear is often perpetuated and exploited by mail-order husbands who profit from this misinformation (Bond 1996).

In most EU member states immigrant wives are granted a dependent resident status for three years or more. If the marriage fails within this period, the wife is liable to be deport-

ed, regardless of the grounds that led to the separation. Their dependent residence status leaves women without defence against violence or abuse, varying from battering to forced prostitution. They have no choice but to endure the abuse or to face the risk of deportation.

Reports of several NGOs state that a considerable number of women who marry through these commercial bureaus and other agencies come into situations where they are in fact expected to do little more than supply domestic and sexual services to their spouses. Since the husbands have often paid substantial amounts of money for the marriage to be arranged, they expect blind obedience from their wives. In Japan and Korea, for example, mail-order brides from other Asian countries are reported to be really ‘maids in disguise’:

Mail-order brides placed in rural areas may find themselves in slavery-like conditions, working as domestic servants and isolated from the outside world. Some are falsely purchased as brides to work as hostesses in night clubs. Gangsters or sex industry brokers have little difficulty because there are no legal checks on the marriages. It is widely known that men in rural areas have a hard time finding wives because women have left for urban areas. Local governments see international marriages as the best way to solve this problem. Numerous mediating agencies are headed by town mayors and these lay down qualifications for the type of women they are looking for. The vice-governor of Akita prefecture said he thought that importing Filipinas was good and stated, ‘I went to the Philippines last year and saw people living in poverty. If they can survive that, they can survive rural life in Japan. I also think it would bring about an improvement of breed’. Since this import of brides started, women human rights groups have formed to protest against the marriages promoted by the governments. The current trend is that where government intervention is decreasing, private agencies are stepping in to replace them (Azu 1995).

The working methods of a typical mail-order bride agency focus on the male customer, who is offered a wide choice of women ‘eager to marry him’, but clearly do not consider the women as having any rights to select their own spouses. The man is the client of the agency and the one who pays the costs. The man receives most information, initiates contact and exercises his choice of women at various stages:

While agencies will not admit it, the introduction is premised on the man being the client and, the woman, the subject of business negotiation between the agency

and the male client [...] On the part of the woman, choice – however defined – is often very limited (del Rosario 1994a, p. 7 ff.).

In addition, the use of female and racist stereotypes as recruitment and advertising methods of the industry are deceptive for both men and women and conjure up unrealistic expectations:

The main selling point is the western stereotype of Asian women, i.e. submissive, uncomplaining, sensual, exotic beauty. [...] Typically, a West German marriage bureau specializing in Thai women advertises ‘...honest, loyal, cuddly, loving. Satisfaction guaranteed or your money back’. (Del Rosario 1994, p. 135/148).

#### 4 Recruiting agents and methods

The methods used by traffickers to recruit women for marriage may differ, as indicated in the previous sections. As the most common recruiting methods respondents mention:

- (promise of) marriage (mentioned by 26% of the respondents as occurring (very) frequently);
- false marriage contracts (12%);
- buying a woman from her parents/legal guardian<sup>1</sup> (7%);
- kidnapping, promise of work as waitress/domestic worker (4%);
- false job contracts (3%);
- buying a woman from her husband (2%).

As the most common recruiting agents are mentioned:

- marriage agencies (mentioned by 26% of the respondents as occurring (very) frequently);
- individual marriage brokers (23%);
- the expected husband (21%);
- family members (16%);
- acquaintances of family or friends (15%);
- friends (13%).

1. Only mentioned by respondents in Africa and Asia.



## Chapter 5

# Trafficking in women, forced labour and slavery-like practices in domestic labour

### 1 Characteristics

In its report on domestic workers to the Working Group on Contemporary Forms of Slavery, the Anti-Slavery Society documents a number of living and working conditions of overseas domestic workers in Britain to conclude that ‘these conditions are those of slavery’ (ASS 1990):

- debt bondage: many of the women fall into debt by borrowing money at exorbitant interest rates to pay recruitment fees or by taking an advance payment from the recruiter. Before they can even begin to send money to their families – the prime purpose of working overseas – they have to redeem these debts;
- their passport is being kept by their employer;
- they are not allowed off the premises except occasionally and then under some sort of supervision;
- they are ill-treated and humiliated. Slapping, hair-pulling, being spat upon, being called donkey, and sometimes slave, are common;
- pay is withheld or given months in arrears;
- they are given left-over food;
- speaking to other servants is discouraged and sometimes forbidden;
- their bed may be on the floor of the children’s room, in a corridor, in the bathroom or in the kitchen;
- there is no respite: in the mornings they are the first to be up and the last to go to bed at night and even then their few hours of sleep may be interrupted;
- sexual harassment is usual and rape is not exceptional;
- they cannot legally change jobs.

The report continues:

Those courageous women who do, and often at great physical risk, run away from their captors, immediately put themselves on the outside of the law. They cannot legally seek employment, they cannot overstay whatever period may be stamped in their passport, which in the majority of cases is in the employer’s safe, and the

appeal rights they have against deportation orders are very limited. In addition, they are frequently penniless and alone in a city they only know from the airport and the house they were confined to (ASS 1990, p. 110).

Although the study is limited to Britain, the report notes that the Anti-Slavery Society is aware that domestic slavery is not limited to Britain and that instances of it, in varying degrees, may be found in Middle Eastern states, in Hong Kong, in North America and in member states of the EU. Also, the report does not go into the exploitation of domestic workers by their fellow nationals in their home countries.

## 2 Contributing factors

Apart from the general contributing factors discussed in chapter 3, several reports on the trade in domestic workers and violence against female migrant workers (Anderson 1993/1996a,b; APDC 1989; Heyzer 1994; UN 1996b) pinpoint a number of specific factors which contribute to the abuse faced by (migrant) domestic workers:

- the unregulated and unprotected nature of the employment sector. Domestic work is not normally covered by labour codes or social security provisions of the host countries. A worker in an employment situation where her rights are not guaranteed by law has no recourse to justice or protection;
- the legal status of the domestic, whether dependent, tying her to a employer and inhibiting her escape, undocumented, when she has been held from the beginning without legal status, or irregular, when she has contravened the immigration constraints by running away from a violent employer;
- lack of inaccessibility or inadequacy of support mechanisms to motivate and facilitate migrant women workers to escape when they are confronted with violence and to assist them after escaping from violent situations;
- the large profits made by all parties concerned, as long as the principal – the woman migrant worker – complies with her situation. Violence, in various forms, is used to keep her in compliance.

An illustration is the case of Gilly, a Nigerian woman who went to Britain as a domestic worker and who related her experiences to workers of Kalayaan:

We came here together and for the first three months everything was fine. The woman settled down and she started working herself and I got left home with the children, and to do the work in the house. The job I had signed back home was just

for me to look after the children. It turned out to be a nightmare. I had to clean the house, we live in a very big house which is four floors, do the cooking, look after all the family's needs, their children, their friends' children, about five to ten children on my own. I have to look after them all. I had to cook for them, care for them and do all sorts of work in the house. I had to clean the house, do the gardening, clean the car and also do my female employer's office. I have no day off, no time off for me. She held my passport. I was not allowed to see my passport and I was not allowed to speak to anyone else. She hit me several times but still I carry on this work for two years, from six o'clock until two in the morning. I had no one else to talk to. Most of the time I stayed in the house crying, hoping that something would free me from there but I know that my contract is for two years and that I will never get out from there. I was told, in this country you have no one to help you here. They said, 'You'll be alone, if you go out you'll have no one to look after you, and to care for you. You'll have no friends.' All these things made me really very sad. I was really upset. Then it was really terrible and I couldn't bear to stand the abuse and the shouting, screaming, calling names and stuff... I couldn't stand it any more so I decide to leave the work ... and then I finally realise that I have no right to stay in this country. Once you left your employers, if the employer brought you here you have no right to work anywhere else. I came here as a worker but I was treated as a slave. That gets me really mad ... (KALAYAAAN 1995).

Irregular and undocumented women workers are especially vulnerable to abuse. As stated by the UN Expert Group on violence against women migrant workers in their meeting of May 1996:

The large flows of such workers are indicative of extensive trafficking networks within and between countries. Trafficking had placed the women migrants in very precarious employment situations, rendering them completely dependent on their employers and/or recruiters. That had resulted in substandard wages and exploitative terms and conditions of work. While both sending and receiving countries may have enacted laws to deal with the problem, many of them had proved ineffective (UN 1996c, p. 11).

The Expert Group also notes that 'one of the ironies of restrictive immigration and emigration policies is their tendency to push women into illegal and unsupervised channels of migration and employment'.



As the most significant types of violence inflicted on women migrant workers the Expert Group lists:

- charging by agents over and above established governmental rates for documentation and processing;
- the collection of unauthorised payments;
- excessive rates of interest on loans for travel and other expenses;
- non-payment or delay in payment of wages due under contract; violation of wages agreed to in contract;
- living and working conditions substantially in breach of internationally and/or nationally agreed standards;
- deprivation of access to social networks and social and religious facilities;
- enforced isolation;
- onset of illnesses diagnosed as relating to living and working conditions that breach conventions;
- deprivation of access to medical and health facilities;
- subjection to harassment, threats, punishment, intimidation, verbal abuse and ridicule;
- physical abuse and sexual harassment and abuse, including rape by agents, governmental officials, employers or others in their household;
- unreasonable imprisonment, confinement or deportation;
- unlawful or forced substitution of contracts;
- unlawful withholding of passports and other documentation;
- absence and/or breach of contract.

While overseas domestic workers are especially vulnerable to various forms of abuse due to their undocumented or dependent legal status, local or domestic workers may suffer similar abusive conditions due to the unprotected and unregulated character of the work.

### **3 Contemporary manifestations and trends**

In order to analyse the contemporary forms of trafficking and forced labour/slavery-like practices in relation to specific groups of domestic workers, the following categories<sup>1</sup> were distinguished for the purpose of this report:

- national domestic workers: women who work as domestics in their own country
- migrant domestic workers: migrant women who work as domestic workers in a for-

1. See the specific section on domestic labour (Section D) of the questionnaire for NGOs (annex I).

eign country. Within this category a distinction was made between documented workers (with a contract and/or working permit) and undocumented workers (without a contract and/or working permit).

Organizations in countries of origin were also asked for their knowledge about the situation of women from their own country working as domestic workers abroad (out-national domestic workers).

A total of 17 NGOs completed the specific section on trafficking in women and forced labour/slavery-like practices in domestic labour. These NGOs were based in Asia (Thailand, Nepal, Hong Kong, Philippines, Bangladesh, Japan, India), Latin America and the Caribbean (Peru, Dominican Republic, Ecuador), Europe (Spain, United Kingdom, Belgium), Canada and Australia. Since the number of respondents is very small (17), the absolute number of respondents is given where applicable instead of percentages of respondents.

### 3.1 *Living and working conditions*

As the most common abusive living and working conditions, which in combination may lead to conditions of forced labour and slavery-like practices, respondents mention (in order of frequency):<sup>2</sup>

1. psychological abuse (threats, name calling, shouting insults);
2. more than twelve hour working days;
3. denial of time off;
4. constant fear of police arrest;
5. sexual assault or rape (including attempted and threatened harassment);  
not paid regularly and/or paid less than contracted;  
no access to medical/health services;
6. not having a proper bedroom (forced to sleep in hallway, kitchen, bathroom, store room);  
no regular food (given left-overs, regularly being denied food, insufficient food);  
lack of respect for cultural/religious customs and beliefs;
7. physical abuse (hitting, shoving, spitting, kicking, beating etc.);  
illegal confinement (movements controlled and restricted, no permission to leave household, or allowed out only with chaperon);  
isolation (prohibited from normal social contacts, interception of letters/phonecalls);

2. Listed are the conditions which respondents mention as occurring 'frequently' or 'very frequently'.

8. identity papers/passport confiscated by employer and not obtainable on departure from employment;
9. debt bondage;  
not having a bed or nothing to sleep on;
10. threat of reprisals against family/relatives;  
false identity papers;
11. personal belongings taken away;
12. compulsory HIV/AIDS testing.

When the occurrence of these conditions is examined in relation to the specific groups of domestic workers, the following trends show:

According to respondents, national domestic workers suffer most from:

- more than 12 hour working days (mentioned by 8 respondents as occurring (very) frequently);
- psychological abuse (7);
- denial of time off/denial of holidays (5);
- sexual assault or rape; not having a bedroom (4);
- not paid regularly/less than agreed; no access to medical and health services; not having a bed/nothing to sleep on; no regular food; lack of respect for cultural/religious customs and beliefs (3).

Documented migrant workers suffer most from:

- psychological abuse (mentioned by 6 respondents as occurring (very) frequently);
- more than 12-hour working days; denial of time off (5);
- not paid regularly; not having a bedroom; no regular food; lack of respect for cultural/religious customs and beliefs (4);
- physical abuse; illegal confinement; isolation; threat of reprisals against family/relatives; identity papers confiscated; no access to medical and health services; constant fear of police arrest (3).

Undocumented migrant workers suffer most from:

- psychological abuse; constant fear of police arrest (4).

Organizations of countries of origin report overseas domestic workers to suffer most from:

- more than 12-hour working days (5);
- psychological abuse; sexual assault or rape; constant fear of police arrest (4);

- physical abuse; illegal confinement; isolation; debt bondage; identity papers confiscated; no access to medical and health services; denial of time off (3).

Respondents mention that they know the least about the situation of undocumented migrant domestic workers and of domestic workers from their own countries who have left to work overseas. In these two categories there is a high score of ‘don’t know’.

As several reports document, forced labour and slavery-like practices in domestic labour are not limited to certain regions, but occur throughout the world.

In her study on working and living conditions of overseas domestic workers in the European Union, Bridget Anderson (1996a<sup>3</sup>) observes live-in domestic work to be a boom area of employment. This market for domestic workers is developing in a largely unregulated fashion and the demand is principally being met by third country nationals, usually undocumented. Since such a large proportion of those working in domestic service is undocumented, it is impossible to make an accurate estimate of their numbers. However, in most EU countries, domestic work is the only work available for migrant women, apart from prostitution.

Undocumented workers enter countries to work for specific employers. Some accompany their employers, like this domestic worker in Athens, who entered Greece with her Indian employer:

They kept my passport. I came in on a three month tourist visa. They wrote something on my passport, but the man negotiated it. I don’t know what it is because I can’t read and write. I worked there one year and three months for nothing (Anderson 1996a, p. 4).

Others are called to work for employers but are instructed to enter on a tourist visa and promised that their employers will sort out their papers on arrival. Sometimes papers are falsified by agencies or employers:

Vicky, a registered nurse from the Philippines, arrived in Barcelona airport. A person designated by her agency met her and took all her money, \$50, in return for a train ticket to the town centre. Her employer met her at the station. He told her that she was carrying a fake passport, but that she should not worry, he would fix

3. This study was conducted for STV/GAATW in the framework of this report. The section on migrant domestic workers in the European Union is largely based on Anderson’s study.

her papers and settle all her problems. After three months working Vicky was still not given her wages. When she approached her employer, she was informed that she was paying in service the amount she owed for him sorting out her documents. Yet she was not allowed to see her papers. In fact, she was not even allowed out of the house, and often kept locked in a room for fear that she might escape [...] After six months she found the courage and the opportunity to escape. She is now working without papers, afraid of being caught by the police or her old employer (Anderson 1993, p. 75).

Domestic service is also one of the most available employment opportunities for women migrating from the countryside to the city. Internal migration can be a precursor to international migration. For example, a large number of Indian domestic workers now enter Britain with Indian employers.

Domestic workers in the EU represent a wide range of nationalities. Though Filipinas tend to be the most visible, they by no means constitute the majority of domestic workers. In France, Italy and Spain women from Morocco make up a significant proportion of domestic workers; in Spain they are Peruvians and Dominicans and in Greece and Italy, Eritreans and Ethiopians. Increasingly women from Eastern European countries enter the European Union to do domestic work.

Although the educational level of the workers varies widely, a significant proportion is highly educated and professionally qualified. They may be doctors, lawyers, teachers and scientists. As expressed by this domestic worker from the Dominican Republic:

I keep my professional qualifications hidden because there is no way my employer would keep me if she knew I was a lawyer...when I came here (Spain) my cousin taught me how to be subservient, tricks like 'don't cross your legs in an interview because it looks too assertive' (Anderson 1996a, p. 5).

Different States have different immigration laws regarding domestic workers, but they all have in common that the majority of domestics are not recognized as workers and consequently work illegally. In this situation, workers have no recourse to the police, whatever abuse they suffer, because of fear of imprisonment, fines and deportation.

Whereas abuse within the home is notoriously difficult to prove – especially when the abuser is wealthy and influential and the abused is isolated and poor –, it is even more difficult in circumstances where the abused has a problematic immigration status and risks deportation should she come to the attention of the authorities. An illustration forms the case of Helen Samuels, a Nigerian domestic worker in the UK:

Helen ran away from her employer after enduring years of malnourishment, physical abuse and exploitation. At the moment of her escape she weighed about six and a half stone and was suffering from malnutrition. There were whip marks and cuts and scratches all over her body. She successfully brought a case against her employers for assault, but was then served with a deportation order as an overstayer. She had only been given leave to stay for three months, and her employers had kept her for over three years. She was an illegal overstayer and thus liable to immediate deportation (Anderson 1993, p. 55).

The important variables in terms of living and working conditions of domestic workers are firstly if they live in or live out, and secondly whether or not they have legal status. Forced labour and slavery-like practices are most often described by undocumented women living in with their employers. The key issue is the freedom to change employer. Those who can change employer can move if their employer maltreats them, but undocumented workers do not have that choice. The same kind of problems is experienced by workers whose legal status is dependent on their employer.

The living and working conditions of especially live-in domestic workers are generally extremely poor. The level of payment is very low, workers are commonly not given any days off and are expected to be available 24 hours a day. Food is often a serious problem: employers do not provide food for the worker and expect them to survive on left-overs, refusing to let them cook their own food. Women may be seriously brutalized by employers or their children, but are unable to pursue claims against them because they are undocumented. Confiscation of passports is common as is non-payment. Employers often withhold money in order to prevent women from leaving them. Mental health is a serious problem for overseas domestic workers. In Greece for example a pastor tells:

There were two Ethiopian girls in the mental hospital. I went to ask for a doctor so I could pray with them. He told me I could not and I would have to pay for them to leave the hospital. He said, 'if you do not, we will deport her to Ethiopia'. But she was sick and she had none in Ethiopia. She had worked here for five years, and she had one shirt only...She was sent back to Ethiopia (Anderson 1996a, p. 10).

No sick pay, no compensation for injuries at work and instant dismissal on pregnancy, even in cases where the woman is pregnant by her male employer, are other problems:

M. was consistently raped by her employer until she became pregnant when she was thrown out. She delivered her baby on the streets. Some weeks later, while still homeless, the child was taken from her by some officials, she did not know who.

When I (Anderson) met her she was clearly mentally ill, living on the streets and still unemployed (Anderson 1996a, p. 20).

Common problems for all overseas domestic workers, regardless of their country of origin or the European country they are working in, include lack of job description (resulting in doing ‘everything’ in the house), long hours and 24 hour availability, lack of privacy, low pay, sexual harassment, physical abuse, constant prioritizing of employers’ over workers’ needs, lack of sickness benefit and dismissal if sick or pregnant.

Exploitation and abuse are often mediated by racism and stereotypes. The employment market for domestic workers is ruled by a ‘hierarchy of nationalities’, often based on crude racist stereotypes and perpetrated by the informal agencies that act as intermediaries for employment. Under this hierarchy workers can expect different rates of pay and different kinds of jobs, depending on skin colour and nationality.

KALAYAAN and the Commission for Filipino Migrant Workers, two NGOs working directly with overseas domestic workers in Britain, documented in detail more than 2,000 cases of ill-treatment and extreme abuse of migrant domestic workers (KALAYAAN 1995). These included confiscation of passports, enforced change of contract, withholding of wages, a sixteen to twenty hour working day seven days a week, deprivation of food, malnourishment, no access to medical and health services, no compensation for injuries, virtual or literal imprisonment in the home of their employer, prohibition of engaging in normal social contacts, including talking to the other staff or outsiders, the interception of letters from their families, physical abuse, sexual harassment and actual, threatened, or attempted rape.

In an article on West-Indian domestic workers in New York, Shellee Colen describes the same conditions of mentally and physically exhausting work, low pay, no health care or securities and dependence on the ‘sponsorship’ of the employer because of immigration regulations. Although a number of guidelines on working conditions exist, neither the US Labour Department nor the Immigration and Naturalization Service or any other agency monitors compliance:

This can lead to a form of state-sanctioned, indenture-like exploitation: the worker is obliged to stay in the sponsored position until the green card (legal permanent resident status) is granted (often two or more years) in spite of any abuses to which she may be subjected (Colen 1993, p. 173).

On the sponsored job, the material and emotional exploitation potentially present in all domestic jobs is exacerbated by the workers’ dependence on their employers for green

cards. They are thus vulnerable to employer manipulation and are less likely to quit an intolerable situation. However, the central issue, which was raised by all women interviewed, is the lack of respect in the attitude and behaviour of employers towards the domestic worker. This is manifested in various ways: name calling, not giving enough or good quality food, not allowing the worker to eat at the same table and condoning disrespect from children towards the worker.

In the Latin American and Caribbean region migration for domestic labour has a long history, similar to sex work. Although domestic work may include living expenses like room and food, and thus may help women to save money more quickly than in other kinds of employment, their unprotected and often undocumented position as migrant workers leaves them vulnerable to abuse. Research on women from the Dominican Republic doing domestic work in Spain (Weinert 1991; AMDE 1992) documents frequent violations of their rights as workers in relation to salary, working schedules and payment of benefits like social security. Given the fact that many of them are not registered as legal migrants, they have very little power to negotiate fair working conditions.

In Africa young Kenyan women are recruited to Saudi Arabia where they are taken to work as house-helpers and baby sitters. They are recruited through employment agencies that they pay thousands of shillings as commission to take them to Saudi Arabia. However, many of those who have returned tell stories of harassment by employers, who also beat, underpay and sexually abuse them (Butegwa 1996).

In the Gulf States there are an estimated number of 1.2 million female domestic workers. Domestic workers comprise about 20 per cent of the estimated six million migrants upon which the Gulf States are completely dependent. The women are predominantly from Sri Lanka, Indonesia, India and the Philippines. They live in with their employers and work for long hours and low wages. Domestic workers are explicitly excluded from labour legislation, which means that even the minimum protection granted to workers is not applied to them. They are not regarded as workers, but as 'members of the household'. Excluded from any protection by labour laws, domestic servants have no holidays, no time off and no limit to the hours they have to work. Their passports as well as their wages are withheld, at least until the employer has recouped the agency fees, if not longer. Because of the highly personalized context of domestic work, domestics are extremely vulnerable to physical and sexual abuse. Buttressed by immigration legislation and lack of labour protection, encouraged by State practices and policies that regard all migrant labour – and female domestic labour in particular – as inferior and deserving less respect



than citizens, employers subject their housemaids to a range of mental and physical cruelties (Anderson, 1993).

In all countries in Asia where large numbers of women from other Asian countries work as domestic workers (Japan, Hong Kong, Malaysia, Singapore) the same litany of abuses is summed up: over-work due to long hours of work and insufficient rest periods, heavy physical work, non-payment or under-payment of wages, lack of privacy and own space, lack of sufficient and adequate food, confiscation of passport by employer, psychological and physical abuse and ill-treatment, sexual harassment and rape (Heyzer 1994).

Migrant domestic workers caught in situations of armed conflict and/or political and social turbulence in countries of destination may suffer extra traumatic experiences. Left by their employers, many women suffer rape, abuse and hardship in their attempts to secure their safety. Their premature return to their home countries is difficult because they often face the burden of huge debts and in some cases unwanted pregnancies (UN 1996c, p. 10).

Not only overseas domestic workers have to deal with extremely poor working conditions, also national domestics face poor conditions, which can amount to slavery-like conditions. In Colombia, household workers who started to organize themselves in Bogota in 1977 (later to become Sintrasedom, National Union of Household Workers) describe their problems as follows:

- the fact that there is no minimum wage for working as a household employee;
- the exploitation of minors who are not paid because it is thought that young girls do not have the necessary capacity or the knowledge to work at a job;
- the fact that many of our companions become old with their health ruined. They are oppressed, working in one or more homes, with no compensation, pension, social security and without legal protection;
- the fact that young girls are brought from the countryside to be kept as slaves. They are paid with second-hand clothes or low salaries and they are mistreated;
- the fact that many household workers can neither read nor write. They are not given time to study or to go out, and that is why few can prepare themselves for the future (Sintrasedom 1993, p. 372).

A report of their first national meeting documents as shared problems: working days of twelve, sixteen, or eighteen hours, salaries very much lower than the legal minimum as salary recognized by the government, lack of social benefits, discriminatory labour legislation, lack of respect, authoritarian and humiliating treatment and violation of the right

to privacy. Because domestic service is considered a non-productive activity, the worker is given no protection by the labour code and is abused and fired without just cause (Sin-trasdom 1993).

In Cambodia women form the majority of the population, but the minority in the formal labour sectors. Women occupy lower positions and receive less salary compared to men, especially in the ‘traditionally female’ sectors of employment such as sewing, weaving, secretarial work, taxi-girls, sales and vending. Economic changes in Cambodia have prompted substantive growth of the informal economic sector. Although this sector contributes to the economy significantly, there is no adequate protection from abuses and other human rights violations, and no monitoring of working conditions:

One group in the informal sector that has been largely ignored but where slave-like working conditions prevail, is domestic workers. Their marginalization in society and law, because of the hidden nature of their work and due to their low social position, is one, if not, the major impediment to their enjoyment of basic human rights (CWHR 1996, p. 4).

Due to, among other factors, the lack of protection by labour laws, women are denied basic rights: the right to fair wages and humane working conditions, the right to due process and to fair and just trial, the right to be protected against inhuman and degrading treatment and unusual punishment, the right to be heard and air grievances, including the right to complain without the threat of physical or verbal abuse or withholding of salary, and the right to recreation and social security. Domestic helpers are generally looked down upon by law-enforcers when they try to complain about maltreatment by their employers. They lack access to counselling, legal and social services (CWHR 1996).

### *3.2 Recruiting agents and methods*

Different methods are used to recruit women for domestic work. While some of these methods are bona fide, others are characterized by deceit, cheating, over-charge, false promises and debt bondage, and can be qualified as trafficking.

The forms of deceit or constraint used by traffickers vary. In relation to national domestic workers, deception with regard to conditions of work is mentioned most often by respondents as occurring (very) frequently. In relation to documented migrant domestics, abuse of authority and deception regarding conditions or nature of work score highest. In rela-

tion to undocumented migrant workers, use of violence or threat with violence is mentioned most often. Organizations in countries of origin of overseas domestic workers report debt bondage and deception regarding conditions of work as the most frequent forms of constraint that overseas domestics are subjected to.

As the most common recruiting agents respondents mention employment agencies, friends, and acquaintances of family or friends.

In most cases women are recruited explicitly for domestic work. However, some of them may be promised other types of work only to find at arrival that the employer gives them no choice but domestic service, or rather the non-choice of returning home immediately at their own expense if they do not agree (ASI 1990). Others are recruited under false job-contracts. The following story is just one of the many familiar stories among domestic workers in the Gulf states:

Alice, a twenty-five years old Filipina and a qualified engineer, turned to a recruitment agency advertising posts as civil engineers. The agency's fee for finding a professional post was 21.000 pesos (some \$ 450), half of which had to be paid immediately. Alice's parents mortgaged their small patch of land, and she undertook to repay the rest on taking up her position. Interviewed and accepted she left for Kuwait. On arrival at the recruitment office in Kuwait City, she was abruptly informed that she could not work as a civil engineer: 'for Filipina the work here is domestic'. Not being able to pay her airfare back or to pay the agency the fees she owed, she had no choice but to sign the contract as domestic worker. In the two and a half year she worked for her employers, members of the Kuwaiti royal family, she had to work day and night without a day or time off (Anderson 1993, p. 13).

There are many ways in which women become a domestic worker in a foreign country. With regard to the European Union, Anderson (1996a) lists the major trends as follows:

- through advertisements placed in newspapers in countries of origin;
- through 'chain migration', whereby a friend/relative of the potential migrant who works in the host country, invites her to work for a friend/relative of their employer. In this method and the one above the employer often encourages the worker to enter as a tourist and promises to arrange her papers on arrival. However, this then proves to be impossible, bothersome or unbeneficial to the employer;
- through recruitment agencies, which assist in the evasion of immigration controls without explaining to the migrant what is happening or what illegal entry implies with regard to their living and working conditions. The agencies often operate illegally and fees can be excessive. Women are taken on by the agency and 'loaned' money to pay the fee, airfare, and the like. They must repay the agency from their earnings.

The agency withholds their passport as collateral. As with chain migration, the women who use agencies often are ignorant of immigration legislation, visa requirements etc.;

- some migrants enter Europe as tourists or students, then overstay their visa to work;
- in practice all European Union countries admit domestic workers who accompany their employer into the country. There is a variety of regulations and schemes permitting this. In general such workers are admitted as tourists or as workers with the name of their employer written on their passport. As a consequence the worker cannot change employer. Should they leave their employer, common in the face of abuse and exploitation, they automatically become undocumented workers.

Many employment agencies are unlicensed and not submitted to any State control or regulations. They often operate quite openly, with or without government collaboration. Once drawn into the recruitment network, women are faced with the payment of a bewildering variety of fees. Agents charge excessive placement fees and costs of fake or tampered travel documents and certificates of employment which require women to borrow large sums of money, to sell or mortgage land or to take loans or advance payments of the agents. In the Philippines, for example, agents may charge an initial service fee to process the necessary employment papers, a placement fee for finding an employer, and the officially prescribed placement fee, often followed by additional charges. Additional charges may include expenses incurred even before the recruit's departure, such as the cost of transport, accommodation and food (Heyzer et al. 1994).

This vicious circle of debts ties women to their employer. Middle East Watch, for example, found many cases in Kuwait in which salaries of women had been withheld by employers, allegedly to settle their debts:

The women workers appeared to have no say in the amount attributed as lent to them or in the decision regarding salary proportions to be deducted towards their debt. In many cases we investigated, debt had the effect of placing women in bondage to their employers. It was used as a means of forcing the women to endure prolonged working hours, inadequate food and sleep, no days off and no time to attend a place of worship for fear of never getting paid or losing their jobs (Anderson 1993, p. 35).

The recruitment networks in the sending countries are connected to the placement networks of agencies in the receiving countries. Some women tell they had to pay agents on both sides or had to pay fees that should be borne by the employer, all adding up to the indentureship of the women.

In *The Trade in Domestic Workers* Heyzer (1994) lists a number of problems attached to the recruitment process in the sending countries:

- misinformation which can amount to false advertising and fraud;
- imposition of exorbitant fees by agencies through a monopoly of overseas jobs;
- lack of government regulations over the recruitment process with regards to the accuracy of the information provided and the fees charged;
- illegal modes of smuggling workers into receiving countries, set up by agents in order to evade government charges for processing legal documents and the official exit fee;
- risks of imprisonment and even death through dangerous modes of illegal migration;
- indebtedness of the individual recruit and her family to agents, sub-agents, money-lenders, pawnshops, banks and others;
- loss of assets and savings through the sale of land, property, jewellery and other valuables, in order to raise funds to pay the agents;
- impoverishment of already poor villagers and the enrichment of relatively rich agents and sub-agents, money-lenders, pawnshop owners, banks and others;
- family pressures on women to migrate in the expectation of their earning big money to support unemployed and under-employed male relatives, the young and the elderly;
- flow of funds out of the country from agencies in the sending country to agencies in the receiving country in the form of commissions.

Some States have tried to impose some control on the activities of the agencies. But according to Heyzer, strict rules and regulations, such as selection regulations and a deposit of guarantee money to the State for licensing, are unlikely to work because they are not coupled with measures to protect the migrant worker who complains of abuses.

#### **4 Constraints to escape**

A variety of factors inhibit women from escape once they are trapped in abusive recruitment practices and/or slavery-like conditions. As the most common constraints to escape respondents mention (in order of frequency):<sup>4</sup>

1. lack of alternative employment;
2. lack of knowledge of the law and their rights;
3. dependence of family on their income;  
not wanting to return empty-handed;
4. Listed are the barriers that are mentioned by respondents as applying (very) frequently.

4. having no money;
5. fear of deportation;  
movements are controlled by traffickers/employers;
6. fear of arrest by the authorities;  
violence by traffickers/employers;  
having no identity papers or false papers;
7. debt bondage;  
fear of retribution against their family for not paying their debt;
8. fear of reprisals by traffickers/employers against family, friends or themselves;
9. involvement of own government/embassy.

When the prevalence of these constraints is examined in relation to specific groups of domestic workers, the following trends show:

According to respondents, the main barriers for national domestics are:

- lack of alternative employment (mentioned by 6 respondents as occurring (very) frequently);
- lack of knowledge of the law and their rights (6);
- dependence of her family on their income (5);
- having no money (5).

The main barriers for migrant documented domestic workers are:

- lack of alternative employment (mentioned by 7 respondents as occurring (very) frequently);
- not wanting to return home empty-handed (7);
- dependence of family on their income (7);
- fear of deportation (5);
- lack of knowledge of the law and their rights (5).

As the main barriers for undocumented domestic workers respondents mention:

- fear of deportation (mentioned by 5 respondents as occurring (very) frequently);
- dependence of family on their income (5);
- not wanting to return empty-handed (5);
- lack of alternative employment (5);
- fear of arrest by the authorities (4).

Organizations in countries of origin of overseas domestic workers report having no money (7), lack of knowledge of the law and their rights (7), having no identity papers (6), not wanting to return home empty-handed (6) and lack of alternative employment (6) as the main factors that hinder women to leave abusive situations.

In general, domestic workers are extremely reluctant to leave their employers because of the difficulty of finding another job and having no surplus to tide them over a period of unemployment, in addition to the risk of deportation. Running away from an abusive employer does not solve their problems and requires great courage, not to speak of the practical difficulties: bolted doors, locked windows, security guards or dogs patrolling the premises. Many women are not allowed out of the house, and have no idea where to go to or how to get there. They have no money, no papers, no friends, no belongings:

My leaving was very frightening although at that point I did not care what happened to me or what the situation might be like out there because they (the employers) always said to me that this country is very dangerous, you cannot meet anybody who will help you, that people mind their own business, people don't care about you, even if you're walking there on the streets somebody can just kill you or shoot you (Anderson 1996, p. 25).

Moreover, if women run away they face a succession of practical problems: where to live, how to survive, how to obtain clothes and get some money. They have no prospects of receiving support from the State and no more means of redress for unfair employment practices than they did previously. In addition, fear of being discovered is a constant source of stress:

Because of my situation, fear is with me constantly and I even give false names to my employers. They do not know about my real situation. I'm longing to have a holiday back home, but I can't do it because of my illegal position. Sometimes in the middle of the night I just lie awake thinking that one day the immigration officer will come and get me. Worst of all, I can't even trust a friend, thinking that they might tip off the immigration authorities about me (Anderson 1996, p. 25).

Female workers with dependent permits lose their legal status the moment they leave their employer. In most countries domestic workers are not allowed to change employer. In the UK, for example, women who leave their employers are not allowed to work. Within a few months they are overstayers without rights to either work or residence in the UK (Anderson 1996a). In Malaysia, women who leave their employer because they are sub-

jected to abuse or ill-treatment or because the employer breaches the terms stipulated in the contract, are usually repatriated. They have no chance to seek another employer except in extreme cases and depending on whether they are willing and able to pay the agent another fee. No compensation is made for loss of (future) earnings: 'The maid goes home even poorer than she was prior to coming to Malaysia' (Tharan 1987, p. 281). No matter if women are recruited by legally or illegally operating employment agencies, they cannot expect any support, protection or reimbursement from the agency.

Immigration laws can also serve in other ways as a barrier for women to escape. In Greece, for example, undocumented workers are fined for every month they have been in Greece in an irregular situation. As a result, workers are unable to leave the country even if they want to because they do not have the money to pay the fine. The story of this Filipina domestic worker is exemplary:

J. came in 1974 on papers falsified by her employers. They told her to destroy all documentation relating to her entry: 'I had no knowledge of cheating. I had lived a very neat life until then, so I did what I was told.' In 1981 her then employer, a government official, managed to get her a work permit. This enabled her to bring over to Greece her husband and children. Then, in 1991 her permit was taken away from her 'it was because of Maastricht'. Her children could not renew their residence permits. J., her husband and her children continue to accrue fines of millions of drachmas because they are unable to leave the country (Anderson 1996, p. 15).

In the Gulf States possibilities of escape from abuse are almost non-existent:

Women have no chance of repaying debts incurred by recruitment fees if they leave the Middle East. It is difficult for women to change employers, and virtually impossible without permission of her current employer. Those who opt to change employers without consent are in the worst situation of all. Posters offering rewards with photographs of runaways appear on billboards and on television. Very few run the risk of leaping out of the frying pan into the fire (Anderson 1993, p. 25).



## 5 Barriers to report to the authorities

Not surprisingly, very few women report to the authorities. According to the respondents the main barriers are:

For national domestics:

- financial dependency of family (mentioned by 8 respondents as occurring (very) frequently);
- lack of knowledge of the law and their rights (6);
- lack of confidence in the legal system (5);
- lack of knowledge of and/or access to support mechanisms (4).

For migrant documented domestics:

- lack of confidence in the legal system; lack of knowledge of the law and their rights (6);
- fear of losing visa sponsorship; fear of deportation; fear of reprisals by the agents; fear that she herself will be punished/arrested; outstanding debts; financial dependence of family; lack of knowledge of and/or access to support mechanisms (5);
- language barrier (4).

For migrant undocumented domestic workers:

- fear of deportation; lack of knowledge of the law and their rights; lack of knowledge of and/or access to support mechanisms (4).

According to organizations of countries of origin, the main barriers to report for women of their country working overseas, are:

- fear of deportation (8);
- lack of confidence in the legal system; lack of knowledge of the law and their rights; lack of knowledge of and/or access to support mechanisms (7);
- fear that she herself will be punished or arrested (6);
- fear of losing visa sponsorship; outstanding debts; financial dependence of family; language barrier (5)
- attitude of law-enforcers (4).

In almost all countries there are no governmental provisions to facilitate or encourage women to report trafficking or slavery-like practices to the authorities, such as confidential counselling, safe shelters, free legal aid, legal residence during investigations or assistance in returning home.

If women nevertheless file a complaint, this virtually never leads to a serious investigation or a conviction. Almost one-third of the respondents say that women are not or rarely believed and that complaints are rarely or never taken seriously. According to half of the respondents, complaints are never or rarely investigated. According to more than half of the respondents complaints never result in a conviction of the offender.

Almost one-third of the respondents state that victims of trafficking or slavery-like practices risk ill-treatment by the authorities, such as harassment by the police, expulsion, harassment by immigration officers, arrest or detention for having false or no identity papers, refusal to give back identity papers or to issue new papers, and arrest for prostitution.

If support is available, it is exclusively provided by NGOs. Asked what services are provided by NGOs, almost half of the respondents mention legal and social assistance. Around two-thirds mention medical assistance, safe shelters and return programmes. Other services provided by NGOs include financial assistance and witness protection. NGO-services are most available for local domestic workers. Social assistance, safe shelters and legal assistance are the services most frequently provided by NGOs to migrant domestics. Undocumented migrant domestics benefit least from these services.

Respondents propose a range of measures that would help women to escape abusive conditions or improve their situation:

- legal protection under labour and immigrant laws, including the right to change employers and security about their stay and work;
- legal rights on escaping abuse, including the right to legal assistance;
- laws that regulate contracts for overseas domestic workers;
- information on prevailing laws, procedures, terms of contracts, labour and human rights as workers, including information on how and where to obtain help when necessary;
- education and training to enhance skills and increase chances for jobs;
- support services, such as counselling, shelters and legal assistance;
- support to organize, raising self-esteem and dignity;
- economic measures to improve the economic situation of women;
- opportunities for savings.

## 6 Returning home

According to respondents, the main problems women face on returning home, are in order of frequency:<sup>5</sup>

- lack of alternative employment;
- breakdown of family relationships;
- shame for coming home empty-handed;
- no housing;
- psychological and medical problems;
- lack of skills/deskilled.

A range of measures is proposed that would support women on returning home:

- economic measures, such as financial support, alternative means of survival, opportunities for (self) employment, alternative employment;
- education and training to develop new skills for alternative employment and self-sufficiency;
- information about support and educational services available before returning;
- publicity and awareness-raising to highlight human right aspects of the issue;
- social and political measures, such as providing health services, shelters and counseling for returnees and their families;
- support of NGOs in home countries;
- legislation to secure the right to return to the host country to work;
- free legal assistance and police co-operation to charge and prosecute traffickers and abusive employers;
- establishment of minimum standards of responsibility between sending and receiving countries, including guaranteed minimum wages.

5. Listed are the problems that are mentioned by respondents as occurring (very) frequently.

## Chapter 6

# Trafficking in women, forced labour and slavery-like practices in prostitution

### 1 Characteristics

In *The Globalization of Trafficking in Women*, Skrobanek documents a number of human rights violations that are characteristic for the international trafficking in women for prostitution. These violations relate to the recruitment processes as well as to the working and living conditions women are subjected to:

- women are denied the right to self-determination. They do not know the conditions of their employment before migration. They are sold and resold and forced to pay back debts fixed by their ‘owners’;
- women are forced to work in slave-like conditions as bonded labourers in order to pay back the debts incurred in getting them to the receiving countries. Because they are undocumented workers and in permanent fear of being arrested, they do not have the freedom to escape the enslaved situation;
- women are forced to work, while the income generated by their labour is appropriated by others. Many women work for years only to pay back their debts;
- women are denied the right to choose their clients as well as the right to protect themselves from sexually transmitted diseases;
- as bonded and undocumented workers, women are denied access to medical treatment and social assistance. HIV tests are forced upon women and the resulting information is withheld from them;
- in some of the receiving countries migrant women are the target of racial discrimination and prejudice. They are subject to many forms of physical and psychological violence;
- under immigration law, women are subject to arrest on charges of overstaying, illegal stay or work and consequently to deportation;
- because women are transported with false documents, they run the risk to become stateless people. They are subject to prosecution in both sending and receiving countries;
- when women seek assistance from authorities such as the police, they may

- encounter other forms of sexual violence, such as rape and sexual harassment;
- in court cases women usually are forced to testify in public and are therefore denied their right to privacy. To give evidence in public of very personal things, is very traumatic for the women concerned;
  - in some receiving countries children born from migrant women are denied the right to have nationality (Skrobanek 1994, p. 6 appendix I).

Trafficking practices not only take place from South to North or from East to West, but also within continents and within countries, for example from rural to urban areas. In Colombia, for example, some trafficking networks concentrate on the internal trafficking of women, recruiting and distributing women for the local, regional and national markets. Other networks provide Colombian women to the markets in countries from the same continent, like Venezuela, Ecuador and Panama, whereas international networks provide for the markets in Europe, the US and the Asiatic continent, especially Japan (Polania Molina 1996).

Trafficking routes, sending countries and countries of destination may alter quite quickly due to political or economic changes. For example, since the fall of the Berlin Wall in 1989 and the resulting political and economic changes, there has been an alarming increase in the traffic in women from Central and Eastern European countries.

Similarly, forced labour and slavery-like practices are not limited to some countries or some groups of prostitutes. Many women – migrant or local, trafficked or entering prostitution independently – work as prostitutes under appalling conditions, either in Europe, Asia, Latin America or elsewhere.

## **2 Contributing factors**

In addition to the general factors described in chapter 3, a number of factors that specifically contribute to the abuse faced by prostitutes can be pinpointed:

- the clandestine and/or illegal nature of the work;
- the illegal immigrant status of women working abroad;
- the marginalization, stigmatization and criminalization of women working in the sex industry;
- the extremely large profits that can be made, among others as a result of the above mentioned factors.

The social, political and legal stigmatization of women who work in prostitution puts them in an even more vulnerable position for abusive practices than women in other sec-

tors of female-designated labour. Once caught in an abusive situation, women are further trapped by the prevailing stigma. As stated by the Czech organization ProFem, the stigma on prostitution works to the benefit of traffickers and abusive employers and enlarges their power over the women involved:

The criminalization of all women who work in prostitution, including those who work independently and voluntarily, creates a perfect opportunity for traffickers to operate without being bothered by social control. The Czech policy towards prostitution is to hide it away from the official image of the city and to restrict it to certain areas. In Prague, a big public campaign was initiated by the authorities, according to which prostitution is moved to the city's periphery. As a result, the prostitutes are more and more brought under the control of pimps and traffickers. The public does not need to see what does not fit in their image of society. As Interpol in Prague reported, victims of trafficking are increasingly recruited in the sphere of prostitution, meaning that women who are working there form the most endangered group of getting trafficked (Profem 1996 p.41).

The same mechanism is described by GAATW in its report on Asia:

A woman who has been trafficked into prostitution is seen as 'in need of rehabilitation'. Her morals need to be corrected. Prostitutes are considered 'bad women' and as 'deviants' they are not accorded the same rights as 'good women' (GAATW 1996, p. 21).

The report continues to describe how in Bombay the police arrested 447 sex workers in raids on brothels. They were taken from the brothels without their belongings and, in some cases, without their children. Though prostitution in itself is not illegal in India, the women were kept in detention. They were forcibly tested for HIV and other sexual diseases, but were not given any medical treatment. Those who wanted to go back to work were not released:

If these women were in different occupations, there would have been considerable public outrage about this abuse and violation of rights (GAATW 1996, p. 22).

A report from Bangladesh states it like this:

In a patriarchal society, the women in an occupation which is polluting and is stigmatized and looked down upon by the society are easily vulnerable to all forms

of violence and abuses. Again, because of this very low status of their occupation, the women are left helpless to defend or assert themselves against indiscriminate exploitation and oppression which is a regular feature of their lives in the brothel (Khan 1992, p. 123).

While migrant prostitutes are especially vulnerable to abuse due to their status as (illegal) migrant, migrant and national prostitutes alike may suffer severely abusive conditions due to the clandestine, unprotected and stigmatized nature of their work.

### 3 Contemporary manifestations and trends

In order to analyse the contemporary forms of trafficking and forced labour/slavery-like practices in relation to specific groups of women working in prostitution, for the purpose of this report a distinction was made between the following categories:<sup>1</sup>

- national prostitutes: women who work as prostitutes in their own country;
- migrant prostitutes: migrant women who work as prostitutes in a foreign country. Within this category a distinction was made between ‘legal’ migrant prostitutes, i.e. in possession of a valid staying permit and ‘illegal’ prostitutes, i.e. those without a valid staying permit.

Organizations in countries of origin were also asked for their knowledge about women from their country working as prostitutes in foreign countries (out-national prostitutes).

A total of 46 NGOs completed the specific section of the questionnaire on trafficking and forced labour/slavery-like practices in prostitution (section C). Of these NGOs, 17 came from Asia (Bangladesh, Nepal, India, Thailand, The Philippines, Japan, Hong Kong, Vietnam, Taiwan, China), 2 from Australia, 17 from Europe (Germany, Belgium, Denmark, Finland, The Netherlands, Italy, Spain, Switzerland, Slovenia, Bulgaria, Ukraine, Czech Republic, Poland, Turkey), 7 from Latin America and the Caribbean (Curaçao, Dominican Republic, Peru, Mexico, Ecuador), 3 from North America and Canada. No NGOs from Africa completed this section.

It must be kept in mind that the category ‘legal migrant prostitutes’ does not exist in many countries because prostitution and/or prostitution by migrants is by definition illegal. In general, respondents knew least about the situation of legal migrant prostitutes.

1. See the specific section on prostitution (section C) of the questionnaire for NGOs (annex I).

In relation to this group, a high percentage of respondents answered either ‘not applicable’ or ‘don’t know’ to the various questions.

### 3.1 Prevalence of trafficking in women, forced labour and slavery-like practices

Forced labour and slavery-like practices, are reported to occur among all groups of prostitutes, national as well as migrant women: 41% of the respondents report forced labour and slavery-like practices to occur (very) frequently among national women, around 25% among legal migrant women and around 55% among illegal migrant women.

Table 6 shows the reported prevalence of forced labour and slavery-like practices among the distinctive groups of prostitutes. The percentages refer to the percentage of respondents that report these practices to occur (very) frequently.

TABLE 6 *Forced labour & slavery-like practices occur (very) frequently with regard to:*

	<i>Europe (incl. the CEECs)</i>	<i>Asia</i>	<i>Latin America &amp; the Caribbean</i>
National prostitutes	18%	53%	72%
Legal migrant prostitutes	29%	12%	43%
Illegal migrant prostitutes	49%	41%	–
Out-national prostitutes	12%	53%	71%

Number of respondents Europe: 17

Number of respondents Asia: 17

Number of respondents Latin America & the Caribbean: 7

For the other regions the number of respondents is too low to draw any conclusion.

Around 12% of the respondents in Europe, mainly from the CEECs, report the occurrence of forced labour and slavery-like practices among women from their own country working abroad in prostitution, against 53% from Asia and 71% from Latin America and the Caribbean.



### 3.2 Recruiting agents and methods

Trafficking practices are reported to take place with respect to all groups of prostitutes. Around 35% of the respondents to the questionnaire say trafficking occurs frequently or very frequently in relation to national prostitutes, against 52% in relation to illegal migrant prostitutes, and 24% in relation to legal migrant prostitutes.

Table 7 shows the reported occurrence of trafficking in women in relation to the distinctive groups in the different continents:

TABLE 7 *Trafficking occurs (very) frequently in relation to:*

	<i>Europe (incl. the CEECS)</i>	<i>Asia</i>	<i>Latin America &amp; the Caribbean</i>
National prostitutes	12%	47%	72%
Legal migrant prostitutes	29%	18%	43%
Illegal migrant prostitutes	65%	47%	29%
Out-national prostitutes	24%	59%	43%

Number of respondents Europe (incl. the CEECS): 17

Number of respondents Asia: 17

Number of respondents Latin America & the Caribbean: 7

For the other regions the number of respondents is too low to draw any conclusion.

Traffickers may use different methods. For all categories of women, deception with regard to the conditions of work scores highest: 61% of the respondents report this to happen (very) frequently in relation to illegal migrant prostitutes, against 52% for national prostitutes.

Other forms of coercion mentioned are (in order of frequency):<sup>2</sup>

For national prostitutes:

- violence or threat with violence;
- deception regarding the nature of the work;
- abuse of authority or dominant position.

2. Listed are the forms of coercion which respondents mention as occurring frequently or very frequently.

For legal migrant prostitutes:

- violence or threat with violence;
- abuse of authority or dominant position.

Evidently, illegal migrant prostitutes are the ones most vulnerable to coercion. Apart from deception regarding conditions of work (61%), almost 50% of the respondents report the (very) frequent use of:

- violence or threat with violence;
- deception regarding the nature of work;
- debt bondage;
- the use of false papers;
- abuse of authority.

Organizations in countries of origin mention deception regarding the conditions of work as the most frequent abusive recruitment practice to which their fellow country-women are subjected.

The fact that most cases of deception relate to the conditions of work rather than the nature of the work, indicates that a substantial number of women do know that they are recruited for prostitution and agree to the work as such. They are, however, consciously deceived about the conditions under which they will be forced to work. It might also indicate that sex workers belong to the group that is most vulnerable to trafficking practices. Other women are deceived about the nature of the work. They are recruited with promises of jobs as waitresses, cleaners, dancers, entertainers or domestic workers. Sometimes traffickers make use of false job contracts. Some women are promised marriage or false marriages are arranged.

As the most common recruiting agents respondents mention (in order of frequency):<sup>3</sup>

- acquaintances of family or friends;
- friends;
- strangers/accidental meetings;
- job agencies and impresarios/artist agencies).

Respondents in Europe (incl. the CEECs) mention as the most frequent recruiters:

- acquaintances of family or friends;
- impresarios/artist agencies;

3. Listed are the recruiting agents which respondents mention under the category frequently and very frequently.

- friends.

Respondents from Asia:

- job agencies;
- acquaintances of family or friends;
- strangers/accidental meetings;
- expected husbands.

Respondents from Latin America and the Caribbean:

- acquaintances of family or friends;
- impresarios/artist agencies;
- family members
- friends.

Respondents from Africa :

- acquaintances of family or friends.

In her report on trafficking in women in Latin America and the Caribbean, Azize-Vargas (1996) identifies several recruiting strategies:

- recruitment by procurers. Nationals who work in the country act as middlemen/intermediaries or 'travel organizers' to recruit women;
- recruitment by other sex workers or dancers. Frequently women already abroad are paid money for every woman they can attract to the business;
- recruitment by informal networks of relatives, friends, village and local community persons;
- recruitment through a real or false marriage;
- recruitment through artist or dancer contracts or under the guise of a folk dance company or to work as models.

According to a survey conducted by COIN in the Dominican Republic (COIN 1993), 29% of the women that travel abroad are helped by friends, 15% by relatives and 19% by 'travel organizers'. Such agencies offer women help with documents and passports, 'show money' to go through customs, travel arrangements, visas, birth certificates, transportation, and the like. The first contact is often made through friends (male or female) who 'know a woman who organizes trips' or a Dominican or foreign 'impresario' who is looking for women to create a dance troupe to go overseas. Both in cities and in beach resorts, there is a combination of local and foreign entrepreneurs. Once the girl establishes contact, she is engaged as a dancer or barmaid and has to pay a fee (usually US \$ 400-1.000) to cover ini-

tial expenditures of certificates, passport, visa, air ticket, and contract. Financial help usually comes in the form of loans to be paid back once the woman starts working (COIN 1993 and 1995; IOM 1996a).

False promises about the nature or conditions of work are also used to recruit women from the CEECs for Western Europe. As described in *One Year La Strada*:

Some women thought they would be waitresses, nannies or domestic servants. Others knew the job was to be in prostitution, with enormous profits to be made (up to D-Mark 3.000 a month). Little did they know about the real circumstances in which they had to work and that the profits would not go to them, but to their perpetrators (Kootstra 1996, p. 14).

Marriage as a recruiting method is regularly reported, especially in countries where traditional practices of servitude of women are still common.

In the case of trafficking to Pakistan, Bengal traffickers marry girls or force them to marry others of their network before bringing them to Pakistan to work in brothels in order to protect themselves from being prosecuted under Islamic Hudood laws. However, 2,500 Bangladeshi women and children are reported to be detained in jails in Pakistan under the same laws, charged with illegal entry and having 'illegitimate sex' (Human Rights Watch 1995).

In Nepal young men pay the 'bride price' for a young girl and then sell her to a brothel. Such traffickers go back to a village several times and 'marry' again and again. It is reported that 35% of the roughly 100.000-160.000 Nepalese girls working in different Indian brothels have been abducted to India under the pretext of marriage or good jobs (Poudel 1994).

According to Butegwa, trafficking in Kenya is mostly done under the guise of marriage, friendly invitations and jobs. Most girls are taken to Germany, probably because there are many German tourists who visit Kenya. They casually invite the girls to Europe for a visit or propose marriage. In Europe the girls end up in brothels or abused by their husbands, who force them to prostitution by confiscating their passport or simply by locking them up in the house (Butegwa 1996).

In Nigeria women are recruited by a special type of intermediary. This person, usually a woman called Madam (or Mama-Loa, meaning 'priestess') acts as a go-between for girls/women and the organization preparing their migration. Trafficked girls/women will keep contact with them, even after their migration. Money is sent to her in order to

pay back the debt to the organization or to pass to the girl's family. The following case illustrates how Nigerian women are recruited for prostitution in Italy:

My story is very similar to the ones of many women from my country [...] I was born 25 years ago in a small village in the country-side, near Kaduna, in northern Nigeria. My family is a very big one and my parents are peasants [...] I decided to go with a few girlfriends to Lagos. There I met some persons in a discotheque, and they suggested that I could go to Europe to work and study. I paid a lot of money to an agency which organizes trips to Italy. The money was not enough and so I signed a contract where I promised to work as a maid for a family in Naples, and I soon understood that my job was another one [...] I was threatened, and they said that I had to pay otherwise my family would have been threatened too (IOM 1996c, p. 19).

Some parents sell their daughters into prostitution for financial gain, as in India:

Bina was sold by her family to a brothel in India. She refused to co-operate and was beaten severely. She still refused and finally men from her village were brought to the brothel. Once they saw her she could not return home, as her village would have known she was in a brothel as prostitute (GAATW 1996, p. 9).

### 3.3 *Living and working conditions*

As the most common abusive living and working conditions, which in combination may lead to conditions of forced labour and slavery-like practices, respondents mention (in order of frequency):<sup>4</sup>

- psychological abuse (threats, name-calling, insults, humiliation etc.);
- physical abuse (hitting, kicking, beating, threatening with violence, etc.);
- constant fear of police arrest;
- illegal confinement (movements controlled/restricted, no permission to leave the working place or allowed only under supervision);
- no right to refuse customers or forced to have a certain number of customers per day;
- sexual assault or rape (incl. attempted or threatened);
- isolation (prohibited from normal social contacts, interception of letters and/or phone calls);
- not paid regularly or paid less than agreed;

4. Listed are the conditions which respondents mention as occurring frequently or very frequently.

- debt bondage;
- denial of time off/holidays;
- no right to refuse specific sexual acts;
- identity papers/passport confiscated;
- more than twelve hour working days;
- no access to medical/health care;
- threat of reprisals against family/other relatives;
- false identity papers;
- not paid at all;
- forced abortions/dangerous abortion practices;
- personal belongings taken away;
- not having a bedroom/forced to sleep in working place;
- no right/opportunity to use condoms;
- compulsory HIV/AIDS testing;
- no regular food;
- not having a bed or nothing to sleep on;
- forced to recruit sisters/girl friends into prostitution.

When the occurrence of these conditions is examined in relation to the specific groups of women working in prostitution, the following trends show:

According to respondents national prostitutes suffer most from:

- psychological abuse (mentioned by 48% of the respondents as occurring frequently or very frequently);
- constant fear of police arrest (39%);
- sexual assault or rape (37%);
- physical abuse (35%);
- illegal confinement; no right to refuse customers and/or forced to have a certain number of customers per day; not paid regularly and/or paid less than agreed (33%);
- debt bondage (31%).

Legal migrant prostitutes suffer most from:

- psychological abuse (mentioned by 28% of the respondents as occurring frequently or very frequently);
- physical abuse (26%);
- constant fear of police arrest; no right to refuse customers/forced to have a certain number of customers per day (22%);
- more than twelve hour working days; sexual assault or rape; illegal confinement (17%).

Illegal migrant prostitutes suffer most from:

- constant fear of police arrest; psychological abuse (mentioned by 57% of the respondents as occurring frequently or very frequently);
- illegal confinement (54%);
- isolation (48%);
- physical abuse; no right to refuse customers/forced to have a certain number of customers per day (46%);
- denial of time off/denial of holidays; debt bondage (41%);
- identity papers/passport confiscated; sexual assault or rape (44%);
- not paid regularly or paid less than agreed (43%);
- no right to refuse specific sexual acts (39%);
- no access to medical and health care (37%);
- false identity papers (36%);
- more than twelve hour working days (35%);
- threat of reprisals against family/relatives (33%);
- personal belongings taken away; not paid at all (30%).

Although it is evident that illegal migrant prostitutes are in the worst position, abusive conditions are also frequently reported with respect to national prostitutes. Legal migrant prostitutes seem to be in a better position, but it must be noted that a high percentage of respondents say that they know little about the situation of this group. Moreover, in many countries this category is non-existent, because it is impossible for migrant women to work in prostitution legally anyway.

With regard to the situation of women from their own countries working abroad as prostitutes, about 40% of the respondents report the (very) frequent occurrence of psychological abuse. About 30% report illegal confinement, physical abuse, isolation and debt bondage to occur (very) frequently. However, again a high percentage of respondents answer ‘don’t know’.

If the occurrence of these conditions is examined in relation to the different continents, the following patterns show.<sup>5</sup>

As the most common abusive conditions respondents in Asia report (in order of frequency)<sup>6</sup>:

- no right to refuse customers/forced to have a certain number of customers per day;

5. Taken all categories together.

6. Listed are the conditions which respondents mention as occurring (very) frequently.

- constant fear of police arrest;
- not paid regularly/paid less than agreed;
- psychological abuse;
- isolation;
- no right to refuse specific sexual acts;
- illegal confinement;
- debt bondage;
- denial of time off.

In Latin America and the Caribbean:

- psychological abuse;
- physical abuse;
- no right to refuse customers/forced to have a certain number of customers per day;
- sexual assault/rape;
- constant fear of police arrest;
- illegal confinement;
- debt bondage;
- no right to refuse specific sexual acts;
- dangerous abortion practices/forced abortion.

In Europe, including the CEECS:

- psychological abuse;
- constant fear of police arrest;
- physical abuse;
- illegal confinement;
- not paid regularly/paid less than agreed;
- isolation;
- sexual assault/rape;
- more than twelve hour working days;
- debt bondage;
- identity papers confiscated.

Little information was available regarding the situation in North America and Canada. However, according to Sanghera's report on Canada (Sanghera 1995), the following conditions occur (very) frequently with regard to all categories of prostitutes in Canada:

- psychological abuse;
- debt bondage;
- not paid regularly/paid less than agreed;



- no access to medical or health care;
- forced to sleep in working space;
- more than twelve hour working days;
- denial of time off;
- constant fear of police arrest;
- forced drug addiction.

In the European countries a striking difference in conditions seems to exist between national and migrant prostitutes: the reported occurrence of abusive conditions is four times higher for (illegal) migrant prostitutes than for national prostitutes. In the other continents, the conditions among the various groups seem to be much more similar.

Reports from NGOs all over the world extensively document abusive working and living conditions in prostitution, amounting to forced labour and slavery-like practices. Some examples are given below.

According to a report of Anti-Slavery International on slavery in Brazil in 1994, women and girls are systematically trafficked from one part of Brazil to other parts to work in brothels in towns near mining camps and large civil construction projects in a.o. Amazonia. Even if women knew beforehand that they would work as prostitutes they are still trapped in these remote areas and immobilized by debts chalked up against future earnings as soon as they arrive. The women and girls not only have to repay the transport costs into the area, but they also often have to pay off their own ‘price’ charged to the brothel owner by the intermediary who has effectively sold them on. As a twenty two-year old woman working in one of the mining camps in Itaituba tells:

The brothel debts (the transport costs) I paid off quickly, but now I have to pay off my own price. She (the brothel owner) paid the intermediary and now I have to pay her. Payment for sexual services is handed over directly to the brothel owners who hold the money against the women’s debts (Sutton 1994, p. 6).

Another form of indebtedness comes with malaria:

Just when a girl thinks she is free of her debts, she unexpectedly contracts malaria, which leaves her cast down in bed, unable to work and without funds for treatment. She has to borrow again. Thus malaria contributes to exacerbate a situation of dependency (Ibid., p. 96).

With no access to the money they have earned and high transport costs out of the area,

their freedom to leave is severely curtailed. Even when they succeed in escaping the brothel they remain immobilized in the area. Moreover, if a woman flees, her debt is transferred to those left behind. Women report being physically coerced and confined, complain of ill-treatment, beatings and imprisonment, and say that those trying to flee were killed or tortured. They also claim that the local police connive in holding them in these conditions by arresting and ill-treating those trying to flee. One woman who tried to seek help, writes:

Here the owners beat us with electric wires folded over four times. When they don't beat us they send the police to beat us, and we're only released when they want it (Ibid., p. 97).

Another form of coercion, apart from physical violence, is to deny women food until they do what they are told.

These practices are in no way exceptional. Debt bondage or indentureship – in which the woman has to pay back the recruiter, brothel owner, or agency the sum for which she is purchased and/or an uncontrollable sum for travel, documents, food, housing and other services – is one of the most frequently used methods to bind women. NGO reports from all over the world document these practices.

In Thai brothels Cambodian women are locked up and guarded until they have paid back their purchasing price. They are not allowed to shop on their own. Instead, the brothel owners do all the shopping and charge them exorbitant prices. They are over-charged for everything they need, so the 'debt' increases instead of being paid. Earnings are also deducted for bribes. In the end women even lose their investment capital. The brothel owners keep their earnings for safe-keeping, so they never know how much they really earn (CWHR 1996).

Burmese girls are recruited for brothels in Thailand by agents who pay amounts up to A\$ 500 to the girl's family. The girls then must pay back this sum and any other expenses they incur while living in the brothel. They receive little or no payment. Commonly a girl serves six to eight clients a day, 25 days a month, earning for the owner between A\$ 600 and A\$ 2,500 per month, of which the girls are paid approximately A\$ 1 per day or A\$ 25 per month. The girls usually stay in the brothel network for at least two to three years. Conditions inside the brothels are appalling, including barbed wired and electric fences (Australia, Parliament 1995).

Women trafficked to Japan must repay the inflated debt before they can earn anything. They are also made to pay for any other expenses such as food, accommodation and medicines:

Pung came to Japan after signing a contract with a canning factory. At first she was suspicious but she felt reassured by the formal contract. She was taken to a snack bar in Yamanashi Prefecture, where her Taiwanese mamasan told her she owed 3.8 million yen (US \$ 38.000) and the only way to pay it back was to work as a prostitute. She was penalized 15.000 yen (US \$ 150) for working without make-up, 1,500 yen for a broken glass and 10.000 yen for every minute she was late returning from servicing a customer. All of these were added to her debt (GAATW 1996, p. 15).

In the Dominican Republic many women borrow money or mortgage the family home to pay recruiters to help them with (false) papers and travel arrangements. They are then bound by this debt to continue working until they have paid their debt back (IOM 1996a). These debts can run up to thousands of dollars: one Dominican woman had been required to pay US \$ 5.000 for tickets and visa to Austria. Another was charged on credit US \$ 2.900, for which she had to pay back US \$ 5.400. Many women had to pay for their transfer within Europe in addition to their plane ticket from the Caribbean. Upon arrival they were picked up by a Dominican man and woman who demanded exorbitant prices for transfer services for a train ticket to Austria and a room for one night (IOM 1996d).

Women from Uganda who come to Dubai and Europe are secured loans for visas, tickets and accommodation. They are unable to get out of the arrangement until they have paid their debts. Freedom of movement and personal choice are further curtailed by the fact that their passports are retained by the airline as security for their debt (Butegwa 1996).

In Italy women from Latin America, Eastern Europe, Albania and Nigeria work the streets to pay back debts contracted with international agencies that organize their migration to Italy. Irrespective of their conscious or forced entry into prostitution they are subjected to the power of their traffickers/protectors by debts, based on agreements which have been made with the traffickers before their departure to Italy. These debts must be repaid with huge interests during the first month that the women spend in Italy (IOM 1996c).

Underpayment, extremely poor working conditions, physical abuse and constant fear of arrest are common problems for women from developing countries working in the sex industry abroad. In *Exotic, subservient and trapped: confronting prostitution and trafficking in Southeast Asia*, Skrobanek describes the following conditions:

- Underpayment: Third World women working in the sex business in Europe are usually paid 40 percent of their total earnings, the rest goes to the bar owners.<sup>7</sup> The

7. According to a European sexworker this is true for the majority of sex-workers – migrant and non-migrant – in brothels in Europe.

women who work for pimps hardly earn anything at all. It is reported that in Japan, 38 percent of the women who have entered the country illegally to work as hostesses, striptease dancers or prostitutes receive no payment in return;

- Working conditions: women working as prostitutes in a foreign country are largely dependent on their employers since they are unable to communicate in the native language. Because of this, they are unable to protect their own interests and have little bargaining power. They may be shifted from one city to another. In Japan, some women are not allowed to telephone or to venture outside their workplace unaccompanied. They have to work 10-12 hours a day [...];
- Physical abuse: it is common for women to be physically abused by their agents or employers. Some are beaten or battered by pimps. Others are threatened when they refuse to pay protection fees to the local mafia. For example, a woman who rents her place to work not only pays double the average rent, but she is also coerced into paying protection money. If she refuses, then both her safety and her property are at risk. In Switzerland, mafia members may earn US \$ 200 to 500 a night in protection money;
- Arrest: women who are sent abroad through illegal means obviously run the risk of being arrested and deported. [...] Having entered a country illegally, and engaged in illegal employment, the women will not approach the police or other governmental agencies for fear of being arrested. In some cases, State officials themselves are the ones who take advantage of the women [...] (Skrobanek, 1992, p. 126 ff.).

Physical violence, rape and force to serve a certain number of customers per day or to earn a certain amount of money per day are frequently reported. NGOs in Nepal report violence against prostitutes to include physical assault, starvation, forced use of drugs and alcohol, burning with cigarettes, rape, isolation in dark rooms, beating with a hot iron, forced abortion and threats by thugs. Reports from Hong Kong state that women are drugged and forced to receive up to 38 clients a night (GAATW 1996). According to reports from India, women who become pregnant are forced to undergo an abortion, usually under illegal and dangerous conditions. Brothel owners reportedly sell babies from prostitutes for adoption (Poudel 1994).

In *One Year La Strada* (a joint Polish-Czech-Ukraine-Dutch programme on prevention of traffic in women in the CEEC's) the following forms of violence exercised on Eastern European women working in the Netherlands are described:

Rape seems to be a favourite among traffickers. As many as fourteen women reported to us that they were raped during their ordeal. Often the argument was

that the woman ‘had to learn the tricks’. We suspect that even more women were forced to have sex with their perpetrators, but would not describe this as rape, since they did not physically fight him at the time. The withdrawal of passports and money is still popular too, although some traffickers gave their victims a small amount of money to control them even more. Among other violence and pressure used are debt binding, isolation, beatings, very poor living conditions (sharing a bed with three other women in the same room where during the day they worked) and the use of drugs [...] Also, women were threatened to be sold to another trafficker, whereas eight clients indicated that they were actually resold (Kootstra 1996, p. 21).

Women often get nothing or just a fraction of their earnings and are kept isolated to prevent them from escaping, like this Kenyan woman:

On reaching Germany, she realized that this was not to be when the brothel owner took away her passport. She only got a pinch of her daily earnings. She had to live like a prisoner because the woman ensured her that all her movements were monitored to avoid escaping or ‘making business’ else where. The brothel owner would also intercept her letters. When her visa expired, she was told that it would only be renewed if she found another Kenyan woman to replace her (Butegwa 1996, p. 7).

According to Hummel (1991), the conditions of foreign prostitutes in Germany are characterized by the absence of legal protection, isolation and extreme financial exploitation. In most cases women work in brothels during the time their visa is valid. After that period they are substituted by other women, who already stay in Europe. Brothel keepers prefer foreign women because they have less legal protection and therefore can be better controlled.

Extortion is not the privilege of the agents, intermediaries, protectors and keepers of brothels, also the police may make itself guilty of these practices. Reports from Bangladesh document various forms of police repression. Police officers force women to give free sexual services or act as babu (regular customer/protector) of ‘wealthy’ prostitutes from whom they extract large amounts of money. Apart from this, policemen are found to forcefully and violently extract the earnings of women whom they find to have many clients:

Often the police rounds up women with their clients from the brothel on some

pretext for extorting money from them. In such cases they also beat up women and manhandle their clients. Protesting prostitutes are taken to the police station where the physical abuse increases and the rates of fines go up (Khan 1992, p. 125).

An investigation of the Chamber of Commerce in Bogota, Colombia reveals that more than 10 percent of the prostitutes interviewed report abuse by the police as their main problem. Extortion and abuse by the police is mentioned by 50 percent of the girls aged eleven to fourteen, and by about 25 percent of the women aged fifteen to forty. Only 1.5 percent report abusive exploitation by the brothel managers (Cámara de Comercio de Bogotá 1992).

Various reports document a range of human rights violations and other abuses of Latin American and Caribbean women working abroad as prostitutes (COIN 1995; Azize-Vargas 1996; IOM 1996a). Abuses mentioned are:

- no freedom of movement. Passports are withheld. Women are locked up in their work place. Sometimes women are threatened if they talk to somebody;
- irregularities in the payment of women's salaries. Women are frequently obliged to work for a certain period without payment before they start to get some pay;
- no right to refuse clients;
- obligatory consumption of alcohol. Women are obliged to maximize the profits of club-owners by encouraging the client to consume large quantities of expensive drinks and by drinking together with the client. Under the pressures of this consumption pattern women invariably become alcoholics;
- sexual violence;
- sometimes the owners of clubs deliberately report women to the police so they don't have to pay them and they will be deported;
- sometimes women are actually sold.

According to reports of the IOM, women trafficked to Greece tell they had to work as dancers/prostitutes without being paid for the first three months, which meant that during this period they incurred debts for accommodation, food, clothes, and the like. The following three months they were allowed to keep 25-30 percent of their earnings from which their debts had to be settled. They were rotated every week to different cabarets and had one day off per week. All of them suffered physical violence and had no right to refuse clients (IOM 1996a).

In *Purchased Unhappiness* Karin Spring describes the working and living conditions of women from South East Asia, Latin America, Africa and the former Eastern bloc countries, who came to Switzerland for work:

With a suitcase and the hope of a better life, women from the Third World arrive daily in Switzerland, either at the airport or at the border. Most of them are heavily in debt, due to their inability to pay cash for the employment agency fees, the necessary formalities and the journey. And – apart from very few exceptions – many of them do not know that our country only provides one opportunity for work – as striptease dancers in bars. Border-crossing presents no problem, particularly when experienced organizations are behind them, because they know exactly which stipulations have to be complied with. Women who attempt to enter the country under their own steam are frequently refused entry. They are at the mercy of these organizations [...] Dependent on the club, a striptease dancer must perform three to four times and ten to twelve times a night. Between performances she has to ‘entertain’ the guests, including encouraging them to drink champagne [...] If the owner of a night-club does not like the woman or her striptease routine, or if she does not sell enough champagne, her contract can be canceled within the first three days without further ado [...] A work permit for a striptease dancer in a night-club is limited to eight months. The women are transferred by ‘their’ agency to a different club each month. After eight months they have to leave Switzerland [...] Because of the limited duration of their residential and work permits, the women are highly dependent on night-clubs and agencies. They have no opportunity to defend themselves against poor working conditions, fraudulent settlements of accounts, humiliating treatment or violence, if they want to continue working as dancers. Most of the women working in night-clubs earn extra money from prostitution [...] Wherever possible, they are financially exploited: by the artist agency, by night-clubs, by real estate agents, by pimps and customers. ‘The attitude towards us is always the same’, said a dancer from Brazil ‘we should be pleased that we’re even here. Here, we’re better off than at home. This is why we can be used and exploited as they want. And if we stand up to them, they threaten us with expulsion’ (Spring 1992, p. 2-3).

Sometimes women are forced to marry a national, like this Thai woman:

Because the Thai woman was living illegally in Switzerland, she was forced into a marriage on paper with a man she did not know. For this legalization of her stay, 20.000 Swiss francs was demanded of her (Spring 1992, p. 3).

## 4 Constraints to escape

Once trapped, many factors prevent women from escaping or changing their situation. Although there are similarities between the different groups, illegal migrant prostitutes are evidently in a particularly difficult position to change their situation.

The main constraints for illegal migrant prostitutes to escape or change their situation – mentioned by 45-55% of the respondents as occurring (very) frequently – are:

- fear of reprisals or arrest by the authorities;
- fear of deportation;
- lack of alternative employment;
- their movements are controlled by the criminal network;
- no money;
- their family is dependent on her income;
- no or false identity papers;
- violence by the criminal network;
- not wanting to return home empty-handed;
- fear of reprisals;
- debt bondage/fear of retribution against her relatives for defaulting her debt.

Other barriers, mentioned by about 35% the respondents, are:

- involvement of own government/officials;
- fear of rejection by their family;
- rejection or moral condemnation by society.

The main barriers for legal migrant prostitutes – mentioned by 20-25% of the respondents as occurring (very) frequently – are:

- lack of alternative employment;
- not wanting to return home empty-handed;
- no money.

The main barriers for national prostitutes – mentioned by 35-50% of the respondents – are:

- family is dependent on their income;
- lack of alternative employment;
- no money;
- movements are controlled by the criminal network;
- not wanting to return empty-handed;



- violence by the criminal network;
- fear of rejection or moral condemnation by society.

The best chances for women seem to lie in trying to gain more independence through their own efforts, as the IOM report on trafficking to Italy notes:

The interviews conducted revealed some significant differences between nationalities concerning the degree of exploitation suffered and the degree of freedom allowed to the women. With time, women from some national groups, who were initially deceived, managed to regain some decision-making ability [...] particularly women from Latin America (Colombia, Brazil, Peru and Argentina) and Eastern European countries. This is mainly due to the fact that these women are on an average older than those of other national groups, and are thus capable of negotiating with the protector/trafficker more successfully. This capacity is strengthened with time, leading, in some cases, to a definitive detachment from the protector or at least to the transformation of a subordinate relationship into a more equal one (IOM 1996c, p. 17).

## 5 Barriers to report to the authorities

Traffic in women mostly takes place in a network-like structure and is based on violence. This has many consequences. Even if existing policies allow women to report to the authorities, only few women will do so for various reasons.<sup>8</sup>

The main barriers to report to the authorities are according to the respondents:

For national prostitutes:

- lack of confidence in the legal system (mentioned by 46% of the respondents as applying (very) frequently);
- lack of knowledge of their rights/the legal system of the country (39%);
- need to financially support their family (37%);
- fear that they themselves will be punished or arrested; fear of moral condemnation; need to financially support their family (35%);
- attitudes of law-enforcers (33%);

8. See chapter 8 for a review of the risks for women attached to the choice for a penal approach.

- no access to legal assistance; fear that their situation will become known to their family/community; shame (30%).

For legal migrant prostitutes:

- need to financially support their family (mentioned by 30% of the respondents as applying (very) frequently);
- lack of knowledge of their rights/the legal system of the country; lack of confidence in the legal system (26%);
- fear of reprisals by the criminal network (24%);
- outstanding debts (22%).

For illegal migrant prostitutes:

- fear of deportation; fear of reprisals of the criminal network; fear that they themselves will be punished or arrested (mentioned by 54% of the respondents as applying (very) frequently);
- lack of knowledge of their rights/the legal system of the country (52%);
- language barrier (48%);
- need to financially support their family (44%);
- no access to legal assistance (43%);
- lack of confidence in the legal system (42%);
- attitudes of law enforcers (39%);
- outstanding debts (37%);
- fear for moral condemnation; shame (31%);
- fear that their situation will become known to their family/community (30%).

In general women have no reason at all to have confidence in the police or other authorities. In most countries prostitutes continually risk imprisonment, harassment or abuse by the police.<sup>9</sup> Migrant illegal women not only risk arrest for being a prostitute, but also for being an illegal foreigner. Every contact with authorities puts them directly at risk of deportation. For many migrant women deportation is an even worse perspective than to stay in the situation in which they find themselves. They prefer to try to survive in the hope that at some point they will succeed in realizing their original aims for migration. Moreover, if women report to the police – of their own accord or because they are arrested – they seriously risk reprisals without being offered any official protection or support. Apart from a few exceptions, governments hardly provide any services to encourage or

9. See chapter 7 for an extensive review of national laws on prostitution and the opportunities they allow women to take legal action in case of violence and abuse.

facilitate women to report trafficking or slavery-like practices to the police, such as confidential counselling, safe shelters, witness protection, free legal aid, specially trained police-officers, compensation for damages, provisions against deportation, legal residence during investigations, assistance in returning home, support programmes for returnees and legalization of residence status if victims can't return home. An exception is the situation in the Netherlands and Belgium, where women who file charges are entitled to a temporary staying permit, legal aid and social, medical and financial assistance during criminal proceedings.

If women nevertheless file a complaint, this almost never leads to a conviction. Around 30% of the respondents say that women are (very) frequently believed and that complaints are taken seriously and are investigated. According to about 20% of the respondents, complaints result (very) frequently in prosecution; 30% answer that complaints rarely or never result in prosecution. Only 10% of the respondents say that prosecution results (very) frequently in a conviction; 40% say that prosecution never or rarely results in a conviction.

Almost 65% of the respondents say that victims of trafficking and forced labour/slavery-like practices suffer ill-treatment by the authorities. National prostitutes suffer most from harassment by the police and arrest or detention as prostitutes (mentioned by about 35% of the respondents as occurring (very) frequently). Illegal migrant prostitutes suffer most from expulsion, arrest and detention as illegal foreigners, harassment by the police, and arrest or detention for having false or no identity papers (mentioned by 33-40% of the respondents as occurring (very) frequently). In addition, about a quarter of the respondents mention arrest or detention as prostitutes and harassment by immigration officers to occur (very) frequently.

Other forms of ill-treatment that are mentioned are compulsory admission in rehabilitation centres or reform camps, refusal to return identity papers or issue new documents and compulsory testing on HIV/AIDS. In some cases women are sent or sold back to their captors or brothel keepers if they turn to the police. This is reported in India and Pakistan. If support is available, this is provided by NGOs. When respondents are asked about what support services are provided by NGOs, 74% mention counselling, almost 60% legal and medical assistance, 51% safe shelters, 38% financial assistance, 34% return programmes and 21% witness protection. The majority of these services are available to national prostitutes; legal migrant prostitutes benefit least from these services.

A range of measures which would help women escape abusive conditions or change their situation is mentioned by respondents. The most important are:

- access to alternative employment opportunities, education and training;

- decriminalization of (migrant) prostitutes, access to legitimate and independent working permits/visas for work in prostitution;
- possibilities for women to bring charges without fear for deportation or arrest, honest police officers, active prosecution of the offenders, better police co-operation and better co-operation between sending and receiving countries;
- access to support systems such as safe shelters, legal assistance, social services.

## 6 Returning home

All migrant women who have become victim of trafficking and/or forced labour and slavery-like practices face severe problems when they return home, yet illegal migrant prostitutes are in the worst position. The main problems for illegal migrant prostitutes mentioned by respondents are:

- no earning/employment possibilities (mentioned by 48% of the respondents as applying (very) frequently);
- psychological problems (46%);
- medical/health problems (39%);
- debts that cannot be paid off (35%);
- stigmatization/rejection by society (33%);
- rejection by their family; reprisals by the criminal network against herself or her family/relatives; no medical care; left to prostitution because of no other possibilities; caught again by traffickers; no housing (28%).

The main problems for legal migrant prostitutes mentioned by respondents are:

- psychological problems; no earning/employment possibilities (mentioned by 28% of the respondents as applying (very) frequently);
- debts that cannot be paid off (26%);
- no medical care; left to prostitution because of no other possibilities; reprisals by the criminal network against herself or family/relatives (20%)
- medical and health problems (19%);
- stigmatization/rejection by society (18%).

The following story of this 22 years old Nepalese woman may serve as an illustration:

When I came back to my own country it was very difficult for me because the Indian police had handed me over to the Nepalese police and the Nepalese police kept me in custody and summoned my family. I only have one older brother and sister.

Both my parents have died. After four months the police officer called my brother and wanted to hand me over to him, but he didn't accept me. When I said I needed his help, he said you are a prostitute, so I don't want to take you home. Even he didn't inform my sister about me. In this way I spent two years in custody. I wanted to die because I was rejected by my family and I was totally helpless (Poudel 1994).

The most important measures that would support women on returning home are according to respondents:

- educational and training opportunities;
- job opportunities;
- shelters and confidential social, psychological, medical and health care;
- legal and police support to prosecute the offenders;
- protection against reprisals;
- financial support;
- no criminalization in their home countries when deported.

## Chapter 7

### National legal contexts

#### Introduction

As discussed in chapter 2, the debate on trafficking in women is characterized by a persistent confusion about definitions. Old and new definitions show inconsistencies, contradictions, conflicting interests, failure to pinpoint violence and abuse, and a tendency to deny female self-determination. National legislation reflects these trends.

A review of national laws on trafficking in women, forced labour and slavery-like practices in domestic labour, prostitution and marriage reveals that those laws are only part of the legal apparatus that affects women in these situations. Laws that determine whether a woman will be ‘protected’ or penalized, sent home or sent to prison, allowed or prohibited to work, etc., have everything to do with the contexts of prostitution, domestic labour and marriage. For this reason it is necessary to look at both the specific laws on trafficking in women, forced labour and slavery-like practices (insofar as they exist in a particular country) and the general legal framework governing prostitution, domestic labour and marriage. Significantly those laws are attached to very different social frameworks. Marriage laws come under civil codes, which are invariably enmeshed in gender discriminatory traditions and institutions. Laws on domestic work come under civil and labour codes, whereas laws on prostitution are under State control, often the criminal justice or public health departments.

A considerable amount of research and action has been undertaken in the realm of trafficking in women, forced labour and slavery-like practices related to prostitution. However, much less has been done regarding domestic work, and very little regarding the most normative context of such abuse, namely marriage. This chapter reflects that imbalance. Although some research has been carried out on laws regarding trafficking, forced labour and slavery-like practices in the contexts of marriage and domestic labour, it has not been possible to review the various national legal systems and their impact in relation to these two areas of our concern. Therefore, although the report aims to challenge this perceived imbalance, this chapter will be restricted to the realm of prostitution.

The existing legal systems on prostitution will be analysed in terms of prohibitions and

regulations, aimed at the distinctive parties and activities involved. Those prohibitions vary from an absolute prohibition of prostitution as such, criminalizing all activities and all parties involved, to prohibitions which criminalize only certain activities or certain parties. Some prohibitions come under special laws on ‘trafficking’. However, what is defined as ‘trafficking’ in national laws varies widely, and in different countries the same type of prohibitions may come under very different names. Since what is called ‘trafficking’ in one country may be called recruitment, pimping, procuring or ‘exploitation’ in another country, all prohibitions attached to prostitution will be examined, irrespective of the name under which a specific prohibition comes.

In section 1 the general prohibition of prostitution as such will be discussed. In section 2 the prohibitions and regulations that specifically deal with prostitutes will be looked into, followed in section 3 by an analysis of the prohibitions regarding ‘third-parties’. In section 3.1 ‘recruitment’ prohibitions will be discussed and in section 3.2 the various prohibitions attached to managing, organizing or profiting from prostitution, traditionally referred to as ‘exploitation of prostitution’. A review of prohibitions with regard to migrant women is given in section 4. In section 5 the current legal definitions of ‘traffic in women’ are summarized. This is followed in section 6 by a critical assessment of the impact of prostitution and ‘trafficking’ laws on the working and living conditions of women engaged in prostitution.

The leading question throughout the chapter is to what extent existing legislation is in the interest of women: what protection does the law offer women against violence and abuse and does the law enable women to take legal action, formally and factual, both in relation to abusive recruitment practices and in relation to abusive or coercive working and living conditions.

No attention will be paid to prohibitions and regulations concerning clients. Very few countries have laws that penalize clients and if such laws exist they are seldom enforced. Prohibitions related to minors in prostitution will not be discussed either. In (almost) all countries any act involving minors in prostitution is against the law. In some cases the law contains specific prohibitions relating to minors, in other cases the minority of the victim acts as an aggravating circumstance. Within the context of this report, however, we will not review this type of prohibitions, as child prostitution requires a separate approach.

## 1 Prohibition of prostitution as such

In a prohibitionist legal system prostitution as such is a criminal offence.<sup>1</sup> All activities related to prostitution are legally prohibited and all parties involved are criminalized, including the prostitute. Yet, most countries, with some exceptions, ignore the clients. In Slovenia, for example, prostitution is covered by the *Law on Offences against Public Order and Peace*, which penalizes any person who is engaged or assists in prostitution, allows or supports prostitution, or organizes, prepares or supports practices of ‘sexual immorality’, with the exclusion of clients.

In Malta, prostitutes can be prosecuted under the 1930 *Order for the Suppression of the White Slave Traffic*. The same Order prohibits to prostitute another for financial advantage or to manage an establishment for prostitution. In Sri Lanka, prostitutes are prosecuted under the *Vagrants Ordinance* and the *Brothel Ordinance* (De Silva 1996). In Uganda ‘any person who practices or engages in prostitution’ may be sentenced to up to seven years imprisonment. In Japan, the *Prostitution Prevention Law* prohibits anyone to commit prostitution or to be a client of a prostitute (Rayanakorn 1995). Prostitutes may be sentenced to fines, imprisonment, forced rehabilitation or even, as in Iran, the death penalty (van der Vleuten 1991). A revealing example of the exploitation of sanctions against prostitutes is the following:

In the Haman Island [...] when the provincial government launched its infrastructural construction, it lacked capital for building a highway. So the government decided to conduct a clean-up campaign. Women who were caught faced a penalty of Rmb. 2.000 and six months labour reform. During the period of reform labour they were sent to build a highway (Lin 1996, p. 4).

Although this type of prohibitionist legislation purports to eliminate prostitution, there is no evidence that countries where prostitution is outlawed have been even remotely successful in achieving this aim. This may be illustrated by the 1994 report of the Slovenian government to the Council of Europe, in which it is noted that the prohibition of prosti-

1. Countries which qualify as prohibitionist are: USA (except Nevada), Philippines, Japan, Burma, Sri Lanka, Vietnam, Nepal, Uganda, Namibia, Tanzania, Mali, Iceland, Malta, Slovenia, China, Romania. This list is based on the answers of respondents to the questionnaire as well as a variety of other documents. Almost 40% of the respondents define the legal system of their country as prohibitionist, defined in the questionnaire as ‘all prostitution is legally prohibited and all involved parties, incl. prostitutes, are criminalized’. Due to, among other things, inconsistencies and ambiguities in the law and its application, in some cases respondents from the same country give different responses to questions regarding the legal system in their country. For example: some respondents define the legal system in Thailand as prohibitionist, others do not. An explanation might be that officially prostitution as such is not an offence in Thailand, but in practice virtually everything related to prostitution is criminalized, amounting to a system of absolute prohibition.



tution does not implicate that brothels do not exist; it rather means that brothels ‘are illegal and operate under alternative names, mainly as massage parlours’ (Council of Europe 1994a). The same mechanism was seen in Aruba, where during the fifties the government tried to outlaw prostitution. The result was an increase in illicit prostitution activities, which led to the reintroduction of permits for sex workers in 1957 (Kempadoo 1995).

With respect to the position of prostitutes it makes no decisive difference to what extent the law is actively enforced. It is sufficient that the law exists and can be used against them at any arbitrary moment for any arbitrary reason. The illegality of prostitution as such renders prostitutes fully dependent upon third parties. Since they have no legal protection at all – for they themselves are liable to arrest and prosecution – they find themselves in the power of brothel owners and middlemen on the one hand, and police officers and court officials who are willing to turn a blind eye in exchange for money or free sexual services on the other hand. This is prone to make prostitution a very lucrative source of revenue for all involved parties, including the police, though with the exception of the prostitutes themselves. In case of violence, coercion or abuse – be it from the side of traffickers, brothel owners, police officers, other law-enforcement officials or clients – there is no authority, not even hypothetically, women can turn to. Any contact with law-enforcers will expose them as prostitutes and put them at risk of being arrested and jailed. As stated by Butegwa, commenting on the legal situation in Uganda:

Since prostitution is outlawed and not regarded as legitimate employment, pimps and traffickers would be able to victimize prostitutes. The latter would not be able to report their grievances to the police since they would be doing something illegal. Therefore it would appear that the traffickers can even use the law to keep the women enslaved and in slave-like conditions by threatening them with exposure. The women would then have no choice but to give in to all the demands and conditions set by traffickers [...] In such a situation even women who were not originally trafficked find themselves in situations where they have little or no say at all regarding their work and what is expected from them. The people who use their services also know that these women are not protected by the law and therefore they can treat them carelessly (Butegwa 1996, p. 11).

Migrant women are in an even more vulnerable position. They are not only liable to arrest as prostitutes, but also to arrest and deportation as illegal foreigners.

It may be concluded that, rather than protecting women or being in the interest of women, the prohibition of prostitution generates considerable profits for anyone but the

prostitute. It facilitates and sanctions control and abuse by third parties, but leaves the women concerned with no legal means whatsoever to defend themselves against violence, coercion or abuse.

## 2 Prohibitions and regulations aimed at prostitutes

### 2.1 Introduction

In the majority of countries, prostitution in itself is not an offence.<sup>2</sup> Yet, this does not necessarily mean that prostitutes are not liable to punishment. In Denmark, for example, it is not illegal to provide sexual services for money and goods, but only as long as sex work is not the main source of income for the prostitute. Otherwise the police might arrest her on charges of vagrancy (Pheterson 1995). In Hungary, prostitution per se is not longer a crime since the modification of the criminal code in 1993. However, parasitical offences (i.e. no proof of legitimate employment) connected with prostitution, are much more seriously prosecuted and punished than before (Fehér 1995). In Thailand, anyone found in a brothel for the purpose of prostitution is liable to punishment. In practice, this is only enforced on prostitutes but not on the clients (Rayanakorn 1995).

In all countries the practice of prostitution is controlled and regulated through an extensive range of prohibitions, restrictions and regulations. Many of these legal prohibitions and regulations are aimed at the prostitutes themselves. If women breach these prohibitions or fail to comply to the regulations they may be sentenced to imprisonment, fines or forced 'rehabilitation'. Female offenders in India, for instance, can be sentenced to detention in a corrective institution for a minimum of two and a maximum of five years. Release after six months is possible 'if there is a reasonable probability that the offender will lead a useful and industrious life' (*Immoral Traffic (Prevention) Act*). In Bangladesh arrested prostitutes can be sent to rehabilitation centres. These not only prove to be in-

2. Almost 40% of the respondents define the legal system of their country as abolitionist, defined as 'prostitution is not an offence in itself, but any involvement of third parties/any exploitation of the prostitution of others is prohibited'. Another 15% of the respondents define the legal system of their country as regulationist, defined as 'prostitution is officially recognized and regulated through different forms of registration and other forms of control in the interest of public order and public health'. The following countries qualify as predominantly abolitionist, according to information from the questionnaire and other documents: Thailand, Bangladesh, Hong Kong, India, Ukraine, Poland, Czech Republic, Lithuania, Bulgaria, Finland, Denmark, Italy, Spain, Portugal, France, Belgium, UK, Ireland, Canada, Nigeria, Mali, Cameroon, Dominican Republic, Colombia. Countries which qualify predominantly as regulationist are, according to the questionnaire and other documents: Turkey, Peru, Ecuador, Curaçao, Greece, Switzerland, Australia, Germany, Austria and the Netherlands.

effective, but also serve as a recruiting place for new entrants, as do the jails (Khan 1992). In Vietnam prostitutes may be sent to education camps (Quy 1994). Since prostitution is seen as a social vice that must be eradicated, prostitutes are considered victims, who should be rehabilitated through social assistance to become respectable citizens and ‘reintegrate in their communities where they could be living amid the love of their countrymen’ (Vietnam report 1996).

Asked whether or not it is possible to work in prostitution on a legal basis – and if so, under what conditions – 57% of the respondents answer ‘yes’ for national women and 41% answer ‘yes’ with respect to migrant women. The conditions mentioned by the respondents can be categorized in prohibitions and regulations relating to:

- mandatory registration;
- mandatory medical control;
- areas/places where to work;
- soliciting and related activities;
- taxes;
- nationality, residence and work permits.

In the following section these prohibitions and their impact on the situation of women are reviewed one by one. The prohibitions and regulations regarding migrant women will be addressed separately.

## 2.2 *Mandatory registration*

In many countries prostitutes are obliged to register: 33% of the respondents answer that prostitutes are subjected to special registration, while 26% answer that prostitution without registration or licence is prohibited.<sup>3</sup>

In some of the brothels in Bangladesh, where prostitution is legally prohibited, women have to register with the police at their entry and pay for an affidavit. This affidavit functions as a sort of licence that allows them to live in the brothel areas, though without giving them any official status or rights or even protection against arbitrary arrest (Khan 1992). In Turkey prostitution is also formally prohibited, however ‘women who have

3. Countries where prostitutes are subjected to special registration are (according to the questionnaire and other documents): Bangladesh, Thailand, Australia, Curaçao, Peru, Mexico, Ecuador, Dominican Republic, Turkey, Greece, Austria, Switzerland. Countries where prostitution without license/registration is prohibited (based on the questionnaire and reports): Australia, Thailand, Turkey, Greece, Switzerland, Curaçao, Peru, Ecuador, Mexico, Slovenia and Belgium.

proved to prostitute themselves and who insist on carrying out this activity are registered as prostitutes and can only work as licensed prostitutes in brothels'. Foreign women can not register and are deported (Council of Europe 1994a, p. 44). In Greece, non-registered prostitutes are considered guilty of an illegal act: they are arrested, tried and imprisoned (Europap 1995).

One of the objections raised against registration is that, due to the stigma on prostitution, it leads to severe social and economic isolation. Moreover, forced registration creates a distinction between 'legal' and 'illegal' prostitutes. Figures show that in Athens there are 400 registered prostitutes, while an estimated 5.000 more prostitutes are not registered. Similarly, in Germany 50.000 prostitutes are registered, but a further 150.000 women are estimated to work in prostitution (Europap 1995). Many women do not want to register for fear of the stigma attached to being a prostitute. Other women cannot register because of their illegal residence status, like most migrant prostitutes. As a result many women will try to avoid registration, which not only makes them liable to prosecution, but also relegates them to an illegal circuit with all the negative consequences this entails. It encourages women to hide from the authorities and functions as a barrier against taking legal action in case of violence, abuse or coercion.

Mandatory registration may also make it more difficult or impossible for women to quit prostitution. Around 35% of the respondents in countries with mandatory registration say that prostitutes can de-register, but that records will be kept and can be used against them at any time. This may be illustrated by the situation in Turkey. If a woman has been found to be practising prostitution, she is compelled to formally register as a prostitute. Her normal identity card, carried by every Turkish citizen, is taken from her and replaced by a prostitute's identity card giving her name, her working pseudonym, age, place of birth, place of residence and place of work. Registered women are supposed to inform the police when they move from one area to another and are not allowed to marry. It is possible to de-register, but records may be kept and made available on demand to, for instance, a prospective husband or employer. As expressed by Anti-Slavery International in its report on forced prostitution in Turkey: 'once a prostitute is registered and working within the Genelev (closed brothel) system<sup>4</sup> she is seldom able to re-enter the outside world and pursue other employment' (ASI 1993).

4. Licensed walled brothel complexes, with only one, permanently guarded, door. Genelevs may only employ registered prostitutes.

### 2.3 *Mandatory medical control*

Most countries that require prostitutes to register, combine registration with mandatory medical checks. This is for instance the case in Curaçao, Peru, Dominican Republic, Ecuador, Greece, Austria, Switzerland, Germany and Turkey. Their frequency varies from once a month (Dominican Republic) to bi-weekly (Greece and Turkey). Failing to attend mandatory medical screening may make women liable to prosecution, like in Greece. In Turkey prostitutes are subjected to mandatory medical controls under the *Rules governing Prostitutes and Brothels and the Regulations on Combating Contagious Venereal Diseases which can be transmitted by Prostitution*. In addition to the prostitute's registration card, women are issued a certificate of examination to stamp the bi-weekly medical exam they are required to take. If a woman does not turn up for her scheduled examination or treatment, she can be brought in by force (ASI 1993). In Curaçao, women who do not report for the weekly medical exam and an update of their health card are reported by the doctors to the police department, which in turn is supposed to track down the 'offender' (Kempadoo 1995).

The system of mandatory medical controls can be criticized for a number of reasons. The results of such controls are extremely limited when it comes to the prevention of contagious diseases and can even work contra-productive. Clients who infect women are not traced, which not only makes controls quite useless, but also stigmatizes the prostitute one-sidedly. Almost always medical control is limited to the detection of STDs in the interest of protecting the client or 'public health', disregarding other illnesses which are 'only' detrimental to the women's health but can not damage the client. Moreover, they create a false illusion of safety among clients, which encourages the demand for unsafe sex. This clearly is detrimental for the health of the women concerned as well as for the prevention of the spread of STDs. In addition, health care facilities and STD prevention activities are generally only accessible for registered prostitutes, which is ineffective in public health terms.<sup>5</sup> Women who cannot register, for example because they are illegal, are excluded from healthcare services. In most countries women who are found to be infected are prohibited from working, which means that they have no source of income. This can be a reason not to seek medical attention, even if women are in need of medical care.

5. See for an extensive description of the effects of mandatory health controls: Europap 1995.

## 2.4 *Areas/places where to work*

In many countries the law prohibits working outside permitted areas.<sup>6</sup> In other countries it is only permitted to work in licensed brothels. Some countries impose restrictions on certain types of prostitution, like street or window prostitution. In Turkey, for example, women are only permitted to work in licensed brothels or in specific areas alone in an apartment (ASI 1993). In Hong Kong women are only allowed to work in ‘one-woman brothels’, though according to a respondent to the questionnaire: ‘even then the police usually find some reason for arresting them’. In Hungary it is prohibited to rent a place for the purpose of prostitution (to be punished with a maximum of three years imprisonment), though prostitution per se is not a crime (Council of Europe 1994a). In the Netherlands window and street prostitution are only allowed in designated areas. Many countries do not allow prostitution in the vicinity of public places (e.g. India) or in the vicinity of schools (e.g. Germany).

Local regulations can have a major effect on the way prostitutes are able to organize their work. They can e.g. be used to move prostitutes from one area to another, making it more difficult for health workers to maintain contact with prostitutes. Banishing prostitutes to certain restricted areas or remote places may contribute to their isolation and make working conditions more dangerous. In Paris, for instance, local regulations have been used to close down apartments and hotels in the traditional prostitution district around Rue St. Denis. As a result sex workers were forced to move to the town outskirts where they are more isolated and working conditions more dangerous (Europap 1995). In Germany most cities have zones where prostitution is prohibited and areas of tolerance, where prostitution is found in super brothels and Eros centres. Only certain sex workers are tolerated. Those who do not fit in, such as migrant workers, are expelled to isolated areas, where working conditions are more dangerous and access to health and social services may be difficult (Europap 1995).

## 2.5 *Soliciting and related activities*

Even when prostitution is not an offence in itself, in most countries the law criminalizes any advertising of services: around 45% of the respondents say that the law prohibits solic-

6. The following countries prohibit prostitution outside permitted areas (according to the respondents to the questionnaire and other documents): Canada, Bangladesh, Nepal, India, Thailand, Hong Kong, Peru, Mexico, Ecuador, Australia, Turkey, Belgium, Switzerland, Germany, the Netherlands and Slovenia.

iting, loitering and related activities.<sup>7</sup> The exact content of this type of prohibitions may vary. In the UK for example, ‘the law seeks to prevent the serious nuisance caused to the public when prostitutes operate on the streets’ through a prohibition on soliciting, loitering and kerb crawling (Council of Europe 1994a). Norway prohibits ‘indecent behaviour’ and in Belgium ‘soliciting, taking someone to or bringing someone away from a place for the purpose of prostitution and promoting vice in public places by words, gestures, signs or publicity’ is prohibited (Europap 1995).

Other countries penalize soliciting in a public place, as is the case in e.g. the Czech Republic, Cyprus, Kenya, Thailand and India. In India the *Immoral Traffic (Prevention) Act* prohibits prostitution, seducing and soliciting in, or in the vicinity of, a public place. In the case of prostitution in (the vicinity of) a public place all parties, including the prostitute and the client, are punishable. However, in the case of soliciting in (the vicinity of) a public place only the prostitute is liable to punishment. For a female prostitute the maximum penalty may vary from six months to one year imprisonment, but ‘provided that where an offence under this section (i.e. seducing or soliciting for prostitution) is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months’. Female offenders can be sentenced to detention in a corrective institution for a period of two years up to five years. According to the *Thai Restriction of Prostitution Act* ‘any person who loiters or solicits in public places for the purpose of prostitution is liable to a term of not more than three months imprisonment or a fine of not more than two thousand baht or both’. The same Act gives the General Director of the Welfare Department discretionary power to send prostitutes to a rehabilitation centre for medical treatment or skill training up to a maximum of one year:

In practice however, most prostitutes would escape on bail to avoid being rehabilitated. This is so despite the fact that they would normally be sentenced to a fine of 200 to 500 baht, a sum less than the amount of the bail money forfeited which is usually around 1.000 baht. The reasons behind this are mainly economic reasons. One year in a rehabilitation centre would mean severe hardship both for the prostitutes themselves and for the family they are supporting. Besides, skill training is of little use if there is no likelihood of finding employment after the training (Rayanakorn 1995, p. 21).

Normally a prostitute is bailed out by a brothel keeper, which means that the amount of bail money forfeited will be deducted from her future earnings. Yet many prostitutes pre-

7. The following countries criminalize soliciting, loitering and related activities (according to the respondents to the questionnaire and other documents): Japan, Bangladesh, India, Thailand, Hong Kong, Philippines, Australia, Canada, Curaçao, Mexico, Uganda, Kenya, Norway, Italy, Belgium, Switzerland, Ireland, UK and Slovenia.

fer this cycle to being sent to a rehabilitation centre. In Japan, prostitutes sentenced for soliciting, loitering or inducing a person to be a client, may be placed under guidance disposition and detained in a Woman's Guidance Home for rehabilitation for a period of six months. In Kenya, though soliciting is prohibited by the penal code, prostitutes are usually charged under other laws:

Prostitutes in Kenya are usually charged under the *Vagrancy Act* and the *General Nuisance by-laws* which seek to control vagrancy and loitering within urban areas. The *Public Health Act* is also applied in cases where commercial sex workers fail to seek medical treatment for sexually transmitted diseases. The police do not prefer the penal code charges, due to factors such as burden of proof cast on the prosecution. Usually the evidence is insufficient to prove an offence (Butegwa 1996, p. 14).

By restricting the ways in which prostitutes can meet customers, they are forced to rely on third parties to make business contacts. In many cases such restrictions lead to unsafe working circumstances and an increased risk of violence by clients. This is illustrated by the situation in Ireland, where soliciting by both prostitute and client is an offence. Since 1993 the police may also summon a person suspected of loitering in a street to leave (making it an offence when the person fails to comply). A survey on the health needs of women engaged in prostitution in Ireland revealed the following effects:

For the majority of the women interviewed the new legislation has meant a decline in their working conditions. Because they are constantly being moved on by the Gardai (Irish police) they are having to work longer hours to make the same amount of money as previously. Also, because of greater Gardai presence there has been a decline in the number of clients seeking services. Thus many of the women have experienced a drop in their income. For some this has meant increasing pressure with regard to payment of bills, etc.[...] The increased pressure to maintain a certain level of income is leading to greater risk taking on the part of the women [...] Risks are also being taken in relation to choice of clients in that women are getting into cars more quickly with no time to study prospective clients.[As one woman says] 'before you had to look out for clients, now you are looking out for the Gardai as well (O'Connor 1994, p. 17)

If a woman is charged with an offence she may incur heavy fines which necessitate her working extra hours to earn money to pay the fine. Also, the role of intermediaries



becomes more important, for providing contacts with clients, as well as for providing protection and paying bail in case of arrest.

The same applies to England and Wales, where the law against ‘kerb crawling’ has seriously reduced the time prostitutes have to assess clients and negotiate safe sex. In other cases women may avoid breaking the law by officially working as waitresses, like in Belgium. In some countries even the possession of condoms can be used as evidence of soliciting, as in California.<sup>8</sup>

## 2.6 Taxes

In quite a number of (especially Western) countries, e.g. the Netherlands, Germany, Belgium, France and Austria, the State imposes tax payments on prostitutes, even though profiting from prostitution is legally prohibited. The attitude of the French government is exemplary for this double moral standard:

This ambiguous legal stance also characterizes the attitude of the tax administration. For the French tax department, prostitution is a source of income just like any other activity and should therefore be liable for tax (Europap 1995, p. 63).

In Belgium several city councils impose local taxes on ‘waitresses’ or ‘performing artists’ in bars, clubs and cabarets. The local police are charged with registering the number of such workers and ensuring they pay taxes. In Germany, taxes on income from sex work are generally imposed in the category ‘other income’, which is much higher than the usual tax rate within the regular tax categories for self-employed businesses. At the same time prostitutes are not entitled to the same tax deductions as other self-employed workers, since the civil code prohibits them to register as a business.

Paying taxes, however, does not imply that prostitutes have rights to social insurance or cannot be arrested at the same time, like in the UK:

As prostitution businesses are not regarded as legitimate, prostitutes cannot legally make a living. Therefore prostitutes are denied rights in relation to State benefits and pensions. Prostitutes have been presented with tax demands for their earnings, but denied the right to form businesses and claim expenses against tax (Europap 1995, p. 127).

8. See for an extensive description of the effects of restrictions on soliciting with regard to safe sex: Europap 1995.

In Turkey registered women also pay tax, but are denied normal social security rights, such as pension and sick-pay. Recently a number of registered prostitutes joined the trade union, trying to procure better rights within their work. The initial aim was to get normal social security rights for the Genelev workers, who already pay tax. A test case is underway: a Genelev prostitute demanded a pension from her former employer but was refused. The case is now with a higher court.<sup>9</sup>

## 2.7 *Other prohibitions and regulations*

It is worth noting that most laws implicitly or explicitly make the assumption that prostitutes are female. In Turkey this is even obligatory: prostitutes must be Turkish, female, over the age of 18, and single.

All laws prohibit the involvement of minors in prostitution, though the age of consent may vary from fifteen to twenty-one.

## 2.8 *Prostitutes organizing*

Over the last years prostitutes have increasingly started to organize in order to defend their rights and improve their working and living conditions. However, prostitutes are not permitted to do so in all countries, even if this is in violation with the ILO-Convention (nr. 87) on Freedom of Association. Around 35% of the respondents say that prostitutes are not allowed to have their own organizations.<sup>10</sup> Yet, even when they are allowed to have their own organization, this does not mean they are allowed to form their own labour or trade unions or join any existing ones as a specific population of workers. In general, prostitutes are denied union rights.

Prohibitions on aiding, abetting or living off immoral earnings can make it effectively impossible for women to organize or even to co-operate. In Cyprus any woman aiding or abetting another woman to prostitution is punishable (Council of Europe 1994a). In

9. Information from a current research project conducted by Anti-Slavery International (published in July 1997, *Defining Prostitution as Commercial Sexwork on the International Agenda*, Jo Bindman, Anti-Slavery International, with the participation of Jo Doezema, Network of Sex Work Projects).

10. The following countries don't allow prostitutes to have their own associations (according to the respondents to questionnaire): Nepal, Thailand, Philippines, Vietnam, Taiwan, China, Peru, Mexico, Bulgaria, Poland and Slovenia.

France the very broad legal definition of procuring causes many problems for prostitutes, especially for those who work in flats:

If they rent their work place, the owner can be immediately prosecuted for brothel procurement. Similarly, two prostitutes cannot become co-owners of the same flat, for in legal terms one of them is automatically considered as the tenant and the other as the owner and can therefore be prosecuted for procurement. Finally, this law prevents any true solidarity between prostitutes, since any loan or financial donation from one person to another can be considered procurement (Europap 1995, p. 62).

### 3 Prohibitions and regulations aimed at third parties

The majority of prohibitions and regulations on prostitution are directed at third parties, varying from a complete ban on any form of third party involvement to various forms of regulation of third party involvement.

Parallel to the distinction between trafficking and forced labour and slavery-like practices, prohibitions and regulations with regard to third parties can be roughly divided into two main categories:

- prohibitions relating to recruiting women for or bringing women into prostitution ('recruitment' prohibitions);
- prohibitions relating to the managing, organizing or profiting from prostitution, traditionally referred to as the 'exploitation of the prostitution of others' ('employment' prohibitions).<sup>11</sup>

If the criminal law holds specific provisions prohibiting 'traffic in women', these are mostly – but not always – related to the first type of prohibitions, i.e. to the process of bringing a person into prostitution.<sup>12</sup> However, what exactly is understood by 'traffic in women', or what elements have to be fulfilled to make up the crime of 'trafficking', varies substantially. At the same time legal provisions on 'trafficking' are not always exclusively linked to prostitution but may also cover recruitment or exploitation for other purposes. Legal

11. In this report the neutral term 'employment' prohibitions is preferred to the term 'exploitation of prostitution', since the latter automatically implies a negative moral judgement on prostitution as well as the (hardly ever discussed) assumption that labour conditions and relations in the sex industry are necessarily, by definition and inevitably, 'exploitative'.

12. In some countries provisions on 'trafficking' (also) cover the 'exploitation of the prostitution of another person'.

provisions concerning other crimes (e.g. kidnapping and abduction) may also be applied to trafficking situations. Moreover, not all countries have specific legal provisions on ‘trafficking in women’.

### 3.1 *Recruitment and mediation for prostitution (‘recruitment prohibitions’)*

The criminal codes of most countries contain a vast range of provisions on bringing another person into prostitution, although the exact content and wording of these prohibitions vary widely. The variety in language may be partly due to the different treaties on ‘trafficking in women’ on which the provisions are based. Terms that are employed are: to recruit, induce, entice, instigate or lead a woman into prostitution, encourage or cause prostitution, make a person to prostitute herself, tempt a person to prostitution, promote, facilitate or incite prostitution. In a number of countries taking a person to, or bringing a person away from, a place for the purpose of prostitution is separately penalized. This is the case in Canada, where section 211 of the Criminal Code penalizes anyone who ‘takes, transports, directs or offers to take, transport or direct any person to a common bawdy-house’ (Sanghera 1996). In some countries the law provides for a general ban on all acts related to bringing another person into prostitution, including any mediation for prostitution, with or without consent. The use of violence, the age of the woman involved or the relationship with the offender may constitute aggravating circumstances. This is for example the case in Turkey, India, Bangladesh, Canada, Uganda, Hungary, Portugal, UK and Nicaragua.

Though Turkey has a licensed brothel system, any encouragement to and mediation for prostitution constitutes a criminal offence. In addition, forced prostitution, defined as forcing somebody into prostitution (not as abusive or forced labour conditions) constitutes a criminal offence. Its severity depends on the age of the person involved and whether or not she is married. If the offender is a family member, husband, teacher, etc., heavier penalties are imposed.<sup>13</sup> In its report to the Council of Europe, the Turkish government considers that ‘in comparison to other countries prostitution and trafficking in women are not serious problems in Turkey’ (Council of Europe 1994a). In sharp contrast to this opinion of the Turkish government, Anti-Slavery International reports a widespread practice of selling women into Genelevs (closed brothels):

13. Current Turkish law on prostitution is embodied in Decree 5/984, entitled *Statutes Concerning the Prostitutes, Regulations which the Brothels will comply with, and the Prevention of the Infectious Venereal Diseases resulting (sic) from Prostitution*, and in Chapter II (Abduction of Girls) and III (Instigation to Prostitution) of the Turkish Penal Code (ASI 1993).

One of the more common ways of selling a woman appears to be for her boyfriend to invite her to live with him for a few weeks before he takes her to a genelev and after that he usually disappears. Often the women are no more than teenagers when they are initially trapped. A number of the prostitutes interviewed emphasized that ‘once a very young woman finds herself abandoned by her man inside a genelev she immediately feels it is impossible for her to escape – there is, after all, only one door by which she could leave and that is always guarded by the police or security officers’ (ASI 1993, p. 21).

In India, inducing a person ‘to go from any place, with the intent that she/he may, for the purpose of prostitution, become an inmate of, or frequent, a brothel’ or taking a person for the sake of prostitution with or without consent, including (attempting to) ‘take a person or cause a person to be taken from one place to another for the purpose of prostitution’, is prohibited by the 1959 *Immoral Traffic (Prevention) Act*. In case of no consent or in case of a child, the maximum punishment is increased from seven years to fourteen years and lifelong imprisonment respectively. The Act also penalizes procuring, living off the earnings of prostitution, brothel keeping and detaining a person in premises where prostitution is practised, with or without consent. In practice, the law is not or inadequately enforced. According to police-officers in Calcutta, if a case is filed it can take ten years to reach a conclusion. After such a delay, witnesses have gone or memories have dimmed. There is ample opportunity to intimidate the complainants and their families (GAATW 1996).

The same prohibition on inciting a person ‘to go from any place with the intent that she/he, for the purpose of prostitution, becomes an inmate of, or frequent a brothel’ is found in the *Bangladesh Suppression of Immoral Traffic Act*, which likewise simultaneously penalizes any third party involvement.

The Penal Code of Uganda prohibits to procure any woman or girl for her to become either in Uganda or elsewhere a ‘common prostitute’, to leave Uganda with the intent that she may become an inmate of or frequent a brothel elsewhere, or to leave her usual place of abode in Uganda (‘such place not being a brothel!’) with the intent that she may, for the purpose of prostitution, become an inmate of or frequent a brothel either in Uganda or elsewhere. Here too, the law is rarely or never enforced. One of the reasons is the provision that no person shall be convicted of any offences in this section upon the evidence of one witness only, unless that witness be corroborated, particular by evidence implicating the accused (Butegwa 1996).

The Canadian criminal law defines ‘trafficking in women’ as either transporting or procuring. Under the title of ‘procuring or living on the avails of prostitution’ the Criminal Code prohibits the inducement of women into prostitution. Procurement includes

‘procuring or soliciting a person to become, whether in or out of Canada, a prostitute or to have illicit intercourse with another person’, ‘procuring a person to enter or leave Canada for the purpose of prostitution’ and ‘on arrival in Canada taking or causing a person to be taken to a common bawdy-house’. According to Canada’s paper for the EU Conference on Trafficking in Women for Sexual Exploitation in 1996, these offences are designed to prevent persons from being forced into prostitution (Canada report 1996).

In Nicaragua art. 203 of the Criminal Code penalizes, under the heading of ‘trafficking in human beings’, any recruitment of persons for prostitution within or outside the republic, with or without consent, including bringing persons into the country for the purpose of prostitution.

Apart from general prohibitions, the law in most countries also provides for specific prohibitions, penalizing recruitment or mediation under certain conditions, for example:

- when deception or coercion is used;
- when borders are crossed;
- in relation to a certain category of victims, e.g. ‘chaste’ women or foreign women.

An example of the latter is para. b and e of the Canadian Criminal Code – not mentioned in Canada’s paper – which penalize, respectively, inveigling or enticing a person ‘who is *not a prostitute or a person of known immoral character* to a common bawdy house or house of assignation for the purpose of illicit sexual intercourse or prostitution’, and procuring ‘a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with the intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out Canada’ (Sanghera 1996).

In some cases recruitment is only punishable under these conditions, in other cases provisions on selling and buying women, kidnapping, etc., are additional to general prohibitions on recruitment, like in Bangladesh.

#### *Buying, selling or purchasing women for prostitution*

Under the chapter ‘trafficking in women’, the 1983 *Cruelty to Women (Deterrent Punishment) Ordinance* of Bangladesh prohibits ‘importing or exporting, selling, letting to hire or otherwise disposing of, or buying, hiring or otherwise obtaining possession of any women of any age with intent that such woman shall be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose’. The *Women and Child Repression (Special Provision) Law* (1995) contains almost identical provisions, but provides heavier penalties. However, according to several reports (Shamin 1995; LHRLA 1991; Shahid 1990; BNWLA 1995; Khan 1992), the successful implementation

of the aforementioned acts and laws is questionable. This is, among other things, due to the inter-regional character of trafficking and the lack of international legislation which has been accepted by all the countries involved. Other factors that are mentioned are: lack of proper and timely prosecution, the vulnerability of the victims under the legislation of the receiving countries that penalize the victims themselves, the existence of strong vested interest groups and lack of State intervention in this regard.

### *Kidnapping and abduction*

Provisions on kidnapping and abduction for the purpose of prostitution can be found in e.g. the criminal codes of Thailand, Bangladesh, Japan and Uganda.

In Thailand, both the 1960 *Restraining of Prostitution Act* and the Criminal Code penalize any person who abducts a woman for ‘acts of indecency’, along with other aspects related to prostitution (Rayanakorn 1995). In Bangladesh the Criminal Code prohibits ‘kidnapping, abducting or inducing a woman to compel her to marry any person against her will, or to force or seduce her to illicit intercourse’, and ‘kidnapping or abducting in order to subject a person to grievous hurt, slavery or unnatural lust’. Both provisions are aggravated forms of the general prohibitions on kidnapping and abduction. These general prohibitions on kidnapping and abduction include ‘conveying any person beyond the limits of Bangladesh without the consent of that person or of some person legally authorised to consent on behalf of that person’ (kidnapping from Bangladesh), and ‘compelling a person by force or inducing any person by any deceitful means to go from any place’ (abduction). In addition, the 1993 *Cruelty to Women (Deterrent Punishment) Ordinance* prohibits kidnapping or abducting any woman of any age with the intent that ‘such woman shall be employed or used for the purpose of prostitution or for any unlawful or immoral purpose, with the intent that such woman may be compelled to marry any person against her will, or in order that such woman may be forced or seduced to illicit intercourse’.

Paragraph 225 of the Japanese Penal Code prohibits kidnapping another person by force or allurement for the purpose of profit or engagement in sexual activities or marriage. In case of kidnapping a person with the purpose to transport the person out of Japan, defined as ‘trafficking’, the minimum punishment is raised to two years. The same applies to persons who buy or sell another person for the purpose of transporting the same out of Japan. Nothing is said about kidnapping, transporting or buying or selling a person for transport into Japan (Kawamura 1996).

The same kind of provisions are found in the Criminal Code of Uganda, where the law prohibits ‘kidnapping or abduction of a person in order that such person be subject to slavery or unnatural lust’.

### *Deceit, abuse and coercion*

Special provisions penalizing the use of deceit or coercion can be found in, among others, the criminal codes of Japan, the Netherlands and Germany.

In Japan the *Prostitution Prevention Law* prohibits to make a person prostitute herself by deception, embarrassment, taking advantage of the influence through kinship, threats of violence, or by according money, goods or any other financial benefit. In case of receiving or demanding (part of) the earnings of the resulting prostitution the penalty goes up to a maximum of five years imprisonment and a fine.

Under the heading ‘trafficking in persons’, art. 250ter of the Dutch Penal Code prohibits ‘inducing another person to engage in prostitution by means of (threat of) violence, abuse of ascendancy derived from actual circumstances or deception’. Abuse of ascendancy is assumed if a woman is found to be in conditions which are ‘not equivalent to the conditions under which an independent and emancipated prostitute in the Netherlands normally works’. In addition the Procurators-General issued special Directives on the investigation and prosecution of trafficking cases. Women who press charges are entitled to a temporary staying permit during criminal proceedings. In relation to non-EEC subjects, recruitment is criminalized regardless of the use of violence or deceit, though in practice prosecution only takes place in case of violence, abuse of authority or deceit. However, many women are still deported without further investigation (Boer 1994).

Under the heading ‘trafficking in human beings’, the German Criminal Code penalizes anyone who, for profit, induces a person into prostitution or keeps a person in prostitution by abusing the circumstances of that person or by ‘exploiting the helplessness connected with being in a foreign country’. There is aggravated ‘traffic in human beings’ when threat, force or deceit is used or when the victim is abducted. The law also recognizes less serious forms of trafficking which are penalized less severely, notably if the victim knew she was recruited for prostitution or when deceit is used towards a person, who is ‘not far from prostitution’<sup>14</sup> (Studzinsky 1996). In practice the criminal procedures – requiring that witnesses are cross-examined directly and in person by the court – in combination with biased judicial attitudes towards women victims, make it extremely difficult to sentence those involved in trafficking. An example of the difficulties that victims encounter is provided by a research conducted on a trial on trafficking with Thai women in 1990 (Niesner 1991; Rayanakorn 1995). The trial, which concerned the deceptive recruitment and coercion of Thai women into prostitution, ended after eleven months with the acquittal of the defendants on the charge of trafficking. The defendants were

14. ‘...die der Prostitution nicht fern steht’.



found guilty of promoting prostitution and procuring, offences that are considerably less heavily punished.

Two of the women involved gave evidence that they were recruited in Thailand to work in a bar in Germany with the promise of 2.000 DM a month to be earned exclusively by go-go dancing and encouraging guests to drink. On their way to Germany they were made to marry a German man in Denmark before entering Germany. When they arrived at the bar in Germany, they were told that they had 15.000 DM in debts to pay and this much money could be earned only by prostitution. The other women were taken to Germany under similar conditions with slightly different details. One was promised to work as a waitress and another as nanny. The women's passports were taken away. From the beginning of the trial, the judge showed reluctance in pursuing the case by complaining about the expected length of the trial and the multitude of cases awaiting the court's attention. Throughout the proceeding, he was friendly towards the defendant and the defence counsel while obviously sceptical towards the prosecutor and the plaintiff's counsel. The trial judge shared the defendants view in not believing in the helplessness of the women, even though it was clear from the evidence that the women were left with little alternative. In addition, the judge regarded the past records of the women in Thailand as relevant in deciding whether they could be victims of trafficking under Art. 181. During the cross-examination at the trial, every effort was made to attack the credibility of the women's evidence. This strategy was shared by the judge who on several occasions prejudged the issue and equated the women's past status to a prostitute. Ignorance of Thai culture plus translation difficulties added to make the evidence given by the women seem less credible. It is worth noting that the Thai government showed no interest in the case, even though the women victims were Thai. Successive calls for evidence and key-witnesses from Thailand were ignored and a Thai police officer could not be questioned because the higher authorities refused to give their consent (Rayanakorn 1995, p. 36).

### *Crossing borders*

Some countries have special provisions regarding cross-border recruitment, like Thailand, Japan, Colombia, Peru, Brazil, Paraguay, Uganda, the UK and the United States.

In addition to the Criminal Code, the Thai *Act on Prevention of Traffic in Women and Children* (1928) penalizes 'any person who brings women or girls into Thailand or sends them for the purpose of having sexual intercourse with other persons, and any person who is

involved illegally in the trading of women or girls brought into the country for such purposes' (Rayanakorn 1995). In spite of the *Prevention of Traffic Act* several reports bear witness to the failure to combat 'trafficking'. Exemplary of such failure is the crackdown on prostitution and 'trafficking in women' in 1991:

During a number of raids many prostitutes were arrested. Approximately 30-40% of the women and children arrested appeared to come from Burma [...] As a result of the crackdown the women were deported or sent to penal reform institutions [...] Collusion, bribery and immunity from prosecution have undermined the government's intentions to stop trafficking. For all the efforts of the Government of Thailand, Asia/Watch has concluded that the trafficking of Burmese women and girls to Thailand continues, virtually unchecked. Moreover, despite clear evidence that the Thai law enforcement and immigration officials remain directly involved in the flesh trade, not a single officer has been prosecuted or punished for such abuse. Brothel keepers, pimps and procurers have been largely exempt from punishment. In fact the main targets of the crackdown on forced and child prostitution have been the victims themselves (Australia-Parliament 1995, p. 50).

Under 'trafficking in women and minors' the Penal Code of Colombia penalizes 'promoting or facilitating the entrance to or the exit from the country of a woman or a minor of both sexes, to practise prostitution'. Additionally foreigners can be expelled from Colombia in case of 'proxenitism'(procuration). However, several reports (Polania Molina 1996; Acosta 1996) state that, apart from lack of juridical or legal instruments which enable prosecution of traffickers in case of international trafficking, corruption of the police and judicial authorities lead to a systematic lack of protection and rampant impunity. According to Polania Molina (1996), bribing of the authorities by trafficking networks 'to achieve that legal procedures are suspended or that the verdict is changed' is common practice. Under the title 'traffic in women' the Criminal Codes of Brazil and Guatemala penalize any person who 'brings on or encourages the entry or exit of a woman for the purpose of prostitution', whereby the use of violence or deceit acts as an aggravating circumstance. Similar provisions are found in the Criminal Code in Argentina under the section Offences against Morality, and under the section Proxenitism in the Penal Code of Peru (Domingo Traspaso 1996). Here, too, it is reported that, in spite of these prohibitions, corruption and lack of interest on the part of the authorities result in de facto impunity, as is illustrated by the case of Ydelsa:

Ydelsa, a young Peruvian woman, was trafficked to Italy and murdered during an attempt to escape her traffickers. Despite desperate efforts from her family to have

the case properly investigated, the case was disposed of as suicide and no further investigations were made, nor by the Peruvians, nor by the Italian authorities (case study prepared by Domingo Traspaso 1996).

The Penal Code of Paraguay prohibits the trade or transport of adult women to another country, with or without consent, with a view to bringing them into prostitution, in addition to a general prohibition on the recruitment of women for prostitution, also under the title ‘trafficking in women’ (Acosta Vargas 1996).

In Belgium the Criminal Code prohibits to ‘contribute to the entry or residence of a foreigner, making use of deceit, violence, threats or any other kind of force, or misusing the especially vulnerable position in which a foreigner might find her/himself due to an illegal or precarious administrative situation or due to pregnancy, illness or physical or mental disorder or disability’ (Centrum voor Gelijkheid 1996).

In the UK, ‘to procure a woman to be a prostitute in another country’ is a separate offence, though the provision is rarely used. According to the UK government report to the Council of Europe:

There is no convincing evidence of the existence of one or more networks trafficking in women. However, there is evidence of the presence of prostitutes, particularly in some ports.

Amazingly, the report continues:

Malaysian, Chinese and Thai women whose occupations as given in their passport are beauticians, hairdressers, etc. are brought into the UK as part of the business activities of Triad-organized crime syndicates [...] Malaysians and Chinese are rigidly controlled by Triad members [...] In many cases it is difficult to obtain the information required, as some women, mostly Malaysian and Chinese, will not talk for fear of retribution from the Triads (Council of Europe 1994a, p. 49).

Under the *White Slave Act*, more commonly known as the *Mann Act*, federal law of the United States prohibits the transportation of ‘any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such an individual engage in prostitution, or in any sexual activity for which a person can be charged with a criminal offence’. Punishable also is anyone who ‘knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States’ with the above mentioned aim.

### *Specific categories of women*

In quite a number of countries the punishability of bringing a woman into prostitution is determined by the 'virtue' of the woman concerned rather than by the acts of the offender. This is explicitly the case in most Latin American countries, Japan, Canada and Uganda.

An illustration is provided by Colombia, where the Penal Code only prohibits to induce a 'persona honesta' to prostitution. Even the use of violence to force a person into prostitution is allowed as long as it does not concern a 'chaste' woman.<sup>15</sup> Women who are not considered to be 'chaste' have no legal protection at all. The same type of discriminatory provisions can be found in the criminal codes of many other Latin American countries.<sup>16</sup> In El Salvador, for example, abduction is viewed a less severe crime if the victim is a prostitute<sup>17</sup> and in Brazil 'abduction with the use of violence, threats or deception with a view to illicit sexual acts' is, again, only punishable if perpetrated against a 'chaste' woman.

The same phenomenon is seen in Japan, where art. 182 of the Criminal Code penalizes any person who, for the purpose of obtaining profit, induces a female person 'not habitually licentious' to commit fornication. In Uganda the law prohibits procuring a girl or woman by causing her to leave her usual place of abode in Uganda such 'not being a brothel' with the intent of prostitution (Uganda 1950, 1990). In Germany, as is mentioned above, the law views it a less serious form of 'trafficking', with a lower penalty, when the victim knew she was recruited for prostitution or when deceit is used towards a person, who is 'not far from prostitution' (Studzinsky 1996).

### *Other prohibitions and regulations*

In some countries the criminal code contains special provisions prohibiting the sale and purchase of human beings for any purpose, defined as 'trafficking'.

In Nepal the *Trafficking in Persons Control Act 2043* (1987) prohibits the sale and purchase of a human being for any purpose, as well as taking a person to a foreign country for the purpose of 'trafficking'. A special paragraph prohibits 'involving a woman in prostitution by enticing or alluring, by undue influence, fraud, threat, force or by any other means'. In addition to the *Trafficking in Persons Control Act*, the chapter on 'trafficking in persons' in the *New Muluki-Ain* (1963) prohibits 'alluring persons to cross the border with intent of trafficking or striking a deal in this regard' and 'enslaving persons or striking a deal

15. Art. 308 of the Penal Code prohibits to induce a 'persona honesta' into prostitution; art. 309 to force a 'persona honesta' to prostitution.

16. See for an extensive review of the discriminatory character of the laws on prostitution and trafficking in women in the criminal codes of the Latin American and Caribbean countries Acosta Vargas, 1996.

17. Art.202, Penal Code El Salvador.

regarding human trafficking'. Buyers, sellers and traffickers are subject to the same punishment (Poudel 1994; Sangroula 1995). However, since the promulgation of the *Trafficking in Persons Control Act* in July 1987 only approximately 117 cases were brought to the notice of the authorities (Sangroula 1995). According to a report from WATCH, no serious attempts have been made to take action against the perpetrators (Poudel 1994). Usually traffickers get off with a light punishment and continue their practice. Only some low level traffickers are prosecuted, though they must be connected with high influential networks. The police and the local administration may have information on such networks but they keep quiet, either to safeguard their part of the profits or under pressure of 'somewhere'. An illustration is the case of Ms. xz:

Ms. xz was trafficked to India by an elder uncle of her, a month after the birth of her first child. After ten years she managed to escape. Through the help of a Nepalese working as policeman in India she managed to reach home again. Her mother filed a complaint at the police-station. The trafficker was arrested but released after a few days: 'As I heard the issue was politicized and he was protected by the ruling party. Also the local administrative authority threatened my mother just because of the complaint she made for me. They were saying that I was not her daughter.' After a long argument the police took him in custody again, but again he was released from custody after 26 days with the pressure of the political party: 'Many times I tried to put the case to court but always they said you don't have enough document to prove it. I don't know what they mean by enough document, because myself a case was there. So, my case is still in the local government office, but I do not have hope for justice with this case' (Casestudy prepared by WATCH/Poudel 1994).

One of the reported barriers to effectively address the issue is police behaviour and their working style. The police are neither trained to deal with crimes against women nor to assist women in appropriate ways. They do not take complaints seriously enough. There have been recent attempts to remedy this, such as establishing women police units and training police in how to investigate crimes against women. However, there are no government-run shelters, victim compensation or witness protection schemes. Women complainants are further intimidated by formal and bureaucratic procedures. In rural areas there are the additional constraints of isolation. For example, the Himalayas of Nepal are difficult to get into, the villagers are often scared of the police and there is no follow-up system to ensure the victim is secure (Poudel 1994).

Apart from offences incorporated in specific laws on prostitution or ‘trafficking’, generally a range of other offences that could lead to prosecution are involved. However, in practice these laws are seldom used. A report of the Australian Federal Police in 1995 (AFP 1995) on groups engaged in the international recruitment and movement of South East Asian women to Australia for prostitution, describes a number of the offences involved: organized crime groups make multi-million profits, usually untaxed and moved offshore, forgery of documents, use of fraudulent documents, money laundering, official corruption, involvement of international criminal networks, health risk to Australian community, illegal immigration, kidnapping, violence. The report further states that there are indications of links to Triad societies, involved in drugs smuggling. Prostitution provides criminal organizations involved in drugs smuggling with finance, criminal associates in drug source and transit countries, transport via the frequent movement of prostitutes and their escorts, and access to distribution networks via organized crime contacts in Australia. One of the problems in law enforcement is the ability of criminal syndicates to change their operating methods to counter law enforcement efforts. Focusing on law enforcement and tightening visa procedures in one region only results in organizers finding other sources and methods of operation. They move, for example, to other countries to obtain women. Another problem is the complexity of the cases, which makes prosecution difficult.

In theory, general provisions on violence could be applied to prosecute coercive recruitment practices. In Cambodia, for example, the *UNCTAD law on criminal procedures* penalizes ‘any one who without orders from the judicial authority arrests, detains or illegally confines a person’. Such provision could be used to address trafficking, as illustrated by the case of Sokha, who was sold by her aunt-in-law to a brothel for \$ 20 dollar. The accused was sentenced to two years imprisonment under art. 35 of the *UNCTAD law*, through lack of specific legislation on trafficking. Although some cases may be prosecuted, the ‘inadequate skills of both the judiciary and law-enforcers on dealing with the issue, the lack of specific legislation and uncertainty or ignorance on how to use the existing laws’ prevent an effective approach of trafficking in women. Moreover, fears of prosecution of influential people who are allegedly involved in the sex trade further undermine every attempt to combat the practice. Police authorities state that they are powerless because both high ranking military and civil government officials are behind the business. Often arrested traffickers are released after only being warned not to do it again and asked to compensate the parents of the woman. Some cases are amicably set by courts and police authorities outside the legal framework of the law by compensation of the victim’s parents. Another problem is the lack of complaints by the victims, due to the absence of legal provisions to protect and guarantee the safety of complainants and witnesses (Cambo-

dia report 1996). It should be noted that the fact that the parents of the woman are compensated rather than the woman herself, reflects the concept of ownership of the woman.

In Zambia the law penalizes any recruitment or transportation of women within or across national borders for work or services which, according to the Employment laws, do not comply with the regulations, holding that any contract of foreign service must be applied for. If a woman is ‘trafficked’ with or without her consent for whatever service, the fact that this was not an approved contract of service by the relevant authorities, makes it an offence under the Employment laws. This includes the use of Zambian women for transporting drugs, prostitution, etc. There is no indication whether or not this provision is used in practice, nor if it is used to prosecute traffickers or to prosecute the women involved (Zambia report, no date).

### *3.2 Managing, organizing or profiting from prostitution (‘employment’ prohibitions)*

Prohibitions and regulations of this type can be classified into two categories:

- prohibitions on procuring, pimping or living off the earnings of prostitution;
- prohibitions on keeping, operating, managing or owning a brothel, making premises available for prostitution or furnishing a place for prostitution.

Both categories of prohibitions will be examined, with special attention to prohibitions related to violence or abuse. In some cases prohibitions on violence act as aggravating circumstances to general prohibitions, in other cases the organization of or profiting from prostitution are only punishable when violence or abuse is used.

In some countries the law prohibits all prostitution-related activities or any organizing of the prostitution of others under the heading of ‘traffic of women’. This is for example the case in Malta, where under the *Order for the Suppression of the White Slave Trade* (1930) all forms of prostitution, accosting on a public highway, procurement and brothel keeping are an offence. In Portugal any organizing of the prostitution of others is defined as ‘trafficking’ (Council of Europe 1994a).

#### *Procuring, pimping or living off the earnings of prostitution*

In almost all countries procurement is criminalized: around 75% of the respondents say

that the law in their country prohibits procurement or pimping per se.<sup>18</sup> Prohibitions on procurement may criminalize ‘procurement’, ‘pimping’ and/or ‘living of the avails of prostitution’.

In particular prohibitions on living off the earnings of prostitution reinforce the social isolation of prostitutes by making it extremely difficult for them to live with other persons, as these may be charged with procurement or living off the earnings of prostitution. This is illustrated by the situation in Canada, where the Criminal Code penalizes ‘procuring or living on the avails of prostitution’. This includes partners, room mates and children who share a dwelling with a woman who works as a prostitute. Even if another source of income can be proven, the simple fact that one member of a household works as a prostitute can be held against any other member of the household as ‘living off the avails of prostitution’:

While this law should have been intended to be used against pimps/procurers who parasitically exploit prostitutes for financial gain, it has been enforced frequently against innocent family members and friends of prostitutes (Sanghera 1996).

The same mechanism can be observed in France where the broad legal definition of procurement prevents prostitutes from living with a partner:

One of the direct effects of the law is to reinforce the social isolation of prostitutes and to make them outcasts [...] However, a recent modification of the law was introduced in March 1993. Now, a man living with a prostitute and who can demonstrate sufficient independent income, is no longer considered as a pimp (Europap 1995, p. 63).

In the UK any adult who shares a prostitute’s income is subject to prosecution. In Italy the ‘exploitation of prostitutes’ is illegal and includes the family of the prostitute. The same applies to Belgium, where the husband of a prostitute can be prosecuted if he profits from her revenue, despite the fact that he has a job and his own income (Europap 1995). Similarly, prostitutes who work together may risk prosecution for procuring or pimping, as in France or Cyprus. In India and Bangladesh living off the earnings of prostitution and

18. The following countries prohibit procurement/pimping per se (according to the questionnaire and other documents): Canada, Australia, France, Belgium, Germany, UK, Switzerland, Italy, Spain, Norway, Finland, Bulgaria, Hungary, Slovenia, Ukraine, Poland, Czech Republic, Lithuania, Japan, China, India, Bangladesh, Thailand, Vietnam, Peru, Ecuador, Mexico, Bolivia, Brazil, Costa Rica, El Salvador, Guatemala, Nicaragua, Dutch Caribbean, Uganda, Kenya and Zambia.



procuring are prohibited under the *Immoral Traffic Act*. In India living off the earnings of prostitution is presumed until the contrary is proved, when a person is ‘proved to be living with’ or even ‘to be habitually in the company of’ a prostitute.

In most countries factors such as the involvement of minors or persons under one’s care, kinship relationships, the use of force, threat, deception or violence, and making a habit or profession of procurement, act as aggravating circumstances.

#### *Keeping, managing or operating a brothel*

In the majority of countries the criminal code contains an absolute ban on keeping, managing, operating, letting, hiring or furnishing a brothel/premises/a place for prostitution, though again the exact content and wordings may vary.<sup>19</sup> The use of coercion, illegal detention or violence and the involvement of minors are generally viewed as aggravating circumstances. In some cases brothel keeping falls under provisions on ‘trafficking’, as in India and Bangladesh, where brothel keeping and detaining a person in premises where prostitution is carried on, with or without consent, is prohibited under the *Immoral Traffic Act*. It is worth noting that in some countries procuring or living off immoral earnings is more severely penalized than brothel keeping, as for instance in the UK. Here, the maximum penalty on living off immoral earnings or controlling prostitutes is seven years, on procuring two years and on brothel keeping six months.

The fact that brothels are prohibited does not mean that they do not exist. On the contrary, in many countries brothels are at the same time prohibited and highly regulated and controlled through different laws and State agencies, such as the police, courts and local administration. The situation in Bangladesh can serve as an illustration. Though brothels are prohibited, various reports relate how the police exercise control over brothel activities, directly as well as indirectly, through the brothel managers and agents or as regular clients. Connections between brothel owners and the local and national level politics are common:

Both the brothel business of prostitution and its affiliated businesses are ‘prohibited’, therefore necessitating a special linkage with State agencies as well as with local level politics. The interests of the brothel businesses are safeguarded through the owners by regular contracted payments to the police at higher, middle and local levels and also by such regular payments to the customs and excise depart-

19. The following countries prohibit brothelkeeping per se (according to the questionnaire and other documents): Bangladesh, India, Thailand, Japan, Bangladesh, Hong Kong, China, Vietnam, Philippines, Dutch Caribbean, Mexico, Peru, Uganda, Kenya, Hungary, Poland, Slovenia, Ukraine, Finland, Norway, Spain, UK, Italy, Cyprus and Canada.

ment. Also we have found that the house owners are very closely connected with the local and national level politics (Khan 1992, p. 47).

Police violence and abuse are common, varying from extortion of money to psychological, physical and sexual violence (kicking, beating, rape) and extortion of free sexual services:

Josna, a twenty-seven years old prostitute in Tanbazar, narrated various forms of police torture and extortion that she faces and had to face. Police often raid the brothel on the pretext of picking up underage girls. Apart from this the police indiscriminately picks up prostitutes on different excuses and extorts money and sexual gratification from them. Josna was picked up six times in a period of two months and was used sexually by policemen, in addition to having to spend up to Tk. 6.000 to Tk. 7.000 for getting 'released'. Josna and others often have to accept policemen as customers who do not pay for the services received (Khan 1992, p. 66).

Women are on a regular basis harassed by the police and forced to pay considerable amounts of money in order to escape arrest or being sent to the police station where worse abuse could take place:

If the 'arrested' women fail to pay or fail sexually to gratify the policemen, they are taken to the police-station where again they are subjected to physical and sexual torture. Failing to satisfy the authorities in cash or in kind leads to a transfer to the courts for confinement and punishment. Usually the court decrees confinement for brief periods of seven to ten days. In the courts, the prostitutes or their pimps have line-ups with the 'muhuri'. On payment, the 'muhuri' arranges for the release of the women or for shorter terms in jail. On an average, a prostitute has to spend about taka 300-400 on the police and around taka 100 on the 'muhuri' for release from police custody (Khan 1992, p. 211).

If active attempts are undertaken to ban brothels, these predominantly result in brothels going underground and arbitrary arrest of the prostitutes, as the following example from the Philippines illustrates:

Meanwhile, in Ermita, Manila, the City Major banned clubs, bars and massage parlours in the City; but the owners and operators just moved to nearby places. The vacated places in Ermita are now occupied by beer gardens, where sex trade still thrives to operate, offering the waitresses and pick-up girls. The City Ordinance has been circumvented by the owners and operators, who always remain scot-free

whenever policemen conduct law enforcement operations. The women victims are the ones usually caught, penalized and jailed [...] Some City officials in the National Capital Region are actively enforcing the laws against prostitution. The raiding operations they conduct in night spots, beer-gardens and massage parlours apprehend only the women and not the operators and owners (BATIS 1996a/b, p. 1 ff./p. 2).

Also Thailand has not been very successful in banning brothels. According to a report of Images Asia, action is restricted to periodic crackdowns on the child sex industry and placing temporary restrictions upon the operators of brothels:

Following these crackdowns, brothels have merely changed their surface appearance, and have continued to function as before. Some put up the thinly veiled facade of being karaoke restaurants, teashops, pubs etc.[...] Such establishments still have to maintain connections with local Thai officials who still ask for bribe money to allow illegal Burmese women to work there [...] Central government policy simply becomes an excuse for local Thai officials to ask for ‘protection money’ to guard the security of unlawful business (Images Asia 1995, p. 9).

The brothel owners on their turn use the payment of ‘protection money’ as a reason for cutting the income of the sex-workers.

Journalists in Kenya (Sunday Standard 1996; East African Standard 1996) relate of country-wide police crackdowns on prostitution, aimed at curbing the increasing number of prostitutes in towns and ‘resulting in the arrest of 3,000 suspects’ (that is: prostitutes). Many of the women arrested were subjected to forced STD tests. Most of them were charged with various offences including prostitution, loitering with immoral intentions and failing to seek medical treatment. Other charges were dependent of the outcome of the medical tests. Those found to be STD positive were arraigned in court. However, no action was taken against the (massage parlours) licensing department, the parlour/brothel owners or any of the men involved. Brothel operators easily manage to escape the police. When the pressure is strong and making buy-outs becomes impossible, they go underground for a while or change locations (Weekend Mail 1993). All in all ‘there seems little reason to believe that the incidence of prostitution has been seriously reduced by the criminal law enforcement, although the forms in which it is conducted have altered’ (Kenya report 1996).

Despite the fact that officially the law criminalizes the brothels and not the prostitutes,

the prostitutes are generally the ones who are caught and detained. In Peru thousands of women working clandestinely are detained every month, without any action taken against the brothel owners (Domingo Traspaso 1996). The same mechanism is reported by NGOs in a large number of other countries. According to a report of the Dominican NGO COIN, the only ones who are suppressed are the prostitutes, but not prostitution itself, the clients, the middlemen or the brothel owners:

For the law-enforcement authorities, the tourist industry, the rum & cigarette trade and prostitution form part of a lucrative business. Impunity of violence and abuse of prostitutes characterize the official policies (Ferreira 1996, p. 9).

At the same time prohibitions on brothel keeping necessarily and by definition criminalize the relationship between a prostitute and a brothel manager, forcing them to deny their business relationship and denying prostitutes workers' rights, including the right of access to social and medical services. Prostitutes cannot sue the brothel manager (or the client) when they are not paid according to agreement, since in many countries any 'prostitution' contract is considered as offending good morals and therefore invalid. The situation in Germany may serve as an example:

In contrast to the civil rights afforded to other professional businesses, no similar protection is given to the profession of prostitution in Germany. The business' fundamental premise – the agreement to provide a sexual service in return for payment – offends the moral basis of the rules of the German Civil Code and is, therefore, not regarded as valid. Conflicting criminal laws also mean that it is not possible to conclude regular employment contracts. This leads to the total absence of social security (Europap 1995, p. 99).

In some countries any contract regarding prostitution is criminalized, like in Japan, where the criminal law explicitly prohibits any contract regarding prostitution activities.

For migrant women it is even more difficult to enforce payment according to agreement, due to their illegal status. An illustration forms the situation of Burmese sex workers in Thailand:

Unfortunately, they can seldom get a proper income from their work because the income depends on the whims of the brothel owners, not on law or contract. Interviews with many Burmese sex workers, as well as those of other nationalities working in Thailand, make it clear that it is almost impossible for sex workers to

speak with the brothel owners about their rightful income. No Burmese sex worker can get the full of her rightful income because the brothel owners do not feel obliged to give them more than a 'Burmese' (i.e.: lower than Thai women) income (Images Asia 1995, p. 8).

As stated, brothel keeping is formally prohibited in many countries, but in practice it is more or less regulated or legalized, for example through paying taxes or through a more or less formalized licensing system, as in Colombia, the Dutch Caribbean, the Netherlands and Germany.

Laws may be established on different levels and be contradictory, like in Colombia. The *National Code of Police* of Colombia does not prohibit prostitution and authorizes other institutions on regional level to regulate it. However, the *District Code of Police* prohibits in any part of the national territory establishments 'which nature is principally or secondarily to practise prostitution', while at the same time the Planning Department of the Districts Council of Bogota accepts the existence of brothels and permits them officially in certain areas. Such contradiction in laws is the reason that prostitution is practised under the camouflage of bars, canteens, residences, hotels, cafes, saunas, dancings, motels and apartments (Polania Molina 1996).

In some countries brothels are regulated through an official licensing system, like in Turkey and the Dutch Caribbean. In Campo Alegre in Curaçao, for instance, registration and control of women takes place under the supervision of a special police department, in conjunction with the Public Health Departments and the Immigration Department. Non-national women can apply for a licence to work in Campo Alegre for a certain period. In St. Martin special regulations exist for the 'Japanese Club', whereas other prostitution businesses for the local population operate clandestinely. According to Kempadoo in her description of the situation in the Dutch Caribbean, brothels are tolerated as long as they do not cause any nuisance or disruption to the broader society, while turning a blind eye to malpractice and coercion in the business (Kempadoo 1995).

### *Deceit, abuse and coercion*

In some countries the law contains specific provisions on abusive or coercive procurement. Such is the case in Uganda, where – apart from the provision on living off the earnings of prostitution – para. 126 of the Penal Code provides against 'procuring the defilement of or carnal connection with a woman by threats, intimidation, false pretences or false representations, or by applying or administering to or causing to be taken by any woman any drug, matter or thing with intent to stupefy or overpower, so as thereby to enable any person to have unlawful carnal connection with such woman'. However, the

provision also imports the requirement for the evidence of one witness to be corroborated, which makes prosecution under this provision extremely difficult (Butegwa 1996).

In a number of countries brothel keeping as such is not an offence, but the law prohibits brothel keeping with the use of coercion, deception or violence, as in Germany. In other countries brothel keeping is formally an offence, but prosecution only takes place in case of coercion, deceit, violence or other abusive practices, as in the Netherlands.

In Germany brothel keeping is an offence only when a person is kept in personal or economic dependence. In the Netherlands running a brothel is tolerated as long as no coercion, violence or deceit is used, though the Criminal Code officially still prohibits brothel keeping as such.<sup>20</sup> Some municipalities require brothels to have a kind of informal licence, other cities tolerate brothels as long as they comply with regulations on public order, etc. In Belgium any 'exploitation of prostitution' is prohibited. In practice legal action is only taken when there is evidence that the landlord seeks to make a profit from this commerce by charging an excessively high rent, whereby the definition of excessive gain depends on the police department involved (Europap 1995). Remarkably enough, the Antwerp City Council provides itself with a substantial source of revenue from prostitution through the application of a so-called 'rendez-vous tax' on bars, clubs, cabarets, windows, rooms and rendez-vous hotels (hotels used by street workers). Officially this tax has to be paid by the operators of the place, in practice it is paid by the prostitutes, either directly or through the bar owners who charge the women for the 'extra costs' they have to make. Nonetheless, paying taxes does not give the women any rights nor safeguards them against the risk of being arrested, e.g. for soliciting.<sup>21</sup>

In some countries the law provides against 'illegal detention with sexual intent', as in Uganda. Section 129 of the Criminal Code prohibits illegal detainment for the purpose of sexual intercourse, stating that 'a person is deemed to have unlawfully detained another person when he, with the intent to induce him or her to remain in that place or brothel, withholds from a person any wearing apparel or other property belonging to the person detained, or where wearing apparel has been lent or supplied by that person, such person in any matter threatens the other person if he or she takes away the wearing apparel'.

### *Other prohibitions and regulations*

Non-prostitution (and non-gender) related provisions on illegal confinement, compul-

20. The Netherlands are in the process of decriminalization of the sex-industry. A bill to lift the absolute ban on brothels has been adopted by Parliament. At the same time, the penalties for operating a prostitution business with the use of violence, deceit or abuse of authority or involving minors, will be raised.

21. Personal communication of a worker of the Belgian support organization Payoke to the authors.

sion, extortion, debt bondage, slavery, etc., which would apply to situations of forced labour and slavery-like practices, can be found in the criminal laws of all countries. Moreover, in many countries, the law contains special provisions on forced labour and slavery and/or slavery-like practices. However, there is no indication at all that such provisions are used to combat such practices in the sex industry.

The Japanese Penal Code, for instance, prohibits compulsion, defined as ‘intimidating a person with threat or injury to his life, person, liberty, reputation or property or using violence against another in order to force him to perform an act which he is not bound to perform or obstruct him from exercising a right to which he is entitled’. Art. 5 of the *Labour Standard Law* prohibits forced labour in general under penalty of one to maximum ten years imprisonment: ‘an employer shall not force workers to work against their will by means of violence, intimidation, confinement, or any other unfair restraint on the mental or physical freedom of the workers’. The article is based on article 18 of the Constitution, which holds that anyone should be free from slavery-like confinement and forced labour. However, the article does not apply to forced labour in prostitution. Forced prostitution is separately prohibited by the *Prostitution Prevention Law*, defined as ‘forcing another person to engage in prostitution by intimidation or violence’ and is strikingly enough much less severely punished than forced labour in other labour sectors (maximum three years).<sup>22</sup> In Bangladesh the Penal Code prohibits slavery and forced labour, defined as ‘importing, exporting, removing, buying, selling or disposing of any person as a slave or accepting, receiving or detaining against his will a person as a slave’. In Mexico the Constitution prohibits slavery, defined as ‘forcing another person to render personal services without proper reward and without his consent’. The Constitution of Uganda prohibits the holding of any person in slavery or servitude, whereas the Penal Code prohibits the trade in and export or import of persons for purposes of slavery:

Where women are made to work in slave-like conditions or are denied the right to choose their conditions of work, s. 243, which makes it an offence to compel a person to labour against their will, would be very useful (Butegwa 1996, p. 12).

In practice, however, the provisions related to slavery and slavery-like practices are merely in the statute-books, without much practical relevance:

In most cases, no prosecutions, let alone convictions have arisen out of them, most-

22. Apparently it does not address conditions of forced labour in prostitution, but only forcing somebody to enter prostitution.

ly due to the nature of the offences and the evidence needed to prove cases [...] Complaints are in most cases dismissed or ignored as rubbish, or investigations are discontinued when the police realize what the complainants do for a living (Butegwa 1996, p. 12).

A major obstacle in the application of the provisions concerned, in both the criminal and labour laws, is the fact that prostitution is not regarded legitimate employment. As worded by Butegwa:

Generally it is believed that were prostitution not outlawed, then some of the Penal Code Act provisions could be used by women who are trafficked or who work in slave-like conditions to their benefit or redress (Butegwa 1996, p. 11).

#### **4 Prohibitions and regulations aimed at migrant women**

In most countries it is not possible for migrant women to work legally in prostitution. Other countries provide legal possibilities under certain conditions. Some countries allow migrant women who are married to a national to work in prostitution, other countries allow prostitution by migrant women on a tourist or artist visa, or issue working permits for prostitution. At the same time the majority of countries have provisions that penalize illegal entry and/or stay, whereas in some cases (especially in the former Warsaw Pact countries) illegal exit of the country is also penalized. Since these regulations and prohibitions have a direct impact on the position of migrant prostitutes and their possibilities to defend themselves against trafficking, forced labour and slavery-like practices, the following section will examine the various situations.

##### *4.1 No possibility to work on a legal basis*

Almost 55% of the respondents state that it is not possible for migrant women to work on a legal basis.<sup>23</sup> Examples are Turkey, the UK, Thailand, the US, Japan, Cyprus and Uganda. Although Turkey has a legalized brothel system, migrant women are not allowed to engage in prostitution, since prostitutes are required to have Turkish citizenship (ASI

23. Countries where it is not possible for migrant women to work in prostitution on a legal basis are (based on the questionnaire and reports): Nepal, Pakistan, Japan, Thailand, Philippines, Vietnam, Taiwan, Canada, Ukraine, Italy, Turkey, Spain, Mexico, Bulgaria, China, Belgium, Slovenia, Poland, Cyprus and UK.



1993). Foreign women who work in Turkey as prostitutes are deported, as is any foreigner encouraging or mediating in prostitution (Council of Europe 1994a).

Migrant women found working as prostitutes in the UK, are liable to deportation under the *Immigration Act relating to Unauthorised Employment*: any person, who ‘gains entry to the country lawfully, but who subsequently overstays her leave or breaches conditions attached to it, or who takes unauthorised employment, may be deported’. If they entered the country illegally, they may be removed as illegal entrants (Council of Europe 1994a). In Thailand Burmese workers have two possibilities to obtain permission from local Thai officials for a temporary stay in Thailand:

In 1994 the Thai Ministry of Labour and Social Welfare guaranteed work permits for Burmese workers in ten Thai border provinces. Labourers associated with a Thai firm can get documents for a year-long temporary stay in Thailand, as long as their boss, or the business official concerned, guarantees the continuation of their job in that particular firm or industry. However, in most cases, sex workers do not have any kind of direct connection with Thai officials or any access to identity documents to state that they are Thai, or that they can legally work in Thailand. On behalf of the sex workers, brothel owners and agents create an understanding with the officials by giving them bribe money, which is calculated in accordance with the number of sex workers in an establishment. Five hundred Baht (\$20) per sex-worker per month, is a common ‘fee’. However, the understanding is not made between the sex-workers and the officials, which is why the sex workers may be arrested if there is a crackdown on brothels. Sometime the brothel owner or agent even asks the police make the arrests. This kind of arrest happens often when the owners or agents do not want to give the sex workers the money that they owe them (Images Asia 1995, p. 4ff).

Some countries like the US, Japan, Turkey and Cyprus, even explicitly exclude prostitutes from legal emigration or immigration. In Cyprus the *Aliens and Immigration Law* provides that ‘any prostitute or any person living on the proceeds of prostitution are prohibited immigrants and are not permitted to enter the country. These persons having entered the country, are ordered to be deported’ (Council of Europe 1994a). In Turkey prostitutes are barred from entering the country under the *Passport Act* (Council of Europe 1994a). In the United States foreign women with a prostitution record can be refused entry (Pheterson 1996). In Uganda, the *Immigration Act* prohibits certain classes of immigrants from entering Uganda. These include prostitutes and those living off the earnings of prostitutes. The same Act provides for the deportation of such prohibited immigrants. Contrary to the cardinal rules regarding burden of proof, the onus is put on the prohibited immigrant to

prove that she or he is not a prostitute or was not living on the earnings of prostitution prior to entry in Uganda (Butegwa 1996).

#### *4.2 Possibility to work on a legal basis under certain conditions*

Around 40% of the respondents answer that it is possible for migrant women to work in prostitution on a legal basis under certain conditions.<sup>24</sup> The conditions mentioned by respondents relate to:

- marriage;
- tourist or artist visa;
- work permit.

In a number of countries, such as Finland, the Netherlands, Switzerland, Germany and Australia, migrant women are allowed to work in prostitution if they are married to a national, which entitles them to reside legally in the country. In such cases, the authorities may check if the foreign woman lives together with her husband. When found otherwise, the woman can be deported. Her residence permit is dependent on the marriage (at least during three to five years). In case of divorce she will lose the right to stay and risks being deported.

Some countries allow women to work in prostitution for a maximum period of three months on a tourist visa, although it is formally prohibited to work on a tourist visa. This used to be the case in some cities in the Netherlands. Another possibility is working on an artist visa. Generally the visa is officially issued to work as a dancer or model, but this often acts as a cover for prostitution. Sometimes this is completely illegal, sometimes the authorities are acquainted with this construction and allow it unofficially. In Switzerland e.g. cabaret dancers are entitled to obtain a residence permit for eight months per calendar year. In December 1992, there were 1.239 migrant cabaret dancers resident in Switzerland, often recruited by artist agencies operating in various countries (Council of Europe 1994a).

As far as known, only in the Dutch Caribbean working permits are issued for sex work. In Surinam foreign women who enter the country to work as prostitutes are given a six month work permit. In Aruba bar/hotel owners are legally allowed to employ two or three

24. The following countries allow migrant women under certain conditions to work on a legal basis in prostitution, according to respondents of the questionnaire: Hong Kong, Curaçao, Mexico, Ecuador, Peru, Dominican Republic, Switzerland, the Netherlands, Germany, Finland, Czech Republic, Australia. In some cases, respondents from the same country are of a different opinion regarding this question, as in Bangladesh, India, Canada, Italy and Mexico.

non-Aruban female sex workers up to three months. Registration with the police department and weekly medical controls are mandatory. Curaçao has set up a well-developed application and work permit system to allow foreign women to work in Campo Alegre for a limited period. The permit is issued for six months. In order to be allowed to work, women must be in possession of a valid passport/visa, a health report, four photographs, a return ticket and work permit. They must register with the police as a prostitute immediately on arrival. Registration with the police and weekly medical checks are obligatory. Campo Alegre is exclusively for non-Antillian women. Local women are allowed to work in a number of hotels in Willemstad, but not in Campo Alegre. Women must apply to the Immigration Department. The administration, screening and selection of candidates, and the issue of work permits is done by the police. This is free of charge and dependent of available places. Since the mid 1980's however, the existence of recruiting agents is seen, who charge the women for their services or who add costs to other expenses and debts owed by the women to the club owners (Kempadoo 1995).

#### 4.3 *Crossing borders illegally*

In many countries not only any third party organizing, aiding or abetting the illegal entry (and/or illegal employment) of another person, but also the illegal alien him or herself is liable to punishment. This is the case in a number of European countries, North America and Canada (IGC 1995). Due to the desire of in particular the rich countries to deter 'illegal migration' and to combat 'alien smuggling' or 'trafficking of aliens', migration laws and policies have become more and more repressive over the last years.<sup>25</sup> Migrants who enter or stay illegally may be punished with imprisonment and/or fines, varying from six months imprisonment (Denmark, Norway, UK) to one year (Belgium, France, Germany) or two years (Canada, Italy).

Not only illegal entry into the country may make women liable to punishment, in some countries it is also against the law to leave the country without permission from the relevant authorities or valid documents. One example is Burma, where the *Immigration and Manpower Act* prohibits illegally leaving the country. Also in Poland and in a number of other former socialist countries it is against the law to leave the country without a valid

25. See for example IGC, December 1995, *Summary description of legislation on aliens trafficking*. This document contains an overview of legislation in the fifteen participating States of the Inter-Governmental Consultation (IGC) to deter illegal migration, i.e. provisions on alien smuggling, aiding and abetting illegal entry, the production of fraudulent documents, employers sanctions for hiring illegal workers, carrier sanctions for transporting illegal aliens, and confiscation and forfeiture of property used in connection with alien smuggling.

passport. For migrant women this means that they are not only punishable as illegal foreigners in the destination countries, but also on return to their home country for having departed illegally. This happened to Joanna, a Polish girl who was trafficked to the Netherlands when she was seventeen, along with three other girls:

After pressing charges Joanna went back to Poland. On her arrival at Warsaw airport, she was interviewed by the police on charges of having left the country illegally on a false passport. They let her go, but told her that they would come back to call her to account. Later, the police visited her relatives a number of times, in search for Joanna. For fear of the police as well as her (Polish/German) traffickers, and lacking any support from her relatives, Joanna fled back to the Netherlands. After a long procedure and initial rejections, she obtained a Dutch residence permit on humanitarian grounds. However, even after four years she still has no identity papers. The Polish embassy refuses to issue her a passport, because she has committed an offence according to Polish law. The fact that at the moment of her departure from Poland, she was convinced that the passport the agent had arranged for her was a valid one makes no difference.<sup>26</sup>

#### *4.4 Impact*

Immigration policies and chances of obtaining a legal residence or work permit strongly influence the living and working conditions of migrant sex workers, their vulnerability to violence and abuse and the extent of control criminal networks can exercise over them. As concluded in the evaluation report of a transnational project on AIDS/STD prevention among migrant prostitutes in Europe:

These differences (in immigration policies) also increase their marginalization, and facilitate possibilities for exploitation, dependency, and control by criminal organizations. In particular, the severity of regulations enacted in Europe against non-Europeans directly influences the basic living and working conditions of clandestine migrant sex workers. Those who are clandestine and work in closed prostitution (apartments, window brothels, sex clubs) remain constantly within the same milieu. Since they rarely, if ever, have an opportunity to leave the context of work of the sex industry, their lifestyle is one of severe isolation and marginal-

26. Personal experience of one of the authors in her capacity of staffmember of the Foundation Against Trafficking in Women (STV) in the Netherlands.

ization, with damaging consequences to physical and mental well-being [...] The possibilities for sex workers to have optimal control over their sexual services and the promotion of their health in general, is determined more by the control they have over their working and living conditions, and by their legal status in Europe, than by their cultural and national background (Brussa 1996, p. 7).

#### *Dependence on husbands, abusive employers and other agencies*

A woman who works in the EU on a marriage-based residence permit is, at least during three to five years, fully dependent on her husband. In case of trafficking or forced labour she has no means of escape, since leaving her husband implies that she loses her right to stay and risks deportation. In many countries, especially in Western Europe, marriage with a national is in practice the only way for women to acquire a legal residence permit. As a result they may be made to pay large amounts of money for sham marriages, either to their 'husbands' or to middlemen. If a woman refuses to pay or to subject herself to abuse, the 'husband' can simply threaten to report her to the Aliens police. Another common trick is to threaten the woman to 'leave' her just before the end of the three or five years period, unless she is willing to pay again and again considerable amounts of money. Laws to combat sham marriages, introduced in many European countries over the last ten years, have mainly resulted in driving up the prices women are charged and in criminal organizations finding other ways to bring in women.

In the same way, women who work illegally on an artist or tourist visa, expose themselves to arrest and expulsion the moment they seek help from the police in case of violence or abuse. Even when they work on a legal visa, as in Switzerland, the women are highly dependent on nightclub owners and agencies because of the limited duration of their residential and work permits. According to Spring (1992) they have no opportunity to defend themselves against poor working conditions, fraudulent settlements of accounts, humiliating treatment or even violence, if they want to continue to work as dancers.

#### *No access to health or other services*

In most countries, illegal migrant women have no access to health or social services, whether in Europe or in other parts of the world. Images Asia reports Burmese women in Thailand to be afraid to seek medical help for fear that someone might inform the police to arrest her (Images Asia 1996). The same mechanisms are seen in other countries.

#### *Corruption of border and law enforcement officials*

Lack of access to independent residence and working permits makes women not only dependent of traffickers, husbands and abusive employers, but also of border and law

enforcement officials, who co-operate with agents and brothel keepers, as is illustrated by several reports from India, Bangladesh, Thailand, Pakistan and Burma:

Indian agents have good networks in both Bangladesh and Nepal and extremely well organized rapport with police and the judiciary. Law enforcement officials, border security and police take bribes. If women or children are caught in raids, they are generally released to false parents or family members coming from the agents, which take custody with the help of police and lawyers, to be brought back to the brothels (Action for Reach Out Newsletter 1995).

In Bangladesh the leader of one of the trafficking networks in the border areas is reported to make all the necessary arrangements with border forces. Women and children are divided in small groups and brought to a secret hiding place. From there they cross the border to India by night and are handed over to the Indian agents:

If disagreements with border officials arise or when they are not sufficiently paid in advance, arrests are made, but the worst victims are usually the women and the children. They are the ones subjected to police harassment, while the agents escape in the meantime, being well aware of the situation (Shamin 1995, p. 13).

A 30 year-old woman from Bangladesh, who was trafficked to Pakistan when she was twenty-seven, relates how she, along with 50 to 60 girls and 25 to 30 men from different parts of Bangladesh, was brought to Pakistan:

We were taken to a secluded place in the jungle before crossing the border to Pakistan under police custody. The border officials kept the girls who were pretty and sexually abused them until the other lots of girls came, then the previous ones were released (LHRLA 1991).

In Pakistan various brothels have been discovered in the slums in Karachi, where trafficked women and children are confined:

At times police raid these dens, usually when their bhatta or protection money is stopped by the den operators. It is alleged that the border security forces of all the three countries – Bangladesh, India and Pakistan – are involved (Shamin 1995, p. 14).

Burmese and Thai officials are reported to connive at or even to be involved in trafficking

of Burmese women to Thailand and to protect practices of forced labour in Thai brothels, as documented in a report of an Australian Government Committee with regard to the situation in Burma:

Agents have very sophisticated arrangements with the Thai police. In many instances, the girls could document instances of being transported into Thailand with policemen in uniform, armed and often in police vehicles. Once in Thailand the brothels are under protection and had the patronage of the police. One of the girls tells that she saw the police in all the brothels where she worked. They seemed to know the owners very well and were often around with their uniforms, guns and walkie-talkies. They also often took the girls to the rooms or out for the whole night. In Klong Yai the police had special arrangements with the owner and could take the girls for free (Australia 1995, p. 49).

The report continues:

Women and girls from Burma who are victims of trafficking are arrested as prostitutes or illegal immigrants, detained in penal servitude in reform institutions. They suffer mistreatment, abuse and extortion in detention and are deported with little concern for the consequences of their return to Burma (Australia 1995, p. 50).

#### *Arrest, detention and deportation*

If women are arrested, they are either deported or jailed. In this way thousands of women end up in jails, often under appalling circumstances, sometimes for years and without hope of release. If they have no identity papers, they risk being denied citizenship of both their country of origin and the country to which they were trafficked. Agents and pimps make use of these immigration policies to dispose of women that are unruly or simply to avoid payment.

Reports of the Bangladesh National Women Lawyers Association (BNWLA) mention several cases of victims of trafficking who, after being arrested by the police – either before they were brought out of the country, or on their return from India or Pakistan to Bangladesh – are taken into so-called ‘safe custody’:

Safe custody prisoners are usually victims that are kept in jails because the court or any other competent authority decides it to be in their best interest. However, while safe custody prisoners are ideally supposed to be kept separately from convicted or under trial prisoners, this is not practised in reality. Many victimized women and children are thus further abused by being kept in overcrowded prison

cells, subjected to supervision by male officials and guards trained to manage criminals, and exposed to the detrimental influence of criminals (BNWLA 1995, p. 3).

In India thousands of Bengal and Nepalese women are held in jails and shelter homes. One of them is Hamida, a twelve year old Bengal girl, who was trafficked to India when she was ten. In addition several policemen raped her repeatedly till she was able to escape from her trafficker two years later:

Hamida now is detained at Tihar jail in Delhi ‘in safe custody’ for already two years. The young girl would like to leave the place but cannot find a way out. The five policemen have been released on bail. So far they have not been prosecuted. The trial against two of the three traffickers is repeatedly obstructed, amongst other things, due to the repeated absence of the public prosecutor. Meanwhile Hamida’s interpreter and sole support was removed as translator for ‘developing a sympathetic corner for the victim’ and is not allowed contact with Hamida any more following a Court order. Arrangements to send her back to her parents can only be made after instructions from the Home Ministry. Just two years ago, the Bengal high commission refused to admit her as their citizen. Now they admit she is from Bangladesh (based on information from *The Times of India* July 25, 1995 and reports of BNWLA 1995).

In Switzerland and Italy hundreds of Dominican women are detained in jail. Dominican women whose residence permit is expired are arrested by the Italian and Swiss police during raids on night-clubs and detained (El Nacional 1995). According to the IOM the majority of women is given a false identity in legal certificates and passports as a strategy used by traffickers to avoid legal problems both in the country of origin and the country of destination. As a result, women cannot legally make a complaint or ask to be repatriated because they are using a ‘non-existent’ identity. Other Dominican women are deported from Spain and Greece to the Dominican Republic after being caught by the police or reported by the traffickers themselves in order to avoid payment to the women. Many trafficked women cannot return because they do not have the financial means, are drug or alcohol dependent or are in prison (IOM 1996a).

In countries where prostitution is an offence in itself, as in Pakistan and Japan, women are arrested and detained both as illegal foreigner and as prostitute. Even if laws are formally designed to criminalize procurers and pimps, they turn out to be used to arrest the women instead of the offenders.

According to reports from Pakistan more than 2,500 Bengal women and children are held



in different jails in Pakistan under the *Hudood Ordinance* and *Illegal Entry Act*, while their offenders go free (BNWLA 1995). Most of them are between twelve and thirty:

When there are police raids, many women and children are arrested, while the main culprits are left behind. The victims are sent to jail under the Immigration Act and Hudood Ordinance and are detained. The pimps with the help of jail authorities meet these victims and assure them that they are their only saviours and no one would come to their rescue. But once they are released they have to obey the pimps. Victims who have been released on bail through these pimps are again trapped in the same vicious circle. Some detainees are further detained, despite completing their detention period (Shamin 1995, p. 16).

Powerful brokers and agents make it difficult for anyone else to get these women and children out of jail. In 1989, the Lawyers for Human Rights and Legal Aid prepared a list of 62 Bengal women detained in Karachi Central Jail (LHRLA 1991). Most of them had been in prison for more than three years and were facing charges for illegal entry, illegal border crossing and illegal stay in Pakistan.

The majority of the women did not have any lawyers to represent them and there was no external support to deal with their cases or provide them with basic necessities in jail. They were incessantly under pressure of touts who were very influential and having support of the local police, compelling them to come out with their effort to involve them after release again in prostitution (Shamin 1995, p. 16, based on a report of Shahid and Khan 1990).

In Japan immigrant women are charged under the *Prostitution Prevention Act*, given a suspended sentence and deported. The *Prostitution Prevention Act* was enacted to fulfil Japan's obligations under the 1949 *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* and criminalizes soliciting, procuring of a client for a prostitute, deceiving or forcing someone into becoming a prostitute and profiting from prostitution (GAATW 1996). In its application, the law punishes trafficked women and ignores the syndicates:

Lea worked as a prostitute in Manila. A recruiter approached her and offered her a job in a club in Japan. In Japan she was sold to the YAKUSA and forced to work without pay. When one day she refused to have sex with her employer, he locked her up for two months and denied her enough food. While she was locked up she was gang raped. Finally she managed to escape and reported to the police. The police invited her employer to the police-station for questioning, but after a few

minutes he left the station again. Lea saw her employer giving money to the policemen. The police reported Lea to the immigration for overstaying and she was deported (case summary, BATIS 1996c).

Women arrested by immigration control authorities on charges of immigration law violations (e.g. overstaying visa, working illegally, not possessing proper travel documentation) are deported from Japan under compulsion. During the procedures they are kept in detention. Due to immigration policies which stipulate that an alien must bear his or her own departure expenses, detention may be extended over an indefinable period of time until the woman acquires sufficient funds to return to her country of origin. The Japanese Immigration Review Taskforce reports several human rights violations against foreign nationals during their detention. Protection of the rights of foreigners who undergo criminal investigations or interrogations is extremely insufficient. Sexual harassment, rape and sexual assault by officials against foreign women in detention centres are reported frequently (Onitsuka 1995).

In most countries illegal migrant women are deported without any investigation and regardless of whether or not they are a victim of trafficking or forced labour and slavery-like practices. Illustrative is this interview with a representative of the Canadian Immigration Department, who simply states:

If any illegal migrant prostitute were involved in any activities prohibited by any laws (civil, criminal or otherwise) and a complaint or arrest was placed, then that person would be deported.

When asked about the circumstances, e.g., whether, if the woman was trafficked, abused or violated in any way while in the country, she could press charges, the answer is a clear no:

‘any involvement’ includes being victim of a crime – she would be deported (Sanghera 1996, p. 8).

In Taiwan migrant women are arrested and charged with illegal entry under the *Disruption of Social Order Act* and the criminal law. No effort is made to find out if they are trafficked or to prosecute the traffickers (GAATW 1996).

In the UK the development of a ‘system to identify migrant women as possible prostitutes at the border’ and the removal of prostitutes under the immigration legislation, is put forward as a way to contain the problem:

The Immigration Service points out that, in the case of prostitutes working for the Triad, it is difficult to obtain evidence against brothel managers and secure convictions [...]. It is for this reason that joint police/Immigration Service operations have been thought to be the best way of containing that particular problem. By removing prostitutes under the immigration legislation, the UK has been able to contain the problem to an extent. Greater international collaboration by all enforcement agencies working in this field might lead to prostitutes being identified and refused entry at the ports (Council of Europe 1994a, p. 53).

Exceptions to the policy of automatic expulsion are found in the Netherlands and in Belgium, where as a result of intensive NGO lobbying, women who press charges of trafficking are entitled to a temporary staying permit during criminal proceedings. According to a special ruling in the Dutch immigration law a woman must be allowed a three-month period of time to consider pressing charges if there is the least indication that she might be a victim of trafficking. When she presses charges she is allowed to stay in the Netherlands until the criminal process has been completed (Aliens Circular, Chapter B17).

In Australia, according to the report of the Committee on Foreign Affairs of the Australian Government, 120 illegal prostitutes were apprehended between 1992 and 1995, although 'figures are in no way representative, since women evade detection'. The women are in breach of immigration laws and therefore liable to visa cancellation, removal, deportation or prosecution. Those who are detained under the *Migration Act* are accommodated in Immigration Detention Centres, where medical assessments and female interpreters are supplied: 'Those being deported are only held for a couple of days while travel arrangements are made. If women apply for a protection visa, they are not held in detention and they receive a bridging visa and are usually granted permission to work' (Australia 1995, p. 52).

### *Double standards*

Even if prostitution is 'legal' for national women, its practice by foreign women can be ground for expulsion. This is the case in Germany, where a foreign woman may be deported on grounds of prostitution unless she is married to a German national. Comparable double standards on prostitution by nationals and by migrant women are applied in the Netherlands. As a result of the changing views on prostitution as work, the police in most cities now require migrant women to have a work permit, where before they accepted women to work on a tourist or artist visa. At the same time, however, it is prohibited by law to issue work permits for prostitution. Consequently women who fall victim to trafficking and/or slavery-like practices but who wish to continue to work as prostitutes

cannot turn to the police without giving up their source of income. Moreover, they still risk deportation the moment criminal proceedings have finished.

### *Conclusion*

With no access to legal residence and working permits and exposed to the constant risk of arrest and expulsion, migrant women are compelled to work in the worst conditions, without defence against abusive agents, brothel keepers and corrupt officials. Their position does not allow them to lodge a complaint in the case of trafficking and/or forced labour and slavery-like practices. If they nevertheless dare to do so, they face immediate deportation (with the exception of the Netherlands and Belgium) or arrest and detention as illegal foreigners and/or prostitutes. Even women who initially manage to organize their migration independent from a third party are, by virtue of their illegal status, more or less forced to rely on malafide or criminal organizations once they have arrived in their country of destination. The risk of arrest, either as prostitute or as illegal alien, makes it virtually impossible for women to defend themselves against violence and abuse and to notify the police or to press charges in the case of trafficking or forced labour and slavery-like practices.

## **5 Summary of legal definitions of ‘trafficking in women’**

In the preceding sections the existing prohibitions attached to prostitution and their applicability to situations of abuse and violence were examined, regardless of whether such prohibitions came under the heading of ‘trafficking’ or whether they addressed prostitution in general. One conclusion that can be drawn is that huge differences exist between countries as to what exactly is prohibited under the name ‘trafficking in women’. Acts which are prohibited under ‘trafficking’ laws in one country, are prohibited under laws on morality, public decency, vagrancy, pimping, procuring, abduction or exploitation of prostitution, etc. in another country.<sup>27</sup>

In the next section the various legal definitions of ‘trafficking in women’, as can be derived from the preceding sections, will be listed. Following each definition some examples will be given of countries where this definition is in use.

27. The following countries have specific provisions on ‘trafficking in women’: India, Bangladesh, Malta, Portugal, Thailand, Japan, Colombia, Peru, the Netherlands, Germany, Switzerland, Dutch Caribbean. Some countries which have no special provisions on ‘trafficking in women’ are: Canada, Norway, Finland, Lithuania, Hungary, Slovenia, UK, Turkey, Cambodia, Taiwan, Australia and Mexico.

*‘Trafficking in women’ = all prostitution and prostitution related activities*

Malta: under the 1930 *Order for the Suppression of the White Slave Traffic* all prostitution, accosting on a public highway, procurement and brothel keeping are an offence.

*‘Trafficking in women’ = any third party involvement*

India: under the 1956 *Immoral Traffic (Prevention) Act* any third party involvement is prohibited. In some cases penalties are more severe if the offence is committed against the will of the woman involved.

Bangladesh: the 1933 *Suppression of Immoral Traffic Act* prohibits any third party involvement.

Portugal: under the title *‘traffic in women’*, art. 217 of the Penal Code penalizes anyone who organizes the prostitution of others.

In India and Bangladesh the law prohibits ‘trafficking in persons and the exploitation of the prostitution of another person’, without defining ‘trafficking’ nor ‘exploitation’. De facto ‘trafficking in women’ is equated with any form of third party involvement, be it recruitment, procuring, living off the earnings of prostitution or brothel keeping. This type of definition is especially found in countries where legislation on prostitution is based on the 1949 *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*, like India and Bangladesh. Not only activities related to third party involvement, but also activities related to the prostitute herself, such as soliciting or loitering, are penalized under the prohibition of ‘trafficking’. In other countries similar prohibitions may be incorporated in general prostitution laws or specific provisions on prostitution in the Penal Code. Examples are the *Prostitution Prevention Law* in Japan, and the 1960 *Restraining of Prostitution Act* as well as sections 282-286 of the 1956 Criminal Code in Thailand.

*‘Trafficking in women’ = buying, selling or obtaining possession of a woman for prostitution*

Bangladesh: separate sections of the 1983 *Cruelty to Women (Deterrent Punishment) Ordinance* and the 1995 *Women and Child Repression (special provision) Law*, prohibit ‘trafficking in women’, defined as importing or exporting, selling, letting or otherwise dispose of, or buying, hiring or otherwise obtaining possession of any woman for prostitution or any other unlawful or immoral purpose.

*‘Trafficking in women’ = any recruitment for prostitution, with or without consent*

Nicaragua: under ‘trafficking in human beings’, art. 203 of the Penal Code penalizes any recruitment of persons for prostitution within or outside the country, with consent or by

means of deception or threat, including bringing persons into the country for the purpose of prostitution.

*‘Trafficking in women’ = facilitating migration for prostitution/bringing a person/woman into prostitution in another country/promote or facilitate the entrance to or exit from the country of a woman to practice prostitution.*

Thailand: the 1928 *Act on Prevention of Traffic in Women and Children* penalizes anyone who brings women or girls into Thailand or sends them abroad for the purpose of having sexual intercourse with other persons, including any person who is illegally involved in the trading of women and girls brought into the country for such purposes.

Japan: under ‘traffic in persons’, art. 225 & 226 of the Criminal Code prohibit the kidnapping of a person with the purpose to transport such person out of Japan, buying or selling another person with the purpose of transporting the same out of Japan and transporting a kidnapped or sold person out of Japan. There are no provisions on bringing a person into Japan.

Colombia: under ‘trafficking in women and minors’, art. 311 of the Penal Code prohibits to promote or facilitate the entrance to or exit from the country of a woman or a minor to practise prostitution.

Peru: the Penal Code contains the same prohibitions as in Colombia, but also prohibits transit through the country (art. 182 Penal Code).

Austria: under ‘trafficking in human beings’, section 1 of par. 217 of the Penal Code prohibits leading someone into or recruiting someone for prostitution in a country other than the person’s own (citizenship) or that where the person normally resides.

United States: the *White Slave Act*, commonly known as the ‘*Mann Act*’ prohibits transporting someone ‘in interstate or foreign commerce’ to engage in prostitution or to induce or coerce someone to travel ‘in interstate or foreign commerce’ to engage in prostitution.

*‘Trafficking in women’ = bringing another person into prostitution by violence, deceit, or abuse of authority or circumstances*

Nepal: the 1987 *Trafficking in Persons Control Act 2043* prohibits ‘trafficking’, defined as involving a woman in prostitution by enticing or alluring by undue influence, fraud, threat, force or any other means.

Austria: section 2 of par. 217 of the Penal Code prohibits under ‘trafficking in human beings’, recruitment for prostitution in another country by means of deceit or violence.

*‘Trafficking in women’ = bringing or keeping a person in prostitution by abuse of circumstances and/or violence, deceit or abuse of authority*

Germany: under the heading of ‘trafficking in human beings’, the German Criminal Code

penalizes any one who, for profit, induces a person into prostitution or keeps a person in prostitution by abusing the circumstances of that person or exploiting the helplessness connected with being in a foreign country.

The Netherlands: under art. 250ter ‘trafficking in persons’, the Criminal Code penalizes anyone who recruits a person for prostitution or organizes/manages the prostitution of others by means of violence, deceit or abuse of authority. It is not relevant whether the woman knew she would work as a prostitute or worked in prostitution before.<sup>28</sup>

*‘Trafficking in women’ = sale and purchase of a human being for any purpose*

Nepal: the 1987 *Trafficking in Persons Control Act 2043* prohibits ‘trafficking’, defined as the sale and purchase of a human being for any purpose. Taking a person to a foreign country for the purpose of trafficking is prohibited by the same law. In addition the 1963 *New Muluki-Ain* prohibits under the chapter on ‘trafficking in persons’ to allure persons to cross borders with the intent of trafficking, enslaving persons or striking a deal regarding human trafficking.

*‘Trafficking in women’ = punishable without further definition*

In some countries, such as the Dutch Caribbean, the law simply prohibits ‘trafficking in women’ without providing a definition.

## 6 Conclusions

It can be concluded that legal control of prostitution targets the outward appearance rather than the working and living conditions in which women find themselves. On the whole, governments are far more anxious about public order and public health than about abuse and violence. An example provides Turkey where the government reports, after having stated that trafficking in women and forced prostitution are no problem in Turkey:

However, according to unofficial information from the Black Sea region, foreign women involved in traffic have relations with married men. As a result, some Government departments have expressed their concern about the wives, as they rather constitute a potential high risk if no preventive measures are taken with respect to sexually transmitted diseases, including AIDS (Council of Europe 1994a, p. 48).

28. This interpretation of the current article 250ter PC is laid down in the special Directives of the Procurators-General on trafficking in women.

Laws on prostitution and ‘trafficking’ are seldom designed to target abuse and violence. On the whole no distinction is made between abusive or coercive situations and situations based on mutual agreement. All forms of recruitment, mediation, profiting from, organizing or managing prostitution are criminalized, no matter conditions of consent or coercion and no matter the will of the woman involved.

Provisions on ‘trafficking’ predominantly address the recruitment aspect, their main concern to prevent ‘innocent’ women (contrary to ‘guilty’ women) from being ‘lured’ into prostitution. As far as they define ‘trafficking’ as bringing a person into prostitution in another country, they generally do not target deceit or force, but focus predominantly on the (illegal) migration aspect. Most prohibitions of this kind indiscriminately criminalize any facilitating of migration for sex work, thus rejecting and denying prostitution as a survival strategy for the women involved.

Irrespective of how women enter prostitution, once they are a prostitute, they are more or less outlawed and deprived of all protective mechanisms other citizens are entitled to. Insofar as specific provisions against violence and abuse exist, they tend to apply exclusively to the category of ‘innocent’ women, that is to say ‘non-prostitutes’: women who were not prostitutes before, did not know they would work as a prostitute, do not want to continue working as a prostitute and whose virtue on the whole is ‘undisputed’ in every possible respect. According to this interpretation ‘prostitutes’, that is any woman whose virtue is ‘disputed’, cannot be subject to trafficking.

Hardly any specific provisions are found that address forced labour and slavery-like practices in prostitution. Non-prostitution and non-gender related general provisions, penalizing for example illegal confinement, kidnapping, debt bondage, extortion, compulsion, forced labour, slavery-like practices etc., are seldom applied or – again – only in the case of ‘innocent’ women. The over-all result is that women working in prostitution are deprived of any legal protection, irrespective of how they entered prostitution.

Whereas the use of violence is seldom considered a relevant factor in law, in all countries the ‘virtue’ of the woman involved is considered to be of overriding importance. Sometimes this is explicitly worded in the law, as in Colombia. This concept of a ‘scale of female chastity’, determining the seriousness of the crime, is found in the criminal codes of a great number of Latin American countries, for example in Venezuela, El Salvador and Paraguay, where the penalty for rape is reduced by one fifth if the victim is a prostitute, no matter the age of the girl involved. In the same way abduction is less heavily penalized if the victim is a prostitute or when it is done with the intent of marriage (!).



Another example is provided by the German law, which defines ‘trafficking’ a less serious crime if the victim knew she would work as a prostitute or when she ‘is not far from prostitution’.

Usually, however, the virtue of the woman is not mentioned as an explicit criterion in law, but – implicitly or explicitly – plays a crucial role in the interpretation and enforcement of the law. In trafficking cases as in other cases of sexual violence, it is by no means exceptional that the victim stands trial instead of the accused. An illustration is the case of Lisa, a Filipina who was trafficked to the Netherlands in 1981.<sup>29</sup> After 7 years of struggling to have her traffickers brought to trial, the Dutch Court sentenced the Dutch suspect to 2½ years imprisonment. However, the man who recruited her on the Philippines, a chief prosecutor of the Court of Justice in Lisa’s village, was acquitted by the Philippine Court, with reference to the alleged immoral character of the victim:

Considering her glaring immoral conduct manifested by her unusual inclination for illicit sex, she will have no qualms in fabricating situations to pursue her ends in bringing the accused to public ridicule [...] what amazed the Court is why the authorities [...] relied on the sole uncorroborated testimony of Lisa M., whose penchant for lying is so manifest and whose moral background is more than questionable [...], despite the declaration of the accused whose character is beyond reproach and whose public life remains unblemished (STV 1991a, p. 10/11).

The fact that a woman’s alleged character and sexual history is of decisive importance in deciding whether or not she can be a victim of trafficking exemplifies the widespread and deep-rooted notion that only ‘decent’, that is ‘innocent’ or ‘chaste’, women can claim protection against violence, rape or abuse.

Also in other ways the interpretation of the law and its enforcement are often discriminatory towards women. Actions against ‘trafficking’ tend to be limited to raids on prostitutes, as in Thailand where only women are prosecuted under the article that penalizes anyone found in a brothel. Whereas violence against prostitutes goes unpunished, women using violence against their captors on the contrary face severe punishment, as illustrated by these stories of Thai women trafficked to Japan:

Sometimes, the only way left for women to escape is to kill their captors. Three Thai women who had been forced into prostitution, killed their ‘mamasan’ to

29. See for an extensive review of the lawsuit in the Netherlands and the Philippines: *From the other side of the sea, Lisa’s story* (STV 1991a).

escape. She had kept them, withheld their passports and never paid them. They were sentenced to ten years imprisonment. Another group of five Thai women killed a Singaporean night club owner in Japan. They had been forced into prostitution and saw the murder as their only way out. They were sentenced to terms of between four and six years. In this last case a NGO initiated a private action against the husband of the night-club owner. He was arrested but released after 21 days on paying a fine of approximately US \$ 250 (GAATW 1996, p. 28).

On the whole existing legislation offers few if any possibilities for women to take legal action against their violators due to their illegal or socially marginalized status as prostitutes. In the case of migrant women, common policies of expulsion not only hamper women to press charges, but also make prosecution virtually impossible since the main witnesses are deported. But even when the law enables women to press charges, many women will choose not to do so. One reason is the lack of legal protection against retaliation. Moreover, in many countries officials themselves are involved in trafficking or profit from the slavery-like conditions women are subjected to.

When laws against ‘trafficking’ exist they are seldom enforced. Even when they are enforced their objective of reducing trafficking in women is rarely achieved.

Existing laws on prostitution do not help in deterring women from prostitution, neither do they protect the fundamental rights of women working in the sex industry. They rather lead to various forms of exploitation and oppression:

Paradoxically, although it is these women’s income that gives the whole range of male functionaries in the brothel their living, the women are totally under the dominating control of these men. This can be done because of the fact that the whole issue of brothel prostitution is viewed as an aberrant behaviour of sexuality, which is not permitted in society. As a result it has been made into an exclusive institution, the operation of which necessitates male control through the intervention of the State (Khan 1992, p. 48).

Although being a prostitute as such is not against the law in most countries, to actually work as a prostitute is de facto made unlawful or subjected to an extensive range of legal prohibitions and regulations. In most cases these are predominantly designed to control prostitutes – be it in the interest of public order, public nuisance, public health or tax imposition – and contribute very little to the well-being of the women concerned. On the contrary, they expose women to arbitrary arrest and render the police an extraordinary

amount of power over prostitutes against which they can hardly defend themselves. This may lead to unsafe working conditions and increased dependence on third parties, as well as act as an effective barrier to escape violence or seek help and take legal action in the case of trafficking, forced labour and slavery-like practices.

Existing laws on prostitution lead to a profoundly ambivalent legal position for prostitutes. They are allowed to be prostitutes (either because they are a ‘victim’ or because they represent a ‘necessary evil’), but working as such is literally or de facto prohibited, since work always implies some sort of organization. The law itself deprives prostitutes of crucial means of assuring an income, e.g. facilities to recruit clients, to advertise, to hire accommodation, or to conclude labour contracts, and relegates them to an illegal and criminal circuit.

In general the various prohibitions and regulations contribute to the stigmatization of prostitutes and strengthen their marginalization and isolation. Regulations on mandatory registration not only stigmatize prostitutes, they may also force them to stay in prostitution or make it much more difficult to take up another job if they want to. Prostitutes who are in breach of the law may be sentenced to fines or imprisonment. In some countries they can be sentenced to forced detention in rehabilitation centres, like in Japan, India, Vietnam and Thailand.

Migrant prostitutes risk being arrested as illegal aliens and deported. With the exception of Curaçao it is not possible to obtain a legal work permit for prostitution. This implies that women are either relegated to middlemen or husbands to provide for a legal status as an artist or a wife, or condemned to the life of an illegal alien without any rights or access to legal, social or medical services. In both cases pressing charges in the case of violence or abuse will mean deportation, with the exception of Belgium and the Netherlands, where women are entitled to a temporary staying permit during criminal proceedings.

All prohibitions and regulations have as a common starting point the moral condemnation of prostitution. This legal standpoint leads to a social and legal attitude towards prostitutes according to which they are primarily seen as ‘victims of their situation’ or ‘in compliance with their situation’, instead of as autonomous individuals and carriers of rights.

Prostitution itself is considered either a moral evil that should be eradicated or an inevitable evil that has to be accepted and controlled. The first view is supported by moral arguments, holding that prostitution is incompatible with the dignity and value of

human beings and ‘endangers the welfare of the individual, the family and the community’.<sup>30</sup>

Within the second view prostitution is just as much considered morally unacceptable, yet impossible to eradicate from society. As Kempadoo notes in her analysis of the regulation of prostitution in the Dutch Caribbean:

Regulations were thus constructed to facilitate the sale of female sexual labour to men, premised on several assumptions. First, that heterosexual intercourse was necessary for male health and well-being. A second was that homosexuality led to moral degeneracy and a third, that sexually transmitted diseases were most harmful to the working and fighting power of men (Kempadoo 1995, p. 1).

Prostitution is thus considered not only an inevitable, but even a necessary evil. To protect society against the dangers of this ‘necessary evil’ prostitution is controlled through the introduction of regulations and various State sanctioned measures in the interest of public order, public health, masculine needs, the need to protect ‘decent’ women, tax payment, public nuisance and visibility. Prostitutes, however, are not given legal rights as workers, neither does the State take responsibility for their working conditions.

While in reality all States tolerate or legitimize prostitution as long as it does not cause nuisance or disruption to the broader society, all legal systems based on the ‘immorality’ of prostitution simultaneously outlaw prostitutes – regardless of whether they are viewed as victims or as deviants – simply because they are prostitutes. As formulated by Khan and Arefeen in *Prostitution in Bangladesh*:

The State proclaims prostitution illegal on the basis of its immorality, while its law and its administration by the courts allows women to operate as prostitutes. The police uphold this legal position by ‘protecting’ the prostitutes in the brothel and outside. This contradictory role of the State not only perpetuates this institution and the socio-religious ideology which creates it in the first place, but also creates opportunities for the exploitation and oppression of women in it (Khan 1992, p. 243).

In no way do existing laws take the women themselves or their views and interests as a starting point. Prostitutes are objects of the law that either have to be ‘rescued’ or made ‘harmless’ (i.e. not dangerous to public health or order). They are not subjects accorded

30. Preamble 1949 *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*.

with rights. Even where the law does not criminalize prostitutes, it does not encompass legal rights for women engaged in prostitution, whether as workers, as citizens, or as persons, thus depriving them of both workers' rights and human rights.

## Chapter 8

### Current strategies

#### Introduction

An analysis of current strategies reveals a variety of approaches reflecting the diversity – and divergence – of the various definitions and interests attached to the issue. Different solutions – that is, measures to prevent or combat ‘trafficking in women’ – are drafted, depending on the conceptualization of the problem to be solved and the corresponding analysis of its causes. Each definition produces its own solutions and each solution is connected to a certain definition of the problem; if ‘trafficking in women’ is predominantly viewed as an economic problem, different solutions will be proposed than if it is viewed as a problem of morality, (illegal) migration or (organized) crime.

Any analysis – and its matching solutions – carries its own value. The issue is complex and strategic responses are therefore necessarily multi-faceted. More than one strategy is appropriate and any one approach is not by definition good or bad. It is, however, possible to evaluate the impact of a given strategy on the situation of the women concerned and such is the aim of this review. Precisely the fact that trafficking in women is related to so many other areas and (State) interests means that each proposed solution needs to be carefully examined in terms of which problem and, above all, whose problem it aims to solve, whose interests it serves and what the effects on the women concerned will be. Does a given strategy address the problems of the women concerned or the problems of the State? Will it help to prevent and combat abuse and violence or does it in fact target another problem? Will it improve conditions for the women involved or will it make their situation worse?

From the array of current strategies six main approaches can be separated: ‘trafficking in women’ as a moral problem, as a problem of (organized) crime, a migration problem, a public order problem, a labour problem and as a human rights problem. Within each approach, two modes of strategies can be distinguished: repressive strategies, aimed at suppressing ‘undesirable behaviour’, such as criminality or illegal migration, and empowering strategies – used primarily by NGOs – geared towards supporting women and strengthening their position.

## 1 A moral problem

The oldest approach to ‘trafficking in women’ is the moral approach, based on the moral condemnation of prostitution. Prostitution as such is considered a social evil that should be eliminated. Trafficking in women is regarded as simply being part and parcel of the overall evil of prostitution. Prostitution and trafficking thus become practically identical. Measures to combat trafficking aim at the elimination of prostitution. Even when in words the ‘problem’ of prostitution is put in other contexts, for example in a human rights or feminist context, the underlying notion is a strong moral rejection of prostitution as such (and thus of the idea of prostitution as legitimate work), with all its (negative) consequences for the women involved.

### 1.1 Governmental policies

Corresponding governmental strategies include criminalization either of all parties involved in prostitution (as in a prohibitionist system) or of any third party (as in an abolitionist system).

Within an abolitionist approach prostitution is believed to persist only through the efforts of procurers and pimps, the ‘third parties’, who induce women into prostitution for their own profit. The abolition of prostitution and the protection of women against this evil can therefore best be achieved by penalizing those ‘third parties’, that is, anyone recruiting for or profiting from prostitution. The prostitute herself on the other hand should not be punished, as she is a victim. Prostitutes are basically seen as passive victims of the social and economic system who need to be rescued, thus negating individual choices and denying women the status of subjects capable of assuming individual agency and responsibility.

Though unintentional, the impact of such anti-prostitution legislation on the women concerned is invariably a combination of isolation, stigmatization, marginalization and social exclusion. The prohibition of any legal organization of prostitution encourages its association with (organized) crime. Even improvement of working conditions may be considered in law as ‘promoting’ prostitution, as exemplified by a number of court rulings in Germany:

In recent legal cases some rulings go so far as to construe all forms of good working conditions in brothels, or brothel-like businesses, such as good sanitary equipment, internal social arrangements, and even the supplying of condoms, as a promotion of prostitution’ (to be punished with a term of imprisonment up to three

years, or with a fine (art. 180a STGB). The background to this is the idea that good working conditions are not conducive to turning women away from the ‘deviant’ way of life they have entered (Europap 1995, p. 102/103).

The prohibitionist system goes one step further by not only criminalizing any ‘third party’ but also the prostitute herself. Although in theory all parties involved in prostitution are criminalized, in most cases the primary target for law enforcement is the female prostitute, not those who profit from her income. In the case of violence or abuse there is no authority, not even hypothetically, women can turn to, as they themselves are punishable by law.

In both systems organization of prostitutes is impeded by the stigma and the criminal charges attached to prostitution, which not only prevent women from publicly asserting themselves, but may also expose them to serious threats.

Numerous attempts to organize have been blocked by violence or social control. In Ireland, for example, a prostitute who tried to organize her colleagues was killed; fire was set to her house and she was burnt to death. In Thailand, a few women tried to organize a kind of union called ‘Thai Night Guard’, but they failed because of family pressure, police harassment and threats from their managers. In Ecuador, brothel managers purposely rotate prostitutes each week to prevent them from grouping together and expressing their grievances about ill-treatment and bad working conditions (Pheterson 1992, p. 7).

## 1.2 *NGO strategies*

Non-governmental organizations direct strategies primarily against moral judgements and their negative effects on women. They campaign for better legal protection of the women concerned, fight prejudices against prostitutes and question the division of women into ‘good’ and ‘bad’, ‘innocent’ and ‘guilty’:

Many strategies have been applied in fighting against this form of violence against women [...] some actions are spontaneous, for example, the demonstrations at airports. Others involve a long process requiring broad-based co-operation [...] The obvious lesson we learn from all the cases is that prejudice against women victims of international trafficking and sex tourism is very strong. The division of ‘good’ versus ‘bad’ women is strongly pronounced. There is no legal protection for ‘fallen



women' because society believes that prostitutes cannot be victims (Skrobanek 1992, p. 34).

Over the last few years an increasing number of groups – prostitutes' rights organizations, women's organizations working with prostitutes and anti-trafficking groups – advocate leaving the abolitionist course in favour of an approach of prostitution that starts from the point of view of the women themselves. The basic principle underlying this approach is the appreciation of women as independent citizens who are able to exercise the same freedom as men, but also expect the same protection from violence and abuse. In this view, policies should be based on the rights of the women concerned to self-determination and the protection of their rights as citizens and workers. Moral judgement against prostitution should not be the principle motivation in drafting policies, if only because of the danger of marginalizing and stigmatizing prostitutes. It is rather believed that trafficking in women, coercion and exploitation can only be stopped if the existence of prostitution is recognized and the legal and social rights of prostitutes are acknowledged and guaranteed.

Connected to this debate is the debate on the role of the State. Based on the 'harm to others' principle as formulated by John Stuart Mill<sup>1</sup>, it is believed that the State is only entitled to intervene in the life of its citizens when the behaviour in question is harmful to others (as is the case with force, deceit or violence). Moral rejection on its own is not a sufficient reason for State intervention. State intervention with regard to behaviour that is not harmful to others but only to the person itself is rejected as paternalistic. This does not necessarily mean that prostitution or the profiting from prostitution are not considered moral problems. It mainly implies that there is no role for the State in promulgating morality. This notion is contrary to the obligation in, for example, the 1949 Convention to penalize profiting from prostitution of others, including adult and independent women who have given their consent to this by their own volition. Not the stimulation of morality by criminal law, at which the treaty apparently aims (and many States with it), but the protection of those who work under involuntary or coercive conditions should be the object of criminal policies.

## 2 A public order problem

In particular in the context of prostitution, trafficking in women, forced labour and slavery-like practices may also be seen as a public order problem. Strategies then focus on the

1. In his essay *On Liberty* in 1859.

regulation of prostitution or, more general, the work in which (migrant) women are engaged, in the interest of public order and health. The effects of such regulations depend to a large extent on the interests that they are meant to serve: those of the authorities or those of the women involved.

### *2.1 The interest of the State*

Although the majority of States officially prohibit any ‘exploitation of prostitution’, in practice, as has been shown, most countries have more or less extensively regulated prostitution, thus combining abolitionist legislation with a regulatory practice. Within a regulationist approach trafficking in women, forced labour and slavery-like practices are predominantly put in the context of public order and public morality. The existence of prostitution is more or less accepted as an ‘inevitable’ evil, but at the same time considered a threat to public health and public order, because of which it has to be controlled and regulated.

Corresponding government policies focus on enforcement of public order through the repression or control of ‘indecent’ or ‘disorderly’ behaviour or persons. In the interests of public order and public health, regulations are enacted to ban such behaviour or such persons as much as possible from public life and public visibility. Regulation generally takes place through different forms of mandatory registration and other methods of State control. These include mandatory medical checks, prohibitions on working outside certain areas or places, prohibitions on soliciting, loitering or related activities, and regulations on the nationality and residence status of the women concerned (e.g. prostitution of local women is allowed, but migrant women lose their staying permit if found working in prostitution), often with corresponding penalties for women who fail to comply to those regulations. Principal motivation is not the interests of prostitutes but rather the interests of the State, notably public order, public nuisance, public health and tax imposition. As argued in chapter 7, those types of regulations often carry negative results for women, if only because of their stigmatizing and marginalizing effects.

Reminiscent of such an approach is the recommendation of the European Commission in its Communication on Trafficking in Women to educate potential clients on the risks of sex with migrant prostitutes:

In order to discourage potential clients, preventive work on information on health risks could be stepped up. This would also help in reducing risks to public health within the EU (European Commission 1996).

It is evident that women have not much to gain from regulations which are designed to ban them from public life or to control their activities in the interests of others.

### *2.2 The interest of the women concerned*

When taking the interests of the women concerned as the starting point, public order would not be defined in terms of controlling the worker but rather in terms of controlling the working conditions. Licences, for example, could be withdrawn when brothel keepers fail to comply with certain standards with respect to working conditions, such as health and safety standards, the right of workers to refuse clients or specific sexual acts, the right to choose one's own doctor, confidentiality of medical information etc. In the same way licenses could be withdrawn in the case of coercion or abuse. Currently there are no governments that put such an perspective in operation, although the Netherlands may do so in the near future.

## **3 A problem of (organized) crime**

In line with the generally increased popularity of criminal law as the instrument to solve any kind of societal problems, 'traffic in women' has been more and more defined as a problem of the criminal law and the criminal justice system. In many countries both governmental and non-governmental organizations call for more stringent criminal legislation, heavier punishments, more (international) police co-operation and other measures which enable more effective prosecution. The underlying idea seems to be that if the State does not evoke action by the criminal justice system, the problem is not taken seriously. Combating trafficking thus becomes equated with (and often restricted to) combating organized crime.

For States a criminal approach is appealing. Criminalizing certain behaviour provides States with the opportunity to demonstrate that they address the problem. At the same time it releases them from taking other, and maybe more effective, measures. As described in chapter 7, States have extensively and in many wordings criminalized 'traffic in women' and related acts in the context of prostitution.

### *3.1 The interest of the State vis-à-vis the interest of the women concerned*

However, the choice for a penal approach is not without risks. Addressing a particular problem in the context of the criminal law means transforming the problem in such a way that it can be mastered by the criminal law and the criminal justice system. Facts and circumstances that are irrelevant in the criminal context are precluded. The criminal justice system operates in terms of concrete offences committed by identifiable individuals. The context in which a certain event takes place is reduced to a specific act by a specific individual; only that is relevant for the criminal justice system. A criminal approach necessarily focusses on individual victims and perpetrators while structural causes of complex problems are not taken into account. Moreover intervention by criminal law is by definition in arrears and covers only a fraction of the actual cases.

In practice criminal laws on trafficking often seem to have a purely symbolic value since they are rarely applied, as is the complaint of many NGOs. Another general complaint of NGOs is that criminal laws are mostly used against the women, rather than against the perpetrators. It often even seems to be of no importance at all whether or not the criminal law is effective. In fact, experiences of women who have encountered abuse point out the opposite.

Even if existing policies allow women to report to the police, most women will not consider doing so a viable route to take. Many victims of trafficking and slavery-like practices have had negative experiences with the police, such as arrest, harassment, detention and, for migrant women, expulsion. Corruption and abuse of power flourish in many countries. The majority of the migrant women are undocumented or become so the minute they leave their abusive husbands or employers, which implies that contact with the police exposes them to arrest and expulsion.

Women also refrain from pressing charges for fear that they themselves will be blamed for the abuses committed against them. Moreover, criminal proceedings can lead to stigmatizing exposure at home, e.g. when the criminal investigation involves the collection of information in a woman's home country. Pressing charges may also expose women to reprisals on the part of their perpetrators and/or harassment and persecution on the part of the authorities, especially in countries where prostitution is criminalized. If women report to the police they take a considerable risk without proper protection against reprisals. In almost all countries adequate witness protection is absent and so is the right to have social, legal and medical support, not to mention the right to redress and compensation.

Another barrier for women to report is the prevailing attitude towards prostitutes and migrants, and the way the law tends to work to their disadvantage, as extensively discussed in the previous chapter.

Although the interest of the State in a criminal approach, i.e. combating (organized) crime, is rather clear, it is much less clear how a criminal approach serves the interests of the women concerned. The criminal justice system fundamentally serves interests other than those of the victims of a crime. The position of crime victims is a general problem in criminal law, but this is exacerbated in trafficking cases. Prosecution of the offenders does not imply rights for the victims. On the contrary, in general the interests of the women involved are made completely subordinate to the interests of the prosecution. The sole interest the criminal system has in victims is their value as witnesses. The devastating consequences that acting as a witness may have for their personal lives and future prospects bear no relevance whatsoever to the law. As yet a criminal approach seems to worsen the problems of the women concerned and even create new problems, rather than providing solutions. This is not to say that victims have no interest in the criminal justice system at all. Apart from many other things trafficking and slavery-like practices undeniably violate the sense of justice of the women affected. Successful prosecution of the offenders may mean a certain recognition of the wrong that has been done. As expressed by a Philippine woman who fought for years to get her traffickers convicted: ‘I’m not only doing this for myself, but also to give courage to other victims of trafficking, proving them that there is a way to win justice (STV 1991a)’.

### *3.2 Governmental policies and NGO strategies*

Where ‘trafficking’ is seen as a criminal problem, government policies lean towards more punitive legislation with longer and heavier penalties, increased national and international police co-operation, and a more active prosecution of offenders.

Corresponding non-governmental strategies are directed towards supporting individual women with legal aid, safe shelters, medical care and counselling. Advocacy groups provide and organize legal assistance and give information about rights and legal procedures. They help women to file complaints, provide support during police interrogations, court proceedings and cross examinations, and work to counteract attempts to discredit women’s testimonies. They try to prevent immediate expulsion and to get women discharged from prison. Apart from supporting individual women, NGOs offer education and training for police and judicial personnel to increase awareness of the phenomenon and the consequences for the women involved and to change attitudes towards women in general and victims of trafficking specifically. They carry out awareness campaigns and lobby for recognition of trafficking in women as a crime. They campaign to get complaints taken seriously and point out the need for better co-operation between different governmental institutions and between States in order to more effectively prosecute the

offenders. In some countries NGOs work to expose the involvement of corrupt officials in trafficking and slavery-like practices.

Most central however, NGOs lobby for measures to improve the position of the victims, such as the right to a (temporary) staying permit, the right to an interpreter, legal aid and adequate witness protection during legal proceedings, the right to State aid and a safe shelter, the right to compensation for damages, and the right to permanent residence on humanitarian grounds or, when appropriate, political asylum according to international guidelines. It should be noted that lobbying for more rights is not everywhere without risks. In some cases organizations advocating migrants' rights are themselves exposed to prosecution.

Some NGOs plea for stricter criminal legislation and higher penalties, but most respondents mention that first of all existing laws should be applied.

## **4 A migration problem**

As argued before, trafficking has increasingly become defined as a problem of (illegal) migration. Within this approach attention is exclusively focused on cross-border movements. Trafficking within national borders, as well as forced labour and slavery-like practices are not addressed. Depending on the party for which 'trafficking' is seen as a problem – the State or the women involved – solutions vary.

### *4.1 The interest of the State*

In many of the economically advanced countries, particularly the Western and Northern States, migration flows from the poorer regions are increasingly seen as a problem, such in contrast with the situation during the 1970s and 1980s when cheap labour from developing countries was in demand. To protect the State against alleged 'uncontrollable flows of migrants', more and more restrictive immigration policies are put in place. Corresponding policies to combat 'trafficking in women' are predominantly directed at immigration control. Within this view prevention of 'trafficking' is taken to mean 'to prevent the entry of possible victims', as worded in the recommendations of the working group on Migration Policy Measures at the Vienna conference on Trafficking in Women organized by the European Commission in 1996 (European Commission 1996a). Measures include tightening visa policies, stricter control of foreigners on the national territory, closer supervision of 'mixed' marriages and criminalization of third parties who facilitate illegal entry or stay (and sometimes of the migrant her or himself). An illustration of this

approach can be taken from one of the discussion papers prepared for the above mentioned conference. The basic concern expressed in this paper is how to control borders and the legal status of ‘aliens’ in the European Union:

The control of EU’s external borders is the keystone as far as the arrangement of the actual travel and entry into the country is concerned [...] it is justified that all activities striving for illegal import of persons be subjected to sanctions as such in all States [...] An alien who has been engaged in prostitution in Finland will find it difficult to get a new visa, because it is possible to apply certain waiting periods to her (Veijalainen 1996, p. 8)

The paper concludes by reiterating the (real) interest of the EU in addressing ‘trafficking’, which is obviously not the protection of women’s rights:

The members of the Reflection Group of the 1996 Intergovernmental Conference of the European Union have said in their report that the Conference should strengthen the Union’s capacity of protecting its citizens against terrorism, drug trafficking, money laundering, exploitation of illegal immigration and other forms of organized crime. So there is a growing need for *public security* that cannot be met by States acting alone (Ibid., p. 11).

As discussed in chapter 7, some countries explicitly exclude (alleged) prostitutes from legal emigration or immigration by arguing that in doing so they combat ‘trafficking in women’, like the UK. Other countries categorically forbid migrant women to work in prostitution under penalty of detention and expulsion, even if they permit nationals to do so.

Though purporting to combat ‘trafficking’, such measures aim in fact at protecting the State against (illegal) migrants, rather than at protecting those migrants against violence and abuse, thus serving the interests of the State rather than those of the women.

Not only destination countries seek to counteract ‘trafficking in women’ by obstructing migration, especially of (young) women. The Indonesian government announced that its citizens will no longer be allowed to work overseas as maids (domestic workers) by the year 2000, due to the increasing numbers of Indonesian workers being maltreated overseas (AMC 1996). In Bangladesh the Government carried out restrictive measures against its own citizens, following incidents of women workers who had been abandoned by recruiters and then turned to prostitution or who had been tricked into prostitution. Rather than taking measures to strengthen the position of women workers against the

trickery of recruiting agents and corruption of officials, the government issued a directive prohibiting the issuance of No Objection Certificates (NOCs) for low and semi-skilled women. Significantly the ban was worded in such a way that the women were blamed for their own condition: ‘These women [...] have low moral standards and can easily be seduced to be engaged in immoral activities’ (Sobhan 1992). In her report, Sobhan relates cases of women who, being financially desperate and having no opportunities of job advancement at home, managed to find employment overseas through clandestine means and after paying bribes. The cases she describes not only show that there are ways to get around official bans, but above all they illustrate that, precisely because of the restrictions imposed by their own government, women were actually compelled to run greater risks of exploitation and abuse.

#### *4.2 The interest of the women concerned*

Clearly the interests of the women involved oppose those of the State. For them it is precisely their illegal status, the lack of legal migration possibilities (in combination with the demand for work in the informal sector) and the unavailability of work in their own country that force them into an illegal circuit without protection against violence and exploitation.

NGOs strongly oppose this transformation of trafficking in women as an issue of violence against women into an issue of illegal immigration. As put in the closing statement of the 1997 European NGO-Conference:

Governmental measures aimed primarily at combating illegality and illegal aliens, ‘protect’ the State instead of the women. Instead of preventing and combating violence against and abuse of women, such measures tend – even when they primarily target recruiters and exploiters – to further marginalize and criminalize the women concerned (European NGO-Conference 1997, p. 10)

However, not only NGOs criticize this development. In his discussion paper for an IOM seminar on trafficking in migrants, Claude-Valentin Marie, French migration expert, raises the following fundamental questions:

Given the substantial means (legislation, regulations and institutions) set up in recent years to restrict all entries by nationals of third countries and to limit admissions of asylum seekers, is there not a (serious?) risk that potential migrant flows may be diverted to totally illegal access channels? Does not this trend



towards ‘criminalization’ of individual movements of migrants have the paradoxical consequence of promoting the development of organized trafficking in persons? (Marie 1994, p. 19)

Since all countries rationalize the adoption of more stringent immigration policies by referring to the ‘threat to or disturbance of law and order’, two questions should be asked according to Marie:

Is it the traffic, associated with the acceleration of international mobility, which constitutes this threat? Or is it the mobility itself which is conceived as a disturbance of law and order? (Ibid., p. 20)

In the first case the migrant is seen as a victim of numerous forms of ill-treatment and those who exploit his/her precarious situation should be penalized. In the second case the migrant is seen as ‘troublemaker’ and it is his/her very mobility which constitutes the ‘corpus delicti’. In the opinion of Marie, almost all the measures devised by states to curb population movements place responsibility on the migrant him/her self, who is the one who is finally penalized. The result of this misconception of the ‘real’ threat is a continuous building up of controls aimed more at identifying (and punishing) the person who is ‘subject’ of the traffic than at taking action against the causes of the traffic and those who profit from it. According to him, the basic question that should be asked with regard to State migration control mechanisms concerns the tension between control and democracy and the risk that interests of the State may override the rights of individuals.

The questions raised by Marie echo a report of the Committee on Civil Liberties and Internal Affairs of the European Parliament released one year earlier, on immigration from Central and Eastern Europe:

Raising barriers around the European Union is unrealistic and it does not comply with the Western European countries’ humanitarian principles, which are based on freedom of movement. It must be assumed that both refugees and people in search of better living conditions will continue their efforts to settle in the European Union in the future, possibly in greater numbers. Faced with this situation the European Union must not become a fortress [...] The EU should, moreover, pursue a policy that tackles the causes of migration (Roth 1993, p. 5).

Similar questions arise in the context of countries of origin. Bangladesh for example sends huge numbers of workers abroad each year. In an interview the Counsellor at the Permanent Mission of Bangladesh to the UN, Mr. M. Quayes, observes that restrictions on

migration create distortions in the labour market, of which ‘migrant trafficking’ is but one. He warns against repressive anti-trafficking approaches which target migrants rather than traffickers, and expresses his fear that many countries view migrants as ‘troublemakers’:

The problem of trafficking would be reduced if people could have access to normal channels of migration, more conducive to the market forces [...] When we target trafficking, it will be essential to be sensitised about the humanitarian aspect of the individual. And legislation should NOT be directed at the migrant as troublemaker (IOM 1994a, p. 1 ff).

Like Marie he questions whether countries of destination see the ‘trafficking’ aspect of migrant trafficking as a cause of concern, or whether it is migration as such which is disturbing. Bangladesh, a country with a strong tradition of labour emigration, is concerned about trafficking, he says, but supports migration: ‘This is where we want to emphasise our difference’ from many countries of destination (IOM 1994, p. 2).<sup>2</sup>

Measures in the interest of the women concerned rather than in the interest of the State would imply the recognition of women’s work in the informal sector and the protection of their rights as workers and as migrants, including access to legal channels of migration. As stated in the aforementioned report of the Committee on Civil Liberties and Internal Affairs of the European Parliament:

If Eastern Europeans are to be prevented from immigrating into the EU illegally, they must be offered, to a limited extent at least, legal immigration and employment opportunities. Ways of regularizing the status of illegal immigrants already living in the EU must be sought. Illegal employment at marginal wages and under poor working conditions must be counteracted; workers from non-EU countries should be employed on the same terms as EU citizens (Roth 1993, p. 5 ff)

At the same time prevention would involve addressing the causes for migration. As Marie put forward, genuine prevention involves a political, democratic choice:

The true challenge lies in the obligation of the developed world to assume responsibility for, and even more the burden of, a genuine prevention policy which

2. However, it should be remembered that the government of Bangladesh itself enacted restrictive immigration measures for low and semi-skilled women, as described before.

benefits the poorest in the first instance. In this connection, it might be useful to restate that the first condition for the genuine exercise of freedom of movement (Helsinki) is the choice left to each person not to be obliged to use that freedom, without which it is no longer a right, but a constraint. The challenge is therefore not so much to prevent one person from entering the home of another, as to give each person the 'freedom' to stay at home [...] It therefore remains essential to encourage the developed States to expend, on this matter, energy at least equal to that displayed in the sophistication of controls on their common or national frontiers (Marie 1994, p. 21 ff).

However, no governmental policies can be found which address trafficking in women, forced labour and slavery-like practices from the perspective of migration in any positive, non-repressive, way. Governmental policies that are directed at women primarily aim to deter them from migration. Examples are programmes to inform women in their countries of origin of the risks of migration and the situation that awaits them in the destination countries, in the hope that this will deter them from leaving their country. In the same way embassies are called upon to warn women who apply for visa of the potential dangers. NGOs question such strategies and advocate caution, since these kind of measures easily lead to stigmatization of migrant women and may make it more difficult for them to return home, once stigmatized as 'victim' or 'prostitute'. Moreover, they observe that policies such as scrutinizing visa applications of women, closer border checks and stricter supervision of marriages involving women from 'suspect' third countries lead to humiliating and discriminatory treatment of migrant women at borders, police stations and embassies.

### 4.3 *NGO strategies*

Contrary to governmental policies, non-governmental organizations strive for the recognition of migration as a survival strategy for women and for the enhancement of the legal and social status of women migrants both in countries of destination and origin. Acknowledging migration as a strategy for women to escape from poverty or traditional and social constraints, NGOs pinpoint the many barriers which hinder women in achieving their ambitions. These barriers include immigration restrictions and the prevailing climate of discrimination in destination societies which do not make migrant women feel welcome, even when they are legally married to nationals of these societies and are therefore 'legitimate'. Moreover, as discussed before, women who deliberately embark on temporary migration for work are compelled to take on low paid, unskilled or marginal jobs

like domestic work and prostitution, regardless of their educational and professional qualifications.

NGO strategies within the context of migration include documentation and research, information and support programmes, campaigns to enhance the legal status of migrant women and the creation of alternative income and employment opportunities.

#### *Documentation and research*

In order to gain better insight into the mechanisms which put women into ‘risk situations’, NGOs research the legal and social conditions and mechanisms which hold migrant women (workers) in forced labour and slavery-like situations. They investigate questions like: are there indeed specific groups of ‘women at risk’ or is every woman a potential ‘victim’? Are there certain migration patterns to be recognized? How organized is trafficking in women in a certain region? NGOs – in particular feminist groups – develop participatory and action-oriented research methods, based on feminist principles. An example of such research is the action research on international migration and traffic in women, conducted by the Foundation for Women in Thailand in collaboration with VENA of Leiden University (Foundation for Women, Thailand 1994 and 1995).

#### *Information programmes*

Information programmes developed by NGOs generally acknowledge the need and right of women to work and to migrate. Apart from the more fundamental questions raised before, NGOs have learned that there is no way to stop women from leaving their country once they have made up their mind to try their luck elsewhere, if only because there are no viable employment alternatives which can compare to the expected earnings of even the lowest paying jobs overseas. Strategies of NGOs in countries of origin rather aim at ‘empowering’ potential migrants before they embark on their journeys. NGO programmes provide general information about migrants’ rights, cultural differences and expectations, as well as more specific information about laws, work options and working and living conditions in destination countries, validity of contracts and addresses where to get help if necessary. Printed information is available at strategic localities, such as embassies, airports, railway stations, public health offices, schools, etc. Information packs sometimes contain warning materials, illustrating poor working conditions, physical injuries and police raids on foreign prostitutes, with the aim to warn women of the dangers awaiting them. But in general NGOs avoid approaches that stigmatize migrant women abroad as ‘victims’, ‘enslaved’ or ‘forced’. Such images lower the chances of a safe return and social acceptance. They also undermine the self-esteem of migrant women, who have consciously chosen an economic strategy – even at the risk of abuse – to build a

better future for their children or families by working overseas or by marrying into a socially more secure society.

### *Support services*

Both in countries of destination and origin NGOs offer support services, run safe shelters, provide counselling, medical care and legal assistance and support women throughout legal proceedings. They provide all sorts of practical help, from language classes to assistance in obtaining the correct papers and negotiations with the authorities. They support women to leave or alter abusive situations and assist them if they want to return home. Some NGOs have initiated programmes aimed at supporting migrant women who return to their home countries, whether by their own choice or because they are expelled. Sometimes religious groups or churches financially assist women to return. However, in general there is little knowledge about what happens to these women after they have returned to their home country.

### *Advocacy and lobby*

In addition to offering practical support services, NGOs conduct information campaigns aimed at the general public and lobby for better legislation. Campaigns target the illegal or dependent status of migrant women as one of the crucial causes that put women into abusive situations and hold them there. They lobby for independent residence permits for migrant women who have fled abusive marriages, forced prostitution or slavery-like working and living conditions. They campaign against laws that render even legal migrants completely dependent on their employers or husbands. Long term advocacy campaigns aim at securing workers' rights for migrant women, including sex workers, and at the ratification and application of international agreements on the protection of migrant workers, such as the *International Convention on the Protection of Migrant Workers and their Families*. The advocacy for workers' rights for domestic workers is well-known. The lobby for the recognition of workers' rights for women in prostitution, both national and migrant, is more difficult and controversial.

## *4.4 International Organization for Migration*

Among international organizations the International Organization for Migration (IOM) is exemplary in its strategies on 'trafficking in women' from the perspective of migration. The IOM started to work seriously on 'migrant trafficking' in response to a UN General Assembly resolution on 'Prevention of Alien Smuggling', in which international organi-

zations were requested to ‘consider ways and means ... to enhance international co-operation to combat alien smuggling’.<sup>3</sup>

Within its overall mandate to promote ‘orderly and humane migration’ the IOM devoted its 11th seminar in October 1994 to the ‘International response to trafficking in migrants and the safeguarding of migrant rights’. This seminar marked the start of IOM’s efforts to address trafficking in women as a distinct issue within the wider phenomenon of ‘trafficking of migrants’. Since then the IOM has developed a broad range of activities consisting of four components: research, information campaigns, technical co-operation, and return and reintegration assistance (IOM 1995a). In the last two years the IOM has systematized and collated data and information from both governmental and non-governmental organizations in different regions of the world, which resulted in the production of an impressive number of country and region specific reports on the issue. Together with government representatives and NGOs, the IOM currently develops information campaigns for the Philippines and Vietnam to provide women and children with ‘credible information on potential dangers and likely circumstances should they choose to migrate illegally, with the aim to prevent them from being trafficked’. Similar campaigns are planned for Nepal and Bangladesh (IOM 1996e).

The most interesting current initiatives are two IOM pilot projects for the return and reintegration of trafficked Chinese, Cambodian and Vietnamese women and children from Thailand (IOM 1996e). The projects aim at creating an effective and humane infra-structure to facilitate the return and reintegration into their home villages of Chinese, Cambodian and Vietnamese women who have been trafficked to Thailand. It offers women who are practically ‘stranded’ in Thailand – either in immigration detention centres or in NGO shelters – a package of ‘integrated assistance’, including administrative-legal assistance, transport, medical attention, psycho-social counselling, vocational training and reintegration assistance. Success of the project will be monitored by regular follow-up visits to the returnee’s villages. The project is implemented in co-operation with NGOs and government bodies in countries of origin and destination. Since those are fairly recent initiatives, it is not yet possible to evaluate the results and judge their significance as a strategy to address the needs of the women concerned.

## 5 A human rights problem

Strategies linked to a human rights perspective are predominantly employed by NGOs. Trafficking in women, forced labour and slavery-like practices are seen as violations of

3. UN General Assembly Resolution 48/102, 1993.

women's human rights for which States are accountable, both in the public sphere and the private sphere. Instruments designed to protect human rights are invoked as key guidelines and used to enhance the rights of women, as well as to hold governments accountable for perpetrating or condoning violence against women. However, as argued before, two different currents of analysis exist within this approach, leading to very different strategies.

### 5.1 *The interest of morals vis-à-vis the interest of women*

Within the first current of analysis, prostitution itself represents a violation of women's human rights equivalent to slavery. Such a judgement brings us back to the moral approach, in which prostitutes are stigmatized as either 'victims' or 'deviants' and are denied a legitimate place in the public debate, but now via the detour of human rights. Strategies to combat 'trafficking' based on this approach aim at the elimination of prostitution as such. It is, however, difficult to see how respect for prostitutes can be promoted if their work as such is seen as inherently degrading. It is equally difficult to see how the interests of women are served by excluding prostitutes' rights organizations from the political debate, as was advised by Fernand- Laurent in his report on the 'suppression of the traffic in persons and the exploitation of the prostitution of others' (Jean Fernand Laurel 1983) and is currently still promoted by some feminist groups.<sup>4</sup>

Within the second current of analysis, not prostitution itself but the conditions of coercion, abuse and deceit violate the human rights of the women involved: the right to be in control of their own bodies, their lives and work, the right to work with fair compensation under proper conditions, the right to migrate, the right to free choice of work, the right to freedom of movement and the right to be free from violence and restraint. As put in *A Vindication of the Rights of Whores*:

Human rights must include the right to migrate (also as legal immigrants or refugees), the right to work (also as prostitutes), the protection of children against sexual exploitation, and the right of all people to be protected against coercion, deceit and violence (in or out of prostitution) [...] Migrant rights, (migrant) prostitute rights and (migrant) worker rights are crucial to liberation struggles everywhere. Those rights call for a politics in which neither 'home' nor 'purity' are idealized and imposed (Pheterson 1989, p. 202 ff.).

4. Among which the Coalition Against Trafficking in Women, based in the US, and the French Federation Abolitioniste Internationale. The opposite position is taken by the Global Alliance Against Trafficking in Women.

## 5.2 NGO strategies

Strategies based on the latter type of human rights perspective include examining structural causes and mainstreaming action to eliminate all gender-based violence. The focus then shifts from protection to empowerment, participation and self-organization of the women concerned. Lobbying focuses on replacement of the 1949 Convention with a new instrument based on female self-determination, upon opposition to all policies which marginalize and discriminate against women, including sex workers, and upon extension of the definition of trafficking to cover the range of situations in which women may find themselves in slavery-like conditions. In general, strategies aim at the inclusion of the women concerned in existing human rights instruments and mechanisms, rather than at the development of new instruments which in fact separate them out as ‘different’.

## 6 A labour problem

Building on the latter type of human rights approach, prostitutes’ rights organizations and anti-trafficking groups have begun to challenge traditional approaches. New approaches are being developed, starting from the point of view of the women involved. Essential questions within this approach are: how do the women involved define the problem, what do *they* want to be protected from? Rather than further criminalize all activities surrounding prostitution, they advocate the decriminalization of sex work and the sex industry as a preliminary condition to ensure the civil, political, economic, social and cultural rights of the women involved, thereby moving the focus of the debate from moral stances to working conditions and workers’ rights. Exemplary is the approach taken in a recent report of Anti Slavery International (ASI):

To ensure the protection of sex workers rights, it may be necessary to challenge, on human rights grounds, the very principle of restricting the sex industry under criminal law. The argument that sex workers should be entitled to the free choice of work, or indeed any of the labour or human rights discussed here, is of course, void if the State does not choose to define prostitution as work, but simply as an unlawful activity (Bindman 1997, p. 6)

In this approach the participation of prostitutes in the political debate and in any measures that affect their lives, is considered to be fundamental.



When trafficking in women, forced labour and slavery-like practices are defined as labour problems, these practices can be seen as the result of the poor legal and social status of women: as women, as workers and as migrants. Within this view the position of women as workers is the focus of strategies for change. Trafficking in women is put in the perspective of traditional female roles, a gendered labour-market and the world-wide feminization of labour migration. Consequently, the concept of ‘trafficking in women’ is expanded to include other forms of exploitation of women’s work in the informal female designated labour sectors.

Moreover, since ‘anti-trafficking’ policies and legislation invariably appear to result in State actions against women – predominantly immigrants and prostitutes – instead of actions against violence and abuse, serious doubts are raised as to the appropriateness of the existing anti-trafficking framework. The concept of ‘trafficking’ is questioned as out-moded and the development of new language to describe abuses in labour migration and abusive conditions of work is advocated, separate and distinct from national and State interests in protecting borders and controlling female sexuality and labour.

This perspective opens a whole new array of instruments to combat exploitation and abuse. Strategies aim at the recognition of women’s work in the informal sectors as legitimate work, including work in the sex industry, at workers’ rights and labour law protection for the women involved and at improving working conditions: basically the same mechanisms and instruments that have been developed from the beginning of this century to curtail abuses in other industries.

In the case of prostitution brothel keepers and employers clearly are in positions of power, as long as prostitutes lack legal protection of their rights as workers. Improvement in the social and legal position of prostitutes would impede traffic in women and slavery-like practices, and would give women the same instruments to defend themselves against such practices as workers in other labour sectors. The power-balance between prostitutes and brothel keepers/employers would significantly change if prostitutes could legally conclude civil and labour contracts; if they could sue abusive employers and clients; if they could enter into collective labour agreements as a result of collective bargaining between employers and employees; if they could insure themselves against the consequences of unemployment or illness; if they would be entitled to State benefits and pensions; and if labour regulations would be applicable to work in prostitution – all measures that are common to regular professions.

Obligations such as those in the 1949 Convention, to take measures to rehabilitate victims of prostitution clearly don’t fit into this view. Instead, enforcement of existing gender-neutral instruments is advocated, such as the ILO conventions on forced labour, the conventions on slavery and slavery-like practices, the migrant workers conventions and provisions prohibiting debt bondage.

## 6.1 *Governmental policies*

It is not surprising that governmental policies rarely, if ever, share this perspective and certainly not in relation to prostitution or migrant workers. Within a gendered labour market, government policies for the protection of workers and the improvement of labour conditions tend to be geared to male national workers, excluding labour sectors designated to women and migrants.

Although over the last years some countries have established new laws on sexual assault and intimidation in the workplace and on equal treatment and pay, enforcement of these laws is often inadequate. Moreover, they are not applied to domestic work and the entertainment and sex industry. Legislation on labour migration and rights of migrant workers has not been improved in the last twenty years, it rather has worsened.

Government policies, especially in destination countries, primarily aim at inhibiting women from migrating for work in the informal sectors. At the same time, repressive and restrictive migrant labour legislation is reinforced, even though it is clear that it is impossible (and even undesirable from an economic point of view) to stop labour migration. Yet aspects of the above mentioned approach can be found at both a European and UN level, for example the 1996 Resolution of the European Parliament.<sup>5</sup>

## 6.2 *NGO strategies*

Strategies within a labour framework are primarily developed by NGOs. NGO initiatives include support services, self-organization, lobbying, and research and information campaigns. NGOs have started programmes to support women in their working situations, such as language classes, courses to improve negotiating skills, and information programs on their rights and on matters relating to health and safety. They offer counselling, health care, legal resources and practical help, e.g. in sending money home. Some NGOs support women to get alternative employment or vocational training. Other groups organize programs that make women aware of their qualities and abilities which can be of great value to improve their situation or indeed qualify for alternative employment.

At the same time domestic workers, prostitutes and wives increasingly organize to improve their working and living conditions and to fight for their rights as workers and/or as migrants. NGOs, prostitutes' rights and migrant workers' rights organizations lobby governments to enhance the legal position and the working and living conditions

5. See chapter 2.

of the women involved, and to gain recognition of prostitution as work. In some countries trade unions are approached to include entertainers and prostitutes.

### 6.3 *International Labour Organization (ILO)*

Among international bodies, the ILO has tentatively begun to address the issue by researching the situation of migrant domestic workers and migrant workers in the sex and entertainment industry. The ILO could play an important role in setting standards appropriate to the informal sectors, particularly those affecting a large number of women, such as domestic work and sex work. ILO conventions, such as the *Convention on Forced Labour*, the *Convention on the Freedom of Association* and the *Convention concerning the Protection of Wages* could be used to abolish slavery-like practices. In the context of trafficking article 9 of the latter convention is especially relevant. This article prohibits the deduction of any payment from wages for the purpose of obtaining or retaining employment, including a recruiting agent. However, until now this course has hardly been taken. Another instrument that might be used to improve the rights of migrant women workers is the 1990 ILO *Convention on the Protection of the Rights of All Migrant Workers and their families*. Unfortunately only a few States have shown interest in this treaty, given the small number that has ratified it. Two of the main obstacles for the application of these treaties are the refusal of countries of destination to recognize that they are immigration countries and the refusal to acknowledge female work in the informal sector, particularly prostitution, as work.

## 7 **Conclusion: repressive vis-à-vis empowering strategies**

Within the various approaches, two modes of strategies can be discerned: repressive strategies, aimed at suppressing what is considered ‘undesirable behaviour’ (be it from a moral, public order, criminal or migration control point of view) and empowering strategies, used primarily by NGOs, aimed at supporting the women and strengthening their position.

Both repressive and empowering strategies can be of value. However, repressive strategies must be approached with caution as they tend to mix up other State agendas, such as counteracting migration, with the issue of trafficking in women as a form of violence against women and a serious violation of human rights. Moreover, they easily give rise to unintended, undesirable side effects for the women affected. At worst they can cause repercussions which have repressive rather than emancipatory effects on the situation of

the women concerned, for example by restricting women's freedom of movement or by using women as witnesses without offering them protection.

Strategies which are based on strengthening women's rights are mainly put forward by NGOs. Participation of the women concerned is seen as essential to the development of effective change strategies. Support and lobby strategies are directed towards empowering women, enabling them to be in control of their lives, and towards facilitating their speaking up for their own rights. At the same time the need for the development of new conceptual frameworks and strategies to combat abuse and violence in recruitment and brokerage practices, as well as in the working and living conditions of women, is recognized. New strategies are promoted which are based on the legal and social recognition of women as autonomous individuals and subjects accorded with rights. The final goal is to ensure the rights of those involved, as women, as migrants, as migrant workers, as domestic workers, as sex workers and as wives. As long as those rights are not recognized and guaranteed traffic in women, forced labour and slavery-like practices will continue to exist.



## Chapter 9

# Conclusions and recommendations

### 1 Conclusions

One of the fundamental problems in responding to the issue of trafficking in women is the lack of consensus on a definition. From the beginning of this century up till now the debate is characterized by confusion about what is meant by the term. Old and new definitions show inconsistencies, contradictions, conflicting interests, failure to pinpoint violence and abuse, and a tendency to deny female self-determination. These trends are reflected in the current definitions and concepts used in international and national legislation.

Trafficking in women, forced labour and slavery-like practices should be seen in the context of traditional female roles, a gendered labour market and the world-wide feminization of labour migration, a.o. resulting from women's increasing responsibility for the economic survival of themselves and their families. The women concerned should be seen essentially as (migrant) workers.

Women, while denied equal access to the formal and regulated labour markets, are to a great extent relegated to the informal, unprotected and unregulated labour sectors. Within a gendered labour market, sexual and domestic work are two of the few income generating options available for women, especially for women from poor countries and regions who seek opportunities to support their families, to escape from traditional gender and family constraints or to find the means for an independent life. Migration patterns – on national, intra-regional and international levels – reflect this labour division, relegating migrant women to the national and international markets for female domestic workers, for marriage partners and for the sex and entertainment industry.

At the same time, poor or lacking legislation, the absence of labour standards and the partially illegal or semi-legal character of these types of work create the conditions for abusive recruitment practices and exploitative working conditions, varying from humiliating treatment, low payment and extreme working hours, to outright forced labour and slavery-like practices.

While the number of women wishing to migrate has grown, many destination countries have put in place more restrictive immigration policies, thereby further decreasing possibilities for legal migration, even when there is a clear demand for certain types of labour. Diminished legal possibilities for labour migration in combination with the demand for foreign labour in the informal sector, create a considerable gap between official policies of receiving countries and day-to-day practices in prostitution, the commercial marriage market and the domestic work sector. This is where organized crime comes in: filling the gap official policies leave. Not only considerable criminal profits are at stake, the incomes of the women concerned also form an important source of foreign exchange for their home countries, while at the same time their labour significantly contributes to the economies of the destination countries.

Poverty and unemployment, development strategies, traditional practices, civil and military conflicts, corruption, high criminal profits, and lack of support mechanisms further contribute to the existence of contemporary forms of trafficking, forced labour and slavery-like practices in marriage, domestic labour and prostitution.

Apart from these general factors a number of specific contributing factors can be pinpointed in relation to the different manifestations. Laws on property, on inheritance rights and on marriage, divorce and residence rights which deny women independence, mobility and legal autonomy act as specific contributing factors to trafficking, forced labour and slavery-like practices in marriage. The unregulated and unprotected nature of domestic work and the lack of access to independent residence and work permits make domestic workers extremely vulnerable to violence and abuse. The clandestine and illegal nature of prostitution as such, the (by definition) illegal status of women working abroad and the marginalization, stigmatization and criminalization of women engaged in prostitution place them at the mercy of criminal recruiters, abusive brothel keepers and corrupt officials, without legal instruments to defend themselves.

All contemporary forms of trafficking in women, forced labour and slavery-like practices have in common that women are denied control of their working and living conditions, as well as recourse to law or society for protection or redress.

Mechanisms of coercion may vary from kidnapping and sale of women, physical force, threats with violence, illegal confinement, withholding of passports and wages, extortion, isolation, deceit, abuse of authority and debt bondage. Within this range deception, debt bondage and practices amounting to debt bondage are the most prevalent and pervasive contemporary mechanisms of coercion within all three areas covered in this report.

Though until now most attention has been paid to international trafficking, trafficking practices within national boundaries take place just as often. No simple ‘one way’ pattern can be discovered with regard to international trafficking. Many countries are at the same time country of origin, destination and transit. One can speak of a dynamic process with new patterns developing in short periods of time in response to economic or political changes, as is seen in the rapid growth of traffic in women from the former socialist countries.

Where laws against trafficking exist, they are limited to trafficking for prostitution. Insofar as they define ‘trafficking’ as bringing a person into prostitution in another country, they generally do not target force, but refer mainly to the migration aspect, rejecting and denying prostitution as a survival strategy for the women involved. Laws typically address only the recruitment of ‘innocent’ women, i.e. women who have never worked in prostitution, did not know they would work in prostitution and who do not want to continue to work as a prostitute.

Women working in prostitution are more or less outlawed and deprived of all protective mechanisms other citizens are entitled to, both in relation to abusive recruitment practices and in relation to abusive working and living conditions. Legal control of prostitution maintains State interests regarding public order, public health, tax payment, deterrence of immigration, etc., instead of monitoring the conditions in which women find themselves. Existing legislation hardly ever focuses on forced labour and slavery-like practices in prostitution, or only in relation to ‘innocent’ women: women who can prove that they are not prostitutes and whose ‘morals’ are also otherwise undisputed. In general, laws make no distinction between abusive and coercive situations and situations based on mutual agreement. General provisions on violence, compulsion, illegal confinement, debt bondage etc., are hardly applied or – again – only in the case of ‘innocent’ women.

Whereas the law seldom defines force and deceit as the critical elements, in all countries the presumed ‘virtue’ of the woman concerned tends to be a decisive factor in determining the seriousness of the crime. Even if the ‘chastity’ of the woman is not mentioned as an explicit condition in law, it implicitly or explicitly plays a crucial role in the interpretation and enforcement of the law. In trafficking cases, as in other cases of sexual violence, it is by no means exceptional that the victim stands trial instead of the accused. Also in other ways interpretation and enforcement of the law is often discriminatory towards women. Actions against trafficking, for example, tend to limit themselves to raids on prostitutes.



In no way do existing laws on prostitution take the women themselves, their views and interests as a starting point. All prohibitions and regulations on prostitution are based on the moral condemnation of prostitution. This legal standpoint leads to a legal and social attitude towards prostitutes which sees them primarily as ‘victims’ or ‘deviants’. Prostitutes are ‘objects’ of the law who have to be either ‘rescued’ or made ‘harmless’; they are not considered subjects accorded with rights. Even if the law does not prosecute prostitutes, it does not give legal rights to women working in prostitution, not as workers and, in many countries, not as citizens and persons.

On the whole, existing laws on prostitution neither deter women from entering prostitution nor do they protect the fundamental rights of women in prostitution. Instead they lead to their stigmatization, marginalization and isolation, thus legitimizing and sanctioning the various forms of abuse and oppression. In general it can be concluded that any form of legislation which marginalizes and victimizes prostitutes results in their increased vulnerability to violence, exploitation and abuse.

Existing legislation offers few if any possibilities for women to take legal actions against their violators, due to their illegal or socially marginalized status. Migrant prostitutes not only risk arrest as prostitutes, but also arrest and deportation as illegal aliens. Common policies of expulsion act as a factual barrier for women to seek justice, and make prosecution of the offenders virtually impossible since the main witnesses are deported. Even when the law enables women to press charges, many women will choose not to do so for fear of retaliation and lack of legal protection against reprisals. Moreover, in a considerable number of countries law enforcement officials, the judiciary and local politicians are involved in and profit from trafficking, forced labour and slavery-like practices.

Current strategies suffer from the confusion of definitions and the contradictory interests of the parties involved. Most governmental measures can be qualified as repressive strategies, such as stricter immigration control, more severe punishments and more effective prosecution. However especially these types of strategies tend to work against the women concerned instead of in their favour, for example, by restricting women’s freedom of movement or by using women as witnesses in the interest of the State to combat organized crime, without providing them adequate protection. Non-governmental organizations on the contrary, concentrate largely on ‘empowering’ strategies such as strengthening the legal and social position of the women concerned, advocacy and support services.

## 2 Recommendations

1. New definitions need to be developed, which are based upon the perspectives and interests of the women involved and which cover deceptive and coercive brokerage practices as well as exploitative and coercive working and living conditions in both the public and private domain. Central principles in developing new definitions should be:
  - recognition of female agency and the right of women to have control over their own life and body;
  - the women concerned, their views and their interests should be taken as the starting point instead of the interests of the State or other parties, however legitimate those interests may be;
  - an exclusive focus on coercion in its diverse forms, as violence and abuse constitute the core issues for the women involved. Coercion can take many forms, including but not limited to, violence or threat of violence, deprivation of freedom of movement, deception regarding conditions or nature of work, abuse of authority, confiscation of passports, debt bondage and practices amounting to debt bondage;
  - inclusion of all work and services rendered under conditions of coercion as defined above, regardless of whether these services are recognized as work, whether they take place under a work or a marriage contract or whether they are considered legitimate or illegitimate by society;
  - inclusion of abusive recruitment and brokerage practices as well as forced labour and slavery-like practices both within and across borders. Especially with regard to measures to be taken, it is important to distinguish between the two, because although closely related, they do not necessarily go together.
2. On the basis of the above formulated principles the following working definitions were developed in the framework of this report, which could serve both as a model and a criterion to re-assess existing legislation:

### *Trafficking In Women*

All acts involved in the recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion.

### *Forced Labour & Slavery-like Practices*

The extraction of work or services from any woman or the appropriation of the legal identity and/or physical person of any woman by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion.

3. Existing national and international legislation and other instruments should be re-assessed on the basis of the developed working definitions and the principles involved.
4. The Working Group on Contemporary Forms of Slavery should be mandated and adequately financed to
  - evaluate the usefulness of the 1949 *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* from the perspective of the definitions and principles as developed in this report;
  - evaluate the nature and extent of State responsibility for the continuing existence of trafficking in women, forced labour and slavery-like practices.
5. Within the framework of the UN, information should be collected on women who are detained by States or are missing in the context of trafficking in women, forced labour and slavery-like practices.
6. Apart from a review of international and national legislation, Human Rights Standards for the treatment of victims of trafficking in women and forced labour and slavery-like practices should be developed which guarantee basic legal protection and possibilities for redress to victims of these practices, such as:
  - the right to freedom from persecution or harassment by those in positions of authority;
  - access to adequate, confidential and affordable health, social and psychological care;
  - access to competent translators during legal proceedings;
  - access to free legal assistance and legal representation during criminal or other proceedings;
  - access to legal possibilities of compensation and redress;
  - provisions to enable women to press criminal charges and/or take civil action against their violators, such as a temporary staying permit during criminal and/or civil proceedings and
  - adequate witness protection;

- assistance to return to her home country if she wishes to do so;
- legal permission to stay if return to her home country is unsafe;
- protection against reprisals from the side of the perpetrators or from the side of the authorities.

In developing such a standard, the Human Rights Standards for the Treatment of Trafficked Persons developed by the Foundation Against Trafficking in Women, the International Human Rights Law Group and the Global Alliance Against Trafficking in Women could be taken as a model.<sup>1</sup>

7. States should ensure and enhance the civil and political, economic, social and cultural rights of women as persons and workers, such as:
  - safe working conditions;
  - freedom of movement, speech and assembly;
  - freedom to control their working and living conditions as domestic workers, as prostitutes and as wives;
  - freedom to stop working as prostitutes or domestic workers and/or change the venue of that work;
  - freedom of divorce.

This implies the application of national and international labour standards, regulations and conventions, such as the ILO conventions on Forced Labour (no. 29), on the Protection of Wages (no. 95), and on the Protection of the Rights of all Migrant Workers and their Families. Special attention should be given to the elimination of debt bondage and practices amounting to debt bondage.

8. States should promote strategies to improve women's access to viable employment opportunities.
9. Women should be accorded full legal status, independent of marital status, professional activity, etc.

1. After the first publication of this report, the 'Standard Minimum Rules', as originally developed by GAATW, have been revised on the basis of an extensive consultation process among NGOs. This consultation process has resulted in a new document, entitled 'Human Rights Standards for the Treatment of Trafficked Persons', proposed by the Global Alliance Against Trafficking in Women, Bangkok; Foundation Against Trafficking in Women, Netherlands; International Human Rights Law Group, Washington (see annex 6).

10. The law should treat women as subjects accorded with rights, instead of as objects or dependants who need to be controlled.
11. Strategies to combat trafficking, forced labour and slavery-like practices should be directed towards empowering the women concerned, as persons, as workers and as migrant workers. Action should be directed towards enabling them to take back control over their lives, and towards facilitating their speaking up for their own rights. Strategies should be based on the recognition of women's right to self-determination and avoid stigmatization and victimization of the women concerned.
12. Independent of the official labelling by the authorities, labour should be treated as labour the moment it actually is labour, that is, an income generating activity.
13. Prostitution should be decriminalized. All laws specific to prostitution should be repealed. The sex industry should be covered by general laws and regulations pertaining to independent workers and businesses within gender neutral legislation. Labour standards, such as developed by the IHO, should be introduced in the sex industry.
14. Working conditions of women in the informal sector, including the sex and entertainment industry, should be improved by creating a legal basis which guarantees working conditions in accordance with national and international accepted labour standards.
15. Noting that self-organizations and NGOs are the main agents for change as well as the main – and often the sole – source of support for the women involved, an essential condition for every measure taken should be co-operation with self-organizations and NGOs to ensure that the interests of the women concerned are adequately represented. This implies that part of any programme should be support and adequate funding of self-organizations and NGOs.
16. Given the lack of precise information on the mechanisms of trafficking in women, forced labour and slavery-like practices in the context of marriage and domestic labour, research in these fields should be encouraged.

# Chapter 10

## Summary

### Towards new definitions

A fundamental problem in responding to the issue of trafficking in women is the lack of a precise and coherent definition. Although the issue was addressed as early as 1885 in Paris at the first international conference on the prevention of trafficking in women, both national legislation and international conventions waver in basic conceptualizations of the crime to be combated. Historical study reveals five major definitional shifts during the last century with corresponding confusions and tensions. Effective strategies on women's behalf require new definitions that clearly pinpoint violences against women within the scope or intent of what has been referred to as 'trafficking'. Historical shifts in definitions that beg clarification include:

#### *From Physical Recruitment to Commercial Exploitation*

Whereas the earliest turn of the century treaties focused exclusively upon the process of (forced) recruitment and transport of women, the still influential 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others combines 'trafficking as procurement' with 'prostitution as exploitation' (defined particularly by financial management or rental of premises for the purpose of prostitution). 'Trafficking' referred specifically to 'the purpose of prostitution'; in the words of the convention, the trafficking crime was defined as an 'evil accompanying' commercial gain for the 'gratification of passions'. This 1949 treaty replaced all preceding agreements and remains the key international guideline on trafficking. Many States which signed earlier conventions did not sign this one due, among other things, to the extension of the definition from procurement to commercial gain from prostitution.

#### *From Coercion to 'even with her Consent'*

The first treaties are limited to compulsive forms of procurement. For example, the 1910 Convention can be considered a 'minimum agreement treaty': although individual States are allowed to punish non-compulsive forms of procurement, international accord obliges punishment only in cases of 'fraud or the use of violence, threats, abuse of authority, or any other means of constraint...'. In 1933 the condition of restraint is removed in a new international agreement which renders procurement punishable 'even with her consent'.

This trend is continued after the Second World War. The 1949 Convention explicitly addresses all forms of procurement and exploitation for the purpose of prostitution, with or without consent.

Since the 1980s, the question of consent is again on the agenda. A number of recent initiatives insist upon conditions of ‘force’ and ‘deceit’ in defining the crime of trafficking. Most recently, the European Parliament Resolution adopted January 18, 1996 calls upon member states ‘to provide a clear definition of the concept of trafficking...[and] to take action at an international level to draft a new UN Convention to supersede the obsolete and ineffective Convention for the Suppression of Traffic in Persons and of the Prostitution of Others (1949)’. ‘Any new convention’, reads the resolution, ‘should focus on coercion and deception’.

On a more grass roots level of national and international debate, a tension exists between those who define prostitution per se as violence against women and those who distinguish between prostitution by force and by individual decision. Those positions have become more refined and less dichotomized in recent years with the strategic recognition that women may consent to prostitution but not to slavery-like conditions in prostitution. International conventions have not yet caught up to such grass roots perspectives on women’s actual experience.

*From ‘trafficking in women’ to ‘illegal migration’*

Some of the more recent definitions, especially in western Europe, equate trafficking in women with the smuggling of aliens, also called alien trafficking or trafficking in migrants. The crime then becomes illegal entry or residence. Research shows, however, that although many victims of the international traffic in women (defined by deceit and/or force) are brought illegally into a country and/or are unable to obtain a valid residence permit, just as many cases are known where women enter the country legally, e.g. as brides, maids or artists, and where women have a legal right to stay in a country, often dependent upon the guardianship of an authorized husband or employer. It must also be stressed that trafficking in women is not per definition related to international migration processes, but can and does occur within national borders.

When trafficking is defined by illegal migration or residence, the crime is no longer violence against women but rather infraction of State law. The women concerned are transformed from victims to outlaws or collaborators and are, thereby, subject to detention, penalization and expulsion regardless of the risk to their safety and livelihood. Even if, in principle, it is primarily the transporters and exploiters who are targeted by such

definitions, the migrant women themselves are marginalized, criminalized and endangered by their alien status.

*From a protectionist to a human rights perspective*

The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993 recognizes ‘international trafficking’ as a form of gender-based violence and urges its elimination in keeping with the ‘human rights of women’. The importance of this shift is twofold: Firstly, in relation to transport, violence necessarily refers to the conditions of recruitment and travel, not to migration per se. Secondly, in relation to prostitution (given that trafficking is attached specifically to prostitution by the still operative 1949 Convention), one must either specify conditions of violence within prostitution or define prostitution per se as violence. If one defines prostitution per se as violence, then no distinction is made between a commercial transaction freely negotiated and an act of coercion, deceit or abuse. A prostitute is thereby unable to call upon State protection for abuse within the context of her trade because she is defined, a priori, as a violated woman. If one specifies conditions of violence within prostitution, then one must recognize sexual-economic transactions as work and begin to apply conventions against forced labor and slavery-like practices to the sex industry. This is exactly what non-governmental organizations around the world have been informally doing in their daily resistance to violence against women for the past few decades.

*From prostitution only to the range of informal and unregulated labour*

During the last 15 years, attention has been drawn to multiple manifestations of trafficking. This shift is reflected in more recent definitions (for a notable example, see the 1994 UN General Assembly Resolution on Traffic in Women and Girls) which include trafficking not only for the purpose of prostitution but also for the purpose of domestic labour, marriage and other work or services. It is of utmost significance that the purpose of trafficking in women is overwhelmingly tied to traditional female roles and limited survival options as wife, domestic or prostitute. Those labour-intensive activities belong to informal and unregulated sectors such as the entertainment business, household services and marital obligations.

The 1979 Convention on the Elimination of all Forms of Discrimination Against Women implies that the exclusion of informal labour sectors from labour law is indirectly discriminatory to women. State accountability is thus extended from the public to private sphere, a great advance for women later made explicit in the 1993 Vienna Declaration; that extension should entail the criminalization of forced labour and slavery-like practices in prostitution, domestic work and marriage as elsewhere. However, State accountability for abuses in the private sphere, most particularly as applies to traditional female services,



remains meagre; in fact, State law and practice often reinforce rather than combat gender discriminatory labour imperatives.

### *New definitions on women's behalf*

In bringing the above definitions and their contextualization up to date on women's behalf, two fundamental guidelines are needed to guarantee both minimum agreement and respect for human rights: Firstly, since neither tradition nor law offer reliable safeguards to female self-determination, it is necessary to base all concepts of gender violence on 'women's experiences and well-being' rather than on social custom or State legislation (for example regarding migration, the family or prostitution). Secondly, only 'material criteria of violence' can reliably describe women's actual circumstances. Given the institutionalized power relation between women and men, the illegality or illegitimacy of women's economic activities in female-designated spheres does not determine whether those activities represent an escape from abuse or a perpetuation of such abuse for the women concerned.

From the perspective of women, the violence of trafficking can operate on two equally important, but separate, levels: (1) the process of recruitment (2) the context of work or services. Those levels must be separated because one can be an act of choice while the other an imposition of force, deceit or other abuse. Drawing upon documentation of the diverse experiences of women in a wide variety of regional and cross-regional contexts, the following working definitions are proposed to distinctly cover abusive brokerage practices, on the one hand, and abusive working and living conditions, on the other, in both public and private spheres:

### *Trafficking in Women*

All acts involved in the recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion.

### *Forced Labour and Slavery-Like Practices*

The extraction of work or services from any woman or the appropriation of the legal identity and/or physical person of any woman by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion.

Since no past or present document specific to trafficking offers a definition unambiguously in women's interest, the above careful formulations rest upon two well-established and widely accepted international agreements: The League of Nations Slavery Conven-

tion of 1926 with its Supplementary Convention of 1956 and the ILO Forced Labour Convention no. 29. Both of those conventions bear keen relevance to the violences in question. The League of Nations Convention and its Supplement condemn all slavery-like practices including debt bondage and forced marriage. In article 2 of the ILO Forced Labour Convention, forced or compulsory labour is defined as ‘all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself [herself?] voluntarily’. Such clarity, sorely needed in relation to violence against women, exists only in conventions that do not address gender-specific issues and are therefore free of gender-discriminatory social control corollaries.

The crucial element in both new definitions is coercion in its many forms. Violence or threat of violence includes deprivation of freedom of movement; deception refers specifically to misrepresentation of working conditions or of the nature of the work to be done; abuse of authority can range from confiscation of personal documents to abusing one’s dominant social position, be it parental or State authority; debt bondage means pledging the personal services or labour of a person indefinitely as security for a debt when the length and nature of the service is not clearly defined. ‘Work or services’ include all domestic, sexual, reproductive or other services rendered under the above-mentioned conditions of coercion, regardless of whether those services are recognized as work, whether they take place under a work contract or whether they take place under a marriage contract. ‘Appropriation of the legal identity’ can range from confiscating one’s identity papers or supplying a woman with a false identity to the loss of one’s legal personality under the marriage contract. ‘Appropriation of the physical person’ refers to the concept of partial or total ownership as used in the Slavery Convention.

The basic principle underlying both working definitions is the (human) right of every person regardless of gender to have control over her or his own life and body. Given the gender specificity of labour in the home and the sex industry, this right is particularly critical for women in the contexts of marriage, domestic work and prostitution. The definitions are, nonetheless, applicable to a wider range of work or service sectors.

## **Contemporary manifestations and trends of trafficking in women, forced labour and slavery-like practices**

With the above two-part definition, conditions of recruitment and conditions of work can be studied separately and the relation between the two can be examined with precision. Although former definitions fell under the one title of ‘trafficking’, it is the labour upon

destination which gives traffickers their bargaining power. We can investigate that labour according to the categories of marriage, domestic work and prostitution but the dividing lines between those sectors are not so clear because women are often fraudulently recruited for one type of work or service and then forced into another. Given the frequency of deceitful recruitment practices, a woman might find herself in a slavery-like marriage when she had expected a position in the sex industry or she might find herself in domestic service when she had expected a marriage of standing. In fact, as becomes clear from research reports, deception together with debt bondage are the main crimes committed by contemporary traffickers.

The problem at hand for women is neither travel nor work per se, but rather travel ‘conditions’ and work ‘conditions’. Women from all world regions are migrating for a myriad of economic, social and political reasons. But they are denied honest, safe and equitable travel and work circumstances, also by those authorities who encourage or impel their emigration. Nearly half of the migrants world-wide are women. And whereas ‘traditionally female migrants have tended to migrate with their families or after the male head of the family has emigrated, [...] today [...] women have sole responsibility for their families and have a stronger incentive to migrate in order to send back remittances to their children’ (IOM, 1996d). In addition to the motive of increased imperative family responsibilities, resistance to traditional gender constraints and hopes (sometimes realistic and sometimes misguided) for greater economic and social opportunity lead millions of women to leave home. According to an ILO report on international labour migration of Asian women (Lim, 1996) approximately 1.5 million Asian women are working abroad both legally and illegally. Nonetheless, despite the massive migration of women, official policies continue to treat women as dependents of male migrants.

Trafficking takes similar forms be it for marriage, domestic work or prostitution. In all cases, agents play upon women’s motives to migrate by offering travel means and employment possibilities otherwise out of reach. There are, however, important distinctions between the legal context of the three spheres. In brief, whereas the greatest obstacle to safe and just economic options for migrants in general is immigration law, the greatest obstacle to safe and just economic options for women in marriages is likely to be family law reinforced by religious traditions, the greatest obstacle to such options for women in domestic work is likely to be labour law and the greatest obstacle for women in prostitution is likely to be criminal law reinforced by social stigma. Those institutional distinctions, united in their refusal to recognize female labour as work, are far more operative for the women in question than are the often vague distinctions between reproductive, household and sexual labour. In relation to brokerage practices and working conditions,

the same principles of social justice are appropriate and should be applied to all three labour spheres regardless of the legal umbrella under which they are classically treated.

Racism interweaves with the above factors in abusive recruitment strategies and working conditions. There is a hierarchy operating in the employment market for domestic workers based upon crude racist stereotypes under which workers can expect different rates of pay and different kinds of jobs depending upon skin color and nationality.

Wherever women go, they find themselves restricted in work options: ‘unskilled’ work on the assembly line, cleaning and cooking and caring work (either in private houses as domestic workers or in restaurants and hotels), entertainment or prostitution. And many women opt for the marriage market in the hope of landing on a relatively wealthy man who can provide future security if not liberty. Many women do, indeed, earn a living to support themselves and their children within such spheres. At the same time, given the institutionalized exploitation of women’s labour, abusive practices are most widespread exactly within traditional female occupations. Moreover, whereas demand for women’s labour is all-pervasive, it is rarely recognized in law or custom as work. Women in such informal sectors are not covered by social security and they have no legal backing for worker rights. Moreover, they may actually be criminalized by laws which forbid such labour outside of existing State regulation. Prostitution, in particular, is likely to be a crime; and even if it is legal for State residents, it is a crime for foreign women (unless recruited for State-run brothels) regardless of customer demand and considerable State revenues from the labour of migrant prostitutes. In the case of marriage, a woman’s labour is viewed more as a duty, an instinct or a selfless act of devotion than as a toil determined by material conditions.

### *Contributing factors*

Trafficking in women and forced labour/slavery-like practices are definitely not a new phenomena in women’s lives. For only one of many examples, at the end of the 19th century women in need of economic subsistence migrated in great numbers from Europe to South America; according to historical accounts, they faced frequent deception and coercion by traffickers taking advantage of their lack of legal or social legitimacy. The same dynamics operate today within the constraints of recent historical contingencies. Research reveals the following factors as key contributors to contemporary trafficking and forced labour/slavery-like practices:

1. **Poverty/unemployment:** Information provided by NGOs as well as testimonies provided by the women concerned confirm that one of the main reason for migrating and for

being receptive to recruitment is women's urge to improve their economic situation. Absence of employment opportunities combines with an increase in economic burden to make migration a pressing alternative.

2. Development strategies: Tourism, industrialization and globalization are often more a source of aggravation than an opportunity for women. For example:

- European men, among others, are 'offered' 'exotic sex' in ex-colonial territories as part of a tourism package. Tourism is, therefore, an opportunity for employment but women are denied agency to work in their own interest.
- Governments have changed vast areas of agricultural land into industrial areas, thereby eliminating the jobs of peasant women without compensation or alternative employment possibilities; agents then come to rural areas and promise those women work as domestic workers, secretaries, etc. which often results in financial profit for the agent and abusive labour conditions for the women.
- Economic policies designed by some governments to fulfill the conditions of international loans, such as in Sri Lanka, include opening up of Free Trade Zones and promoting migration for employment. Women constitute the majority of workers in both sectors which are characterized by slave-like conditions including physical and sexual abuse.
- Migration (labour) laws and policies: Whilst the number of women wishing to migrate has grown, opportunities for international legal migration, especially to Western countries, have decreased. Looking at destination countries, a great number of them claim that they are no longer immigration countries. Measures have been taken to tighten asylum procedures, reinforce border controls and reduce permits for foreign workers. Despite such official acts, the demand for migrant workers is increasing. For example, there has been a massive increase in demand in Europe for private domestic service, including care of children and the elderly; that demand is largely filled by migrant women without legal status. The other occupation open to migrant women is prostitution. According to the IOM, a majority of sex workers in many sectors of the sex industry in the European Union are migrant women (i.e. 75% of street prostitutes in overall Germany; 80% of street prostitutes in Milan, Italy; 50% of prostitutes generally in Dutch large cities). However, the work of foreign prostitutes is not recognized as work and the women involved are without legal protection, either from labour laws or immigration laws. Migrant women are, thus, not only vulnerable to traffickers but also to police control and State punishment. Even those countries that promote and legalize the immigration of

women migrants, like Japan with its policy of importing foreign brides, view migrant women as undesirable, although needed, aliens. Also countries of origin profit economically from migrant women's cheap labour, such as the Dominican Republic for whom the prostitution of women abroad is one of the most important sources of foreign exchange. Those women are extremely vulnerable to abuse because current alien policies and attitudes supersede the application of human rights charters when it concerns women in the informal sectors of domestic work and prostitution, not to mention the most invisible sector of arranged marriage.

- Corruption of authorities: Numerous are the reports on incidental and structural, small and large scale involvement of officials in trafficking and forced labor/slavery-like practices on both local and international levels. This involvement ranges from (a) coercive or deceptive recruitment of women for work or services by police officers to (b) protection by officials of traffickers and abusive employers in exchange for financial gain or free sexual service to (c) abuse of authority by officials such as robbing women of their passports or blackmailing those in need of papers at the price of rape.

- Traditional practices: Trafficking and slavery-like practices may be a part of traditional and/or religious custom. For example, although women have officially had the legal right to a free marriage in China for the past 40 years, the institution of arranged/forced marriage as an economic transaction is a widespread legitimized practice rooted in traditional feudal culture. That practice then provides public support for the illegal activities of traffickers; such violence, both legal and illegal, is considered a normal, private family matter.

- High profits: Forced recruitment and/or forced labour of women hold relatively few risks for the guilty parties whilst providing considerable financial gain. The illegality and attractive economic benefits encourage involvement of well-established criminal syndicates such as the Yakuza in Japan. Financial investigations of the Australian Federal Police in 1994 identified 280 transactions, totalling over A \$1.3 m., related to movements of funds from Australia to SE Asia. Those funds reflect both the forwarding of migrant women's earnings back to their countries, particularly of prostitution earnings, and the payment to organizers and facilitators in those countries.

- Civil and military conflicts: Among the abuses incurred by women in times of war are rape and forced labour. Many women in Burma, for example, prefer to leave the country to work in the sex industry in Thailand rather than serve soldiers without payment at

home. In Thailand they risk arrest, detention and expulsion as prostitutes and as illegal immigrants.

### *Marriage*

A marital relationship can be termed servile when the husband exerts power as ‘owner’ over the wife. However a woman has entered such a relationship, she is likely to be subjected to labour exploitation, intimidation with (the menace of) physical and sexual violence, and exclusion – comparable with slavery. Furthermore, she can be made to work without pay; she cannot decide whether and how many children she wants; she is threatened with loss of her children if she disobeys her husband; she is forbidden to leave the marriage or to earn an independent income outside the home or, if she does earn, she is not allowed to dispose of her earnings.

Women are trapped into relationships ranging from traditional servile marriages to contemporary forms of arranged or forced marriage by a number of institutionalized gender discriminations among which the following are crucial:

- In many countries all over the world (married) women do not have full legal status and are considered minors under customary, religious or secular law. They therefore possess no independent legal capacity to enter into contracts, to sue or to be sued in their own name, to enter into employment negotiations or to begin a business of their own. This makes them totally reliant upon the co-operation of their husbands or other male guardians.
- Women are denied the right to property in many places. According to a study on servile marriages in Nepal, Pakistan, Tanzania, the Gambia and Lesotho, the denial of property rights (in particular, the right to own land) and inheritance rights is the greatest obstacle to women’s autonomy.
- Laws on marriage, separation and divorce can put women at greater risk of abuse and violence. In Uganda and Kenya, for instance, a court will not entertain a petition for divorce within the first three years of marriage. And even after three years, many women trafficked for marriage are kept as virtual prisoners so that they cannot get the evidence of husband adultery which is the key to getting a divorce. On the other hand, many immigrant women cannot afford a divorce despite husband abuse because their residence permit depends upon the marriage.

Cross-regional research suggests the following hierarchy from the most to the least com-

mon abusive recruiting methods for marriage: Promise of marriage, false marriage contracts, buying a woman from her parents or guardians, kidnapping, false job contracts, promise of work as a waitress/domestic worker, buying a woman from her previous husband. Given the clandestinity of most of the above transactions, estimates depend upon partial documentation and observation of people working in the field. Those sources point to deceit as the major trafficking strategy. Women are eager to migrate and they are well aware of the world-wide demand for their labour. They therefore seek legitimate channels of migration; as these channels are unforthcoming, the women become vulnerable to deceptive State and criminal profiteers.

With regards to kidnapping, it is important to note that, contrary to popular mythology, current research has failed to find widespread evidence of kidnapping for the purpose of prostitution or domestic work; however, kidnapping and sale for the purpose of marriage is strikingly documented for certain rural areas of China. In some villages, kidnapped and sold women account for two thirds of all young married women in the village. Reasons for this trend include a shortage of women across the nation to fulfill the traditional requirement of every man to continue his family line; also, it is cheaper to buy a wife than to marry one given the cost of betrothal gifts exchanged between men in transferring 'their women' from one family to another. The women who are kidnapped are generally abducted en route away from their native villages, usually in an attempt to escape an arranged marriage or simply in search of a more autonomous life. Once abducted, they may be sold and resold and subjected to cruel and inhuman treatment by the men who buy them as wives. And, because many women have attempted escape from slavery or committed suicide, men are known to lock them up, tie them down or torture them when caught on the run.

Whereas kidnapping is technically illegal, forced marriages are perfectly legal in China and as well as in a number of other countries, such as Kenya. In China, 30-90% of marriages are forced depending upon local customs. In Kenya, Indian women brought into the country for the purpose of marriage are robbed of their passports and kept in bondage. Sometimes a woman is recruited under the pretence of marriage, for example in Bangladesh, and then forced into working under slave-like conditions in factories under the auspices of a so-called husband. In Mozambique, refugee women from the war-torn countryside are sold to South African men; referred to as 'stock' by the traders, they are promised work over the border and then sold to men in the townships. In Japan, women are recruited as computer trainees from Sri Lanka and then forced into mass marriages.

In the industrialized countries, there is a growing demand for women as wives; the commercialization of matchmaking such as Mail-Order-Brides (MOBs) is often loaded with



fraudulent practices. The majority of women involved are presently Filipinas, but there is also a growing trade in women from Eastern Europe, Colombia and several other South East Asian countries. The bureaus operate on the West European, Japanese, Chinese, Australian and North American market. There is little, if any, government regulation of the industry. Although quite a number of marriages may fulfill women's expectations, many marriages become a site of forced sexual and domestic labour. Since the women depend upon the continuance of the marriage for their legal status in most places, they may choose to remain under slavery-like conditions rather than face expulsion back to the harsh home circumstances they left in the first place.

### *Domestic Labour*

Women are recruited for domestic work through various channels. Whereas some of those channels are bona fide, others are characterized by deceit, cheating, over-charge and debt-bondage, and can be classified as trafficking. Domestic work and prostitution are often women's only two employment options and many women opt for domestic work due to the greater stigma on prostitution. Women working in their own country report deception about the conditions of domestic work but rarely about the nature of work. Also migrant women are most often deceived about work conditions. Many professional women answer ads for domestic work because they can earn more as a maid in an industrialized country than as a lawyer or engineer in their developing home country; but sometimes they find themselves robbed of legal papers and without recourse in slavery-like circumstances. Other migrants, both professional and semi- or un-educated, are deceived also about the nature of the work; traffickers take particular advantage of uneducated migrants who cannot read or write or of educated migrants who do not know the language of official documents.

In addition to newspaper advertisements in countries of origin, migrants are sometimes recruited by friends and family already working abroad whose employer wants additional services for himself or for his associates, a process referred to as chain migration. But often the employer backs out once the newcomers arrive, finding it impossible or too much of a bother to arrange the necessary papers; the recent migrants are then stranded and without means either to stay or to return.

Others are recruited by agencies, many of which are illegal. Those which operate deceptively manage to evade immigration controls without explaining to the migrant the consequence of illegal entry for her living and working conditions. Fees can be excessive (for example, \$2,500 for a voyage from Peru to Spain); in some cases agencies withhold the worker's passport and 'loan' the airfare, fees, etc. under obligation to repay the agency out

of later earnings before the passport will be returned. Once drawn into the recruitment network, women are often faced with the payment of a bewildering variety of fees requiring unpaid labour, confinement in abusive conditions, loans from home and sale of possessions. This catches women in a vicious circle of debt tying them to their employer. In addition, workers may be admitted as a tourist with the name of the employer on their passports, for example in the UK; thereafter they do not have the right to change employer without becoming undocumented, that is illegal, workers.

The abuses most commonly reported within domestic work are similar around the world: Despite the massive demand for domestic workers, especially in industrialized countries, most governments do not regulate or protect this occupation any more than other private sectors of the economy. Domestic work is not normally covered under labour codes or social security provisions so workers have no recourse to justice or protection. In particular, they can take no action against employers who withhold or delay pay, who impose 12 hour work days of heavy labour or who fire them without cause. Neither do they have backing to resist psychological abuse, denial of time off, beatings, sexual abuse, confinement, or compulsory HIV/AIDS tests or to insist upon proper sleeping accommodations, access to health care and a minimum wage. Migrant domestic workers are especially vulnerable to frequent breach of contract, inadequate provision of food and disrespect for their culture and religion. Furthermore, migrants who are undocumented (a status that they may have acquired by manipulation, deceit or coercion) live in constant fear of police arrest, fines, imprisonment and expulsion. Due to the large profits made by recruiters and due to the cheap service reaped by employers, migrant women's compliance – albeit by force, confinement and intimidation – is heavily imposed. Without legal rights as workers or immigrants and without support services for escape from slavery-like practices, those workers have no recourse in the face of human rights violations. As one Nigerian woman in Britain exclaimed: 'I came here as a worker but I was treated as a slave. That gets me real mad...' (Kalayaan, 1995).

Once trapped in coercive brokerage practices or labour circumstances, it is extremely difficult, if not impossible, for many domestic workers to escape. They may be forced to remain in the abusive situation for a number of reasons: Most critical is the difficulty of finding another job and the lack of any surplus money to tie them over for a period of unemployment. Migrant workers are also dissuaged by their lack of identity papers, by the illegality of seeking employment with anyone other than the initial contractor, by the possibility of reprisals against themselves or their families for not paying debts, by the violence of traffickers or employers, by their knowledge of the complicity of State authorities (including their own embassies in certain cases), by possible arrest by authorities, by

a lack of knowledge of the laws and their actual rights and, above all, by a reluctance to return home without money or without future hope of re-emigration to a better life. In some countries, women cannot go elsewhere because of specific regulations, for example in Greece where undocumented workers are fined for every month they have been in Greece in an irregular situation. As a result, workers are unable to leave the country even if they want to do so because they do not have the money to pay the fine.

Not surprisingly, very few women report to the authorities. In addition to all the above mentioned barriers, women stress language barriers and the dismissive or abusive behavior of law-enforcers and the involvement of officials. Indeed, a risk of ill-treatment by authorities, such as harassment by the police, direct expulsion, harassment by immigration officers, arrest or detention for having false papers or no identity papers, refusal to give back identity papers or issue new papers or arrest as a prostitute are reported in every world region. With few exceptions, governments do not encourage women to report trafficking or slavery-like practices to the authorities, as evidenced by the lack of essential supportive services such as interpreters, confidential counselling, safe shelters, free legal aide, legal residence during investigations or assistance in returning home for those who so desire. When such support is available from outsiders, it is provided by NGOs. Most important, however, is the support women give to one another in informal networks and, more and more, in initiatives for collective organization.

### *Prostitution*

The criminal treatment of prostitution renders it even more clandestine, marginal, profitable and stigmatized than other sectors of female-designated labour. Furthermore, official criminalization of women identified as prostitutes, whether during recruitment or on the work site, functions to rationalize abusive treatment as the fault of corrupt, dangerous, bad or 'fallen' women rather than of discriminatory laws and rituals.

Trafficking practices, as defined by the working definitions, are reported for the purpose of prostitution in relation to women of every legal status ('national' women who are working in their own country, 'legal migrants' and 'illegal migrants'); however, illegal migrants clearly form the most violated group with nearly three times as much reported abuse as for either nationals or legal migrants. It must be noted that the category 'legal migrant prostitute', unlike the category 'legal migrant wife or domestic' is often meaningless since a woman is criminalized in most countries by her status as a prostitute if not by her status as an immigrant.

The most common strategy used by traffickers of women for the purpose of prostitution

is once again deceit. And, as with domestic work, deception is usually about the conditions of work rather than about the nature of work. The fact that most deception is not about the nature of the work indicates that a substantial number of women do know that they are recruited for prostitution and consent to the work itself, but clearly do not know that they will end up in slavery-like conditions. Other women are deceived about the nature of the work. They are recruited under promises of jobs as waitresses, cleaners, dancers, entertainers or domestic workers. Sometimes traffickers make use of false job contracts; women may be promised marriage or false marriages may be arranged. Recruiting agents are most often acquaintances of family and friends, friends, job agencies and artist agents; family and friends are sometimes themselves coerced into mediating for traffickers.

The relation between trafficking and forced labour/slavery-like practices is nowhere more clear than in the practice of debt bondage: For example, a woman may be led to believe that she has a clear contract for transport and a job, perhaps knowingly in a brothel, and then find herself in a situation of unspecified, indefinite and uncontrollable debt; she is then bonded against eventual earnings to her future employer. She will have to pay back the recruiter or travel agent and the brothel owner the sum for which she was purchased (in other words, she is owned) and/or she must pay back a sum for travel, documents, food, housing, medical and other unforeseen expenses, often including a host of arbitrary fines. It is not uncommon in such situations for the debt to increase rather than decrease due to employer control of fining, over-charges and additional deductions, notably for police bribes and obligatory 'savings accounts' controlled by the brothel owner. Payment for sexual services is then handed directly over to the owner who holds the money against the woman's debts. With no access to her earnings and no control over the (in)justice of her debts, women have no means to leave. Such slavery-like abuse occurs in all world regions.

Other manifestations of abusive conditions within prostitution include, in order of frequency reported: psychological abuse, physical abuse, confinement, police harassment and arrest, sexual assault, no right to refuse a customer or a mandatory minimum number of customers per day, isolation, denial of days off, no right to refuse specific sexual acts, confiscation of identity papers and/or passport, imposition of twelve or more hours of work daily, no access to medical care, forced or dangerous abortions, threats of reprisals against family members for non-compliance, confiscation of personal belongings, denial of right to use condoms, withholding of pay, no proper sleeping accommodations, compulsory AIDS testing and no access to the results, inadequate food and, incidentally, forced recruitment of sisters and friends into prostitution. According to reports, the preceding abuses are perpetuated four times more often against (illegal) migrant women than

among national and legal migrant women in Europe; in other regions, the conditions for various groups are much more alike.

Escape from coercive conditions is inhibited by a fear of violent reprisals to self and family, fear of arrest, fear of expulsion (for migrants) and fear of rejection or moral condemnation by society. Indeed, escape is an act of resistance which does often elicit reprisals by both State and criminal agents and which may mean social visibility and stigmatization as a prostitute or as an abused (seen as ‘damaged’) woman. Next to fears of physical and social punishment for insubordination, women are locked into slavery-like conditions by a lack of economic alternatives, a lack of money, no support system and no (or false) identity papers. Some women do manage to escape coercive employers and to establish themselves more autonomously within prostitution or within another occupation. Others abandon escape strategies as simply too risky, but succeed in gaining some power of negotiation with their employer and, in the best of cases, in arriving at eventual detachment from oppressive control.

Even if State policies permit women, in principle, to report abuse, few women do so because of a lack of confidence in the legal system, a lack of knowledge of their rights, fear that they will be punished or arrested, fear of reprisals by criminal networks and, for migrants, language barriers and a fear of expulsion. Most women have no trust whatsoever in the police or in any other authorities because they are continually faced with daily harassment, corruption, and physical and sexual coercion by exactly those officials. As to migrant prostitutes, a majority of them are illegal in the country of residence and they realistically expect expulsion and probably blame for the abuse committed against them if they report to the police. A forced return home may mean a return to intolerable toil and confinement, the reasons for their original departure, as well as humiliation for returning empty-handed and perhaps rejection by their own family for having worked as prostitutes; at the same time, there is no guarantee that return will avoid reprisals from criminal networks. But the bottom line inhibiting these women from reporting to authorities is their awareness that the law and law officials world-wide do not respect the person or the human rights of prostitutes. Prostitute women know, more than anyone, that their recruiters and employers have more power than they, especially if those agents are public authorities.

The support that is available, provided by NGOs as well as by prostitutes’ rights organizations, includes counselling, legal advice, medical attention, safe shelters, financial assistance and witness protection. Most important among measures designed to concretely help women escape abuse or change their situation are access to alternative employment

(whether or not still in prostitution), access to education and training, decriminalization by arrangement of legal papers, possibilities to take civil action against violators without fear of expulsion or arrest, and access to an array of services as listed above for legal and medical assistance and for safe shelters. For those migrants who return home, there is likewise great need for educational and training opportunities, job opportunities, financial support, shelters, services, support to prosecute offenders and protection against reprisals from agents and against State criminalization.

The above-mentioned prostitutes' rights organizations have been the most grass roots source of information, advocacy and self-organization among sex workers in diverse circumstances. As yet, those organizations are only marginally recognized by national governments and international bodies as essential partners in the struggle for social justice and self-representation.

## **National legal contexts**

National and cross-national legal instruments governing brokerage and working conditions of women in marriage, domestic work and prostitution are complex both conceptually and practically. As stated earlier, the term 'trafficking' is fraught with inconsistencies, contradictions and conflicting interests both within and between juridical frameworks such that deceit, force and violence are often irrelevant or secondary in recruitment and labour legislation pertaining to women migrants and nationals in female-designated labour spheres. In fact, the only labour sphere considered in national anti-trafficking legislation, as in international conventions, is prostitution, thus excluding a whole range of other work or service activities including those subsumed under domestic work and marriage. Some laws glue trafficking to commercial exploitation as if every (migrant) prostitute is necessarily a victim of (forced) recruitment (who must be expelled, detained or rehabilitated 'for her own good' or 'for the good of society') and as if the migration of women per se implies criminal, whether or not freely contracted, labour intentions. Labour intentions are, indeed, central to the problematic at hand. From the perspective of women, the need and right to work with just compensation under proper conditions is primary, whether in one's country of origin or in a country with a demand for one's labour. However, from the perspective of the State, restriction and control of such labour is primary so that officials have more authorization to police women workers than to police working conditions.

A detailed review of pertinent legislation demonstrates the double bind of women whereby they are obliged and recruited to work in female-designated sectors due both to a lack

of alternative employment and/or to gender imperatives while, at the same time, they are punished and discredited for doing so. Legal contexts framing that bind include both trafficking legislation (however defined and under whatever heading) and legislation on marriage, domestic labour and prostitution. Marriage and domestic labour laws go beyond the scope of the present report although the preceding examination of current manifestations of trafficking and forced labour/slavery-like practices reveals the need for in-depth study of the effect of those legal contexts on women's lives. The focus here will be specifically prostitution laws, both in relation to conditions of work and conditions of recruitment. How do those laws affect women? Do they guard against trafficking and forced labour/slavery-like practices according to our working definitions? Or, do those laws collude with violence, coercion and deception of women either inadvertently or by institutional design?

Documentation from all world regions based upon direct interviews, police records, surveys and case studies overwhelmingly shows the failure of the range of existing prostitution laws to support women attempting to avoid, escape, report or prosecute abusers. Prostitution laws fall into two categories, both of which deny the legitimacy of sex work and sex workers: (1) Absolute prohibition of prostitution (2) Selective prohibition and regulation of prostitution. It is important to emphasize that despite contradictions with their own legal codes, States everywhere are explicit or implicit partners in the management and exploitation of the sex industry. A review of legal practices provides a sketch of the uneasy relation between State regulations and the labour conditions imposed upon women.

### *Prohibition of prostitution and criminalization of prostitutes*

The first category of prostitution laws prohibit prostitution and criminalize prostitutes. Sex workers can be fined heavily and regularly (such as in France), arrested and imprisoned (for up to seven years in Uganda, also in Bangladesh, India, Pakistan, Switzerland and Italy), detained in so-called rehabilitation centres against their will (in Vietnam) or sentenced to death (in Iran). Although such laws pretend to eliminate prostitution, governments admit (for one example, see report of the Slovenia government to the Council of Europe, 1994) the failure of prohibitionist laws to deter either customers or their providers. Instead, the common effect of a prohibition system is to increase illicit activity at considerable profit for both pimps and police; control of prostitutes by legal and illegal third parties increases prostitute vulnerability to abuse. Migrant women, whether or not victims of trafficking, are in an even more defenceless position than other women. They are not only liable to arrest as prostitutes but also to arrest and expulsion as illegal foreigners. Under such precarious circumstances, prostitute self-organization is all but

impossible and medical, social, legal or other services are inaccessible. Prostitute clients are basically immune to punishment despite formal sanctions; even when reprimanded, their punishments are incomparable to those of their providers (for example, in India a prostitute can be imprisoned from six months to one year and her customer from seven days to three months, although his sentence is almost never imposed). It must be emphasized that periodic arrests of customers has never in any way improved the position of prostitutes; rather, it is again another push to more isolated and unsafe conditions for women.

The second, and dominant, type of prostitution laws do not prohibit prostitution per se but do legislate selective regulations and prohibitions regarding an array of behaviors intrinsic to the work. Some behaviors are those of prostitutes (and their customers) and some are behaviors of third parties. Beginning with State control of prostitutes (control of customers is secondary, at most), one finds definite enforcement of sentences for failure to register, to appear for mandatory State venereal disease checks, to pay taxes and to stay within designated work zones; in addition, prostitutes can be punished for organizing or even living with other prostitutes, and for working without a legal residence, tourist, artist, working or marital permit. In practice, the above exigencies jeopardize women's social mobility, health, safety and possibilities for escaping and reporting abuse. Specifically, women at risk of job loss, arrest, imprisonment, expulsion or lifelong commitment to a brothel by State authorities will avoid registration at all costs. For that reason, a large majority of prostitutes under a mandatory registration system prefer to work in hiding from the police despite the greater risk of violence and of police blackmail for money and sex. Prostitutes will avoid mandatory health checks for the same reasons; it should also be noted that mandatory checks deny medical confidentiality, encourage customers to insist on unsafe sex due to their illusory sense of immunity, signify arrest for unregistered/unexamined women, and fail as public health measures due to their focus on detection rather than prevention of disease and to the lack of control of the overwhelming majority of players, namely customers. As to zoning, prostitutes fearful of police control avoid prescribed areas and move to isolated, often unsafe work areas. Lastly and perhaps the most widespread prohibition, anti-soliciting laws impose extra work hours to cover frequent fines, impose reliance on pimps for mediated contact with customers, and lead to an exhausting flight from police officers who are trained to entrap rather than protect women.

The above range of State constraints and harassments portrays the legal context to which women locked into forced labour/slavery-like practices in prostitution have recourse. How can they report abuse when their status or commercial activity as prostitute defines



they themselves as outlaws? Escape would probably mean arrest by authorities and even more violence from their abusers. Many women prefer to take their chances with criminal networks than to face the public humiliation, definitive social ruin and risk of violent reprisal a turn to the law could entail. That no-win situation, whether based upon a system of absolute or selective prohibitions, operates for all prostitutes and is especially prohibitive for migrants. Migrant women are often dependent upon recruiters, border guards, employers and husbands in order to live and work legally in a country; such overseers are known to collaborate with the police by offering bribes and ‘free service’ at the expense of the migrants. And when bribes are not paid or the authorities decide to enforce the laws, foreign women are the first to be arrested and either detained in jails (be it in Thailand, Pakistan, Netherlands or Italy) or expelled to a situation they had originally fled for reasons of need, violence, forced labour or threat to life.

### *Prohibitions on third parties*

Next to prohibitions on women’s commercial behavior in prostitution are prohibitions on third parties who recruit women for prostitution or who manage prostitution businesses. Most anti-trafficking laws fall under prohibitions on recruitment, although some are subsumed under the heading of anti-management or anti-exploitation. Drawing upon diverse national laws, ‘trafficking’ is currently defined in the following ways: (1) All prostitution related activities (Malta) (2) All third party involvement in prostitution (India, Bangladesh, Portugal) (3) Buying, selling or obtaining possession of a woman for prostitution (Bangladesh) (4) Any recruitment for prostitution (Nicaragua) (5) Bringing a person/woman into prostitution in another country/promoting or facilitating the entrance to or exit from the country of a woman to practice prostitution (Austria, Thailand, Japan, Colombia, Peru) (6) Bringing another person into prostitution under conditions of violence, deceit or abuse of authority or circumstances (Nepal) (7) Bringing or keeping a person in prostitution by abuse of circumstances and/or violence, deceit or abuse of authority/Any recruitment and/or exploitation with the use of violence, abuse of authority or deceit (Germany, Netherlands) (8) Sale and purchase of a human being for any purpose (Nepal). The above list demonstrates clearly that no examination or re-evaluation of trafficking legislation can avoid an assessment of prostitution legislation and its application. In most countries, the two terms – prostitution and trafficking – are intertwined or even synonymous.

Unlike prohibitions on women’s behavior, prohibitions on third parties, whether called anti-trafficking or anti-prostitution, are not enforced against exploiters as dictated by law but are regularly enforced against prostitutes. For example, laws in most countries include a prohibition of procurement, pimping and/or living off the earnings of prosti-

tution; prostitutes suffer under this law because anyone with whom they live (including a partner, roommate or child) can be and frequently is charged with procurement and living off 'immoral earnings'. Anti-pimping laws also make it illegal for women to work together in the interest of safety, social support and economic co-operation because prohibitions against female solidarity are strongly enforced. Another example of a third party prohibition that burdens women is the common ban on keeping, managing, operating, letting, hiring or furnishing a brothel or other premise for the purpose of prostitution. It is the women working in brothels who are regularly harassed by the police and forced to pay large amounts of money to escape arrest, physical and sexual torture, and confinement. Typically, bans on brothels coincide, however hypocritically, with open or undercover State complicity with brothel owners. For two of many examples: in bangladesh brothel owners make regular contracted payments to the police, customs department and other local State agencies; in Peru, thousands of women working in brothels are detained monthly without any action taken against brothel owners. Also, prohibitions on brothels necessarily criminalize the relationship between a prostitute and the brothel owner, thus denying prostitutes worker rights including proper conditions and access to medical and social benefits. In almost all countries any contract regarding prostitution is either against the criminal law or considered as offending 'good morals' and therefore invalid. And once again, the women in the weakest position are migrant women who are totally discredited both as prostitutes and as foreigners.

#### *Legal disqualification of women in prostitution*

Discreditation of women is a central theme in relation both to the violation of women and to their denial of just recourse following abuse. Quite a number of countries explicitly disqualify women from legal protection who lack 'virtue,' (Canada, Uganda) 'honesty' (Colombia) or 'chastity' (Brazil, Japan). 'Virtue,' 'chastity' and 'honesty' are not used to delegitimize men; they refer specifically to the sexual or sexual-economic behavior of women, notably to women in prostitution. Other countries diminish sentences against the violator of a woman if she is a prostitute (El Salvador).

Research has shown that countries with less explicit distinctions between worthy and unworthy women are no less likely to put a woman on trial when she accuses a man of abuse. In relation to 'trafficking', the offense is considered less serious if the woman was a prostitute prior to being recruited. In other words, once a woman has worked in the sex industry, be it by consent or by force, her legal rights diminish or disappear. The reason for her disqualification is not the illicit character of prostitution because male parties, notably clients, managers, police collaborators and State regulators, do not suffer the same plight. No, the denial of rights to women in prostitution is clearly an example of gender discrimination and abuse.

A second legal disqualification of women in prostitution refers to the non-application of existing laws to female-designated sectors of the economy, in particular to prostitution, domestic work and marriage. There exists legislation in the criminal codes of all countries against illegal confinement, coercion, debt-binding, deception and slavery-like practices. Although such legislation could appropriately be applied to situations of trafficking and forced labour as defined in this report, it is never so applied. Perhaps the main reason for non-application is a refusal to recognize prostitution, the case in point, as labour despite the fact that it entails commercial exchanges of great importance that involve many profit-oriented parties, including the State, and despite the fact that millions of women depend upon earnings from sex work for their livelihood.

Returning to the question of how prostitution and trafficking laws (sometimes one and the same) affect women and whether they protect or endanger prostitutes, women who migrate with the intention of working in prostitution and women who are forced to do so, we can conclude that those laws menace rather than protect women. Most fundamentally, they refuse to grant women the status of adult subjects with human rights. The letter of the law and official practice rarely target force, deceit, violence or slavery-like practices when the victim is female and never do they honour female self-determination. In particular, women stigmatized as prostitutes or unchaste persons are controlled, fined, imprisoned, medically examined by force and commercially exploited by governments in the interest of State agents, criminal networks, brothel owners and individual husbands, pimps, customers and guardians of women.

## **Current strategies**

The diversity of current strategies employed by both governmental and non-governmental organizations to address traffic in women and forced labour/slavery-like practices reflects the diversity – and divergence – of definitions and interests attached to those phenomena. Logically, a solution is drafted in accordance with one's conceptualization of the problem to be solved. If the problem is viewed as economic, then different solutions will be proposed than if the problem is viewed as moral or criminal. Furthermore, since the issues in question are complex, strategic responses are necessarily many faceted; the situation of women is determined by multiple positions as woman, prostitute/domestic worker/wife, migrant, migrant worker, victim of (organized) criminality, and so forth. More than one strategy is appropriate and any one approach is not necessarily good or bad. It is, however, possible to evaluate the impact of a given strategy on the women concerned and such has been the aim of the present report.

Six main approaches to traffic in women and forced labour/slavery-like practices can be deciphered from the array of current strategies. Within each approach one can distinguish a repressive and an empowering strategic mode. Although repressive modes can contribute to a recognition of coercion in recruitment and work as a crime, they run a major risk of turning against women (for example, by restricting women's freedom of movement or by using women as witnesses against organized crime without protection against reprisals); significantly, repressive strategies are appealing to governments for their simplicity and congruence with a range of State interests such as immigration control. Empowerment strategies, used primarily by NGOs, are geared toward supporting women and strengthening their position.

### *A Moral Problem*

Within a moral framework, prostitution is viewed as the problem. Based upon the traditional definition wherein trafficking is inherently coupled with prostitution, prostitution itself is seen as evil without regard for conditions of consent or coercion. Women in prostitution are either victims who must be rescued or deviants who must be reformed/punished.

Corresponding governmental strategies include a criminalization of prostitution (either of all parties in a prohibitionist system or of third parties in an abolitionist system) and sometimes rehabilitation programmes, obligatory or not, for prostitutes. The impact on women is invariably a combination of isolation, stigmatization, marginalization, criminalization, and increased vulnerability to violence due to the illegality of their status and/or activity. Improvement of work conditions and prostitute self-organization are difficult if not impossible since either can be considered in law as facilitation of prostitution.

Non-governmental organizations direct their strategies primarily against moral judgments and the insidious effects of those judgments on women; they work to interrupt the stigmatization and marginalization of prostitutes, to interrupt the prejudices which cast victims of trafficking as fallen women and to interrupt the division of women into good and bad. NGOs plead for legal protection of prostitutes and for the development of work alternatives to prostitution. Some organizations try to shift debates about trafficking from moral stances to a concentration on concrete work conditions and safety measures for prostitutes. They plea against State legislation of morality and against State intervention in prostitution except in cases of force, deceit or violence; they are also in favour of extending the notion of trafficking to include other forms of exploitation such as in domestic work and marriage.

### *A Problem of (Organized) Crime*

In Western countries, a criminal approach is currently dominant not only in response to traffic in women but in response to societal problems in general. This approach focuses on individual perpetrators of crime and individual victims while leaving aside structural causes of complex problems. In practice, criminal laws on trafficking seem to have a purely symbolic value since they are rarely applied: As one NGO says, ‘We don’t need new laws; we need application of existing laws.’ Or, another general complaint of NGOs: Criminal laws are mostly used against women rather than against their violators.

Criminal approaches do indeed carry great risks for women. Most women have negative experiences with the police such as arrest, harassment or, for migrants, expulsion. Filing complaints can lead to stigmatizing exposure at home as well as to reprisals from traffickers or exploiters against oneself and one’s family. Governments lean toward stronger punitive legislation with higher sentences, increased national and international police co-operation and a more active prosecution of offenders. Non-governmental strategies within the criminal approach are directed toward supporting individual women with legal aid, safe shelters, counseling, medical care, help in filing complaints and during court proceedings, prevention of direct expulsion and/or advocacy for discharge from prison.

In addition, NGOs train police and judicial personnel and lobby for recognition of traffic in women as a crime and for application of existing legislation against actual perpetrators of violence. Most central, NGOs lobby for an improvement in the position of the victims such that their complaints are handled seriously, their violators are indeed reprimanded, they are granted (temporary) living permits, adequate witness protection, compensation for damages, State aid and shelter in the place of arrest and expulsion, and humanitarian right to permanent residence or, when appropriate, political asylum according to international guidelines.

### *A Migration Problem*

Those who view traffic in women as a problem of migration put the accent on border crossing, namely on illegal border crossing and illegal residence. Depending upon the perspective of the party, two different strategies are proposed: For the State, most particularly rich countries, fear of ‘uncontrolled waves of foreigners’ leads to strategies geared to halt and sometime criminalize (illegal) migration from poor countries. Also sending countries impose restrictive migration legislation, such as Indonesia with its prohibition of migration for low- and semi-skilled women.

The perspective of women opposes that of the State: For women, it is exactly their illegal

status, the lack of legal migration possibilities (in combination with the demand for work in the informal sector) and the inavailability of work in their own country that makes trafficking such a profitable business and that forces them into an illegal circuit without protection against violence and exploitation. Beginning from the perspective of women, NGOs strive toward (a) recognition of migration as a survival strategy for women (b) research on the legal and social conditions and mechanisms which contribute to trafficking and forced labour/slavery-like conditions (c) information programmes for women considering migration concerning laws, work options, support services, etc. in destination countries (d) organization of support services for women in sending and destination countries (e) improvement of the legal position of women in destination countries, i.e. by lobbying for legal and independent status as workers and as migrants, for workers' rights, for application of conventions related to protection of migrant workers, for independent residence status for women married to a national (f) organization of support for women who return home such as alternative income and employment opportunities (g) creation of viable employment opportunities in countries of origin.

In the context of migration, also the IOM has been active in forging strategies for combating abuses in recruitment and work conditions. Four main aspects of IOM involvement are (a) research (b) information campaigns in countries of origin (c) technical assistance for women to enable their return (d) support programmes for returnees. Those are fairly recent initiatives so it is not yet possible to judge their correspondence to women's needs.

### *A Public Order Problem*

Within a public order optique, strategies focus on the regulation of work. Also here the problem and possible solutions are defined differently by different parties. The State generally views public order in repressive terms whereby 'indecent' or 'disorderly' behavior and 'illegal persons' (notably, migrants) must be banned. Public order is very much tied by governments to public health and especially to medical regulation of prostitutes. Women view public order not in terms of controlling the worker but rather in terms of controlling the working conditions; for example, employers could be penalized or disqualified for coercive or unfair practices. There are no current strategies which put this last perspective in operation although the Netherlands may do so in the future.

### *A Labour Problem*

When traffic in women and forced labour/slavery-like practices are viewed as labour problems, then the position of women as workers becomes the focus of change strategies. In an attempt to improve women's poor legal and social base, strategies aim to achieve recognition of labour in informal sectors as legitimate work, legal possibilities for such work, a

recognition by destination countries of the demand for workers in the informal sectors and labour law protection for the women concerned. Governmental policies rarely, if ever, share this perspective and certainly not in relation to prostitution or to migrant workers. Governments are more likely to employ strategies that inhibit women from migrating for work in the informal sectors and that reinforce repressive and restrictive migrant labour legislation.

It is primarily NGOs which strategize within a labour framework. Concrete NGO initiatives include: (a) support services to strengthen the women in their working situation such as legal resources, language classes, practical help with negotiating money and sending money home, abuse counselling, etc. (b) lobbying for recognition of trafficking and forced labour in marriage, domestic work and prostitution as serious problems (c) lobbying to strengthen (migrant) worker rights, also in the entertainment sector, and to gain recognition of prostitution as work (d) lobbying to improve the legal position and the working conditions of the women involved (e) support of self-organization (f) development of alternative employment programmes (g) research and information campaigns. Also the ILO has begun to focus on the work of women in informal sectors with research on the situation of migrant domestic workers and migrant workers in the entertainment industry.

### *A Human Rights Problem*

Strategies linked to a human rights perspective are predominantly employed by NGOs. Traffic in women and forced labour/slavery-like practices are seen within this framework as violations of women's human rights for which States are accountable. Instruments designed to protect human rights are then invoked as key guidelines. Also here there exist two different currents of analysis: For some, prostitution itself is considered a violation of women's human rights equal to slavery. That judgment of sex commerce per se brings us back to the moral approach whereby prostitutes are stigmatized (as victims or deviants) and whereby prostitute self-organizations are allowed no legitimate place in public debate. For others, the human rights violation is not prostitution itself but the work conditions of force, deceit, violence and abuse of authority. In fact, this approach makes a more real comparison with slavery than an anti-prostitution approach in that condemnation falls upon an oppressive power relation rather than upon a certain type of work; the elimination of slavery ends ownership by one person of another but it does not end farm or domestic labour. Such an analysis reflects the perspective of the women concerned who wish to keep their job but end abusive conditions.

The latter approach rests upon women's rights to control their own body, life, work and,

specifically, to migrate, to decide for themselves whether or not to work in prostitution and under what circumstances, and to be free from violence and restraint. Lobbying focuses upon replacement of the 1949 Convention with a new instrument based upon female self-determination, upon ratification of CEDAW, upon opposition to all policies which marginalize and discriminate against women and upon expansion of definitions to the range of situations in which women find themselves in slavery-like conditions including not only prostitution but also marriage, domestic work and other work or services.

### *Repressive vs. Empowering strategies*

In concluding this review of current strategies, the distinction between repressive and empowerment approaches should be emphasized: Existing governmental strategies are predominantly limited to repressive strategies such as restrictive migration policies and stronger criminal action. Not only do those approaches have meagre preventive effects, but they also fail to meet the women's interests in whose behalf they were supposedly drafted. However, repressive measures are the most obvious, easiest to implement and most appealing for governments in terms of their correspondence to diverse State interests. Traffic in women then comes to legitimize very different goals than those of women.

On the other side are strategies against force and violence which rest upon a strengthening of the rights of women. NGOs put forth this approach (next to a call for clearer and more enforced criminal codes) in combination with practical support (social, medical, juridical). Starting with women's right to self-determination, the interests of women stand central and their participation is seen as essential to the development of effective change strategies. The goal is to insure the rights of those involved as women, as female migrants, as female migrant workers, as domestic workers, as sex workers and as wives. 'As long as those rights are not recognized and guaranteed, traffic in women and forced labour/slavery-like practices will continue to exist.'

## **Concluding recommendations**

I. Research strongly supports the need for new definitions of traffic in women and forced labour/slavery-like practices based upon the perspective and interests of women. Those definitions must specify abusive circumstances attached to brokerage practices, on the one side, and working conditions in both public and private domains, on the other. The central principles underlying the new definitions are the right of women to self-determination, an exclusive focus on coercion in diverse forms and an inclusion of all



work and services rendered under forced labour/slavery-like practices regardless of whether these services are recognized as work, whether they take place under a work or marriage contract, and whether they are considered legitimate or illegitimate in society.

II. Once definitions on behalf of women's rights, safety and social agency have been accepted, existing legislation and other legal instruments, both national and international, should be re-assessed.

Specifically, the Working Group on Contemporary Forms of Slavery should receive adequate financing to (1) evaluate the usefulness of the 1949 Convention from the perspective of the new definitions and their principles and (2) evaluate the nature and extent of State responsibility.

III. Within the framework of the United Nations, information should be collected concerning women who are detained by states or who are missing in the context of trafficking in women and forced labour/slavery-like practices.

IV. Human Rights Standards for the treatment of victims of trafficking in women and forced labour/slavery-like practices should be developed to guarantee basic legal protection and possibilities for redress to victims of these practices. The model developed by the Global Alliance Against Trafficking in Women, The Foundation Against Trafficking in Women and the International Human Rights Law Group should be taken as a reference in developing standards for victims including:

- Right to freedom from persecution or harassment by those in positions of authority;
- Access to competent translators during legal proceedings;
- Access to free legal assistance and legal representation during criminal or other proceedings;
- Access to legal possibilities of compensation and redress;
- Provisions to enable women to press criminal charges and/or to take civil action against their offenders, such as a temporary staying permit during criminal and/or civil proceedings and adequate protection as witnesses;
- Legal permission to stay if return to one's home country is unsafe or, if so desired, assistance to return;
- Protection against reprisals either from the side of the violators or from the side of the authorities.

V. States should address the contributing factors, including women's access to viable employment opportunities, as well as the civil and political, economic, social and cultural rights of women as persons and workers, such as: safe working conditions; freedom of

movement, speech and assembly; freedom to control one's living and working conditions as domestic worker, as prostitute, as wife; freedom to stop working as a domestic worker or prostitute and freedom of divorce. The above rights imply the application of national and international labour regulations, such as the ILO Conventions on wage labour, forced labour, rights of migrant workers and their families, with special attention to clauses on the elimination of debt bondage and practices amounting to debt bondage.

VI. Women should be accorded 'full legal status', independent of marital contract or occupation (including prostitution).

VII. The law should treat women as subjects accorded with rights as 'independent persons', as workers and as migrants, and never as objects of exchange or dependants to be controlled. Strategies should be based upon a recognition of women's right to autonomy and social legitimacy rather than upon female subordination and stigmatization.

VIII. Decriminalization of prostitution: all laws specific to prostitution should be repealed.

IX. Working conditions of women in the informal sectors, including the sex industry, should be improved by creating a legal basis which guarantees working conditions in accordance with international accepted labour standards.

X. Noting that self-organizations and NGOs are the main agents for change as well as the main – and sometimes the only – source of support for the women involved, an essential condition for every measure taken should be co-operation with self-organizations and NGOs working in direct contact with the women concerned to ensure their interests are adequately represented. This means that part of any programme should be support and adequately funding of self-organizations and NGOs.

XI. Given the lack of information on the mechanisms of trafficking in women and forced labour/slavery-like practices, as defined in this report, in the contexts of marriage and domestic labour, research in these fields should be encouraged.



## Annex I

### Questionnaire for NGOs

Utrecht, 15 April 1996

Re: Questionnaire/Report on Trafficking in Women and contemporary manifestations of Forced Labour & Slavery-like Practices in prostitution, domestic labour and marriage

L.S.,

Hereby we are sending you a questionnaire on trafficking in women and contemporary manifestations of forced labour & slavery-like practices with the request to complete it and return it to us.

#### *Background to the Report*

This questionnaire forms part of an investigation we are carrying out in the framework of a report which the Foundation Against Trafficking in Women (STV), based in the Netherlands, and the Global Alliance Against Traffic in Women (GAATW), based in Thailand, are compiling for the UN Special Rapporteur on violence against women, Mrs. Radhika Coomaraswamy, who was appointed by the United Nations Commission on Human Rights at its fiftieth session in February 1994.

One of the forms of violence against women on which she will report in her third report to the Commission, in 1997, is 'trafficking in women and forced prostitution'.

After the publication of her preliminary report in February 1995, representatives of STV and GAATW had opportunity to discuss the issue with the Special Rapporteur. Following these discussions, the Special Rapporteur requested these two organizations to assist her by compiling a substantial report on this issue (annex 1). The report will be global in character and will include a description and analysis of the current trends in trafficking in women, national and international legislative and administrative instruments, governmental and non-governmental efforts to address the issue at community level, as well as in-depth case studies.

#### *Double objective of the Report*

We believe that such a global report will also be extremely useful for furthering the work of NGOs and contribute to the search for more effective measures to combat and prevent

trafficking. Next to providing the Special Rapporteur with the relevant information for her report to the Commission on Human Rights, we aim to bring together persons, organizations and networks and to identify and analyse strategies and shortcomings in current practices. We hope that this will contribute to the development of a conceptual framework as well as stimulate new strategies which are based on the recognition of the human rights of women in all spheres of life and work.

### *Organization of the Research*

STV is coordinating the research for information and the production of the final report. We are collaborating with regional consultants in Asia/Pacific (Sarah Johnston), Africa (Florence Butegwa), South & Central America & the Caribbean (Yamila Azize Vargas) and North America (Lisa Kois) who will coordinate the research and networking in these regions.

We are acutely aware that the most valuable information must come from persons and organizations who are actively addressing the issue in their own local situations, whether through providing services, advocacy on behalf of victims, or research to raise public and political awareness of the particular violations of women's human rights involved. Therefore we are sending this questionnaire to organizations who are working in various ways on this issue and whom we expect to have actual and/or specific information on their own local/ national/ regional situation. Many of those we have approached to ask their cooperation have responded enthusiastically to the whole project, but for some of you this letter will be the first contact. We hope that you will agree with us on the importance of this activity and share with us your invaluable information and experience.

### *The questionnaire*

The questionnaire concentrates on forced labour & slavery-like practices and trafficking in women for prostitution, domestic labour and marriage, since these are the most commonly known and researched situations. However, through the questionnaire, other areas may be identified where these practices occur and where further research is needed. The introduction to the questionnaire (annex 2) presents the framework for the whole report and explains how we developed working definitions of trafficking in women and of forced labour & slavery-like practices, based on our own work in the field and on present developments in the international discourse on the issue.

We hope our efforts to come to coherent definitions that connect to the reality of women will prove to be helpful to the work of NGOs, as well as to focus the international debate by clarifying terms and concepts.

The questionnaire has 4 sections, which are explained in the Instructions for answering the Questionnaire (annex 3).

### *Deliberate omissions*

Although we are aware that trafficking in children occurs extensively and with devastating effects on those affected, the questionnaire will not address trafficking and forced labour & slavery-like practices with regard to children, since these practices take place in a different legal context and need a different approach and strategies.

There is also no specific section in the questionnaire on slavery-like practices and trafficking with regard to marriage. In our opinion this area needs in-depth research in order to understand all the complexities involved. We therefore will appreciate any specific information and case descriptions on trafficking for marriage which you could send us, so that we will be able to include the relevant aspects in the report.

The Special Rapporteur needs the basic information by the end of September 1996. In order to be able to process the responses to the questionnaire in time, we need to receive them by 31 May 1996. We plan to publish the report by the end of 1996. All those who have participated in this effort will receive a copy.

We are aware that we are asking a considerable effort from you to answer quite a substantial questionnaire, so we would like to thank you in advance for making the effort. We look forward to receiving your responses.

With kind regards,

Lin Lap-Chew, Marjan Wijers, Marjolein Sol  
*International Report Project, the Netherlands*

### Annexes:

1. Recommendation letter from Mrs. R. Coomaswamy
2. Introduction to the Questionnaire
3. Instructions for answering the Questionnaire



## Introduction to the questionnaire

### *Objective of the survey*

The objective of the survey is to obtain an overview of:

- the nature and extent of trafficking in women and contemporary manifestations of forced labour & slavery-like practices in prostitution, domestic labour and marriage;
- the national legislative and political instruments to combat trafficking and forced labour & slavery-like practices;
- the strategies of governmental and non-governmental organizations addressing the issue in their countries.

### *Necessity of a clear definition*

A fundamental problem in responding to the issue of trafficking in women is the lack of a precise and unambiguous definition. The traditional concept of trafficking focusses only on prostitution and addresses mainly the ‘procurement’ aspect, based on concern for ‘innocent’ girls who should be protected against being lured into brothels, but largely ignoring the abuses and the slavery-like conditions inside the brothels. Moreover, the traditional concept does not address the contemporary forms of trafficking, such as the traffic in women through commercial marriage bureaus and the trade in domestic workers.

Recent international documents also fail to offer a clear definition of trafficking in women. Some are even quite confusing, e.g. mixing up trafficking and illegal migration or smuggling of aliens, or simply equating trafficking with prostitution. Even the 1949 UN Convention on Trafficking In Women<sup>1</sup> fails to define the two most central terms of ‘trafficking in women’ and ‘forced prostitution’.

However, a clear definition is necessary to develop measures which are effective and which do not give rise to unintended, undesirable side-effects for the women concerned. Without a good definition, attempts to deal with the problem will remain ‘wishful thinking’ at best. At worst they can cause repercussions which have repressive instead of emancipatory effects on the already precarious situation of the women likely to be affected.

### *Working definitions*

We have developed the following working definitions in order to cover abusive working and living conditions and abusive brokerage practices occurring in both public and domestic spheres:

1. Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1949.



*Trafficking In Women:* All acts involved in the recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion.

*Forced Labour & Slavery-like Practices:* The extraction of work or services from any woman or the appropriation of the legal identity and/or physical person of any woman by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion.

### *Explanation of the working definitions*

In formulating these definitions we went back to two international agreements: the League of Nations Slavery Convention of 1926 and the Supplementary Convention of 1956<sup>2</sup>, which condemn all slavery-like practices, including debt bondage<sup>3</sup> and forced marriage<sup>4</sup> and the ILO Forced Labour Convention no. 29.<sup>5</sup> These conventions have broad international acceptance and clearly describe the situations at hand. In the Slavery Convention the concept of ‘ownership’ is fundamental to slavery, which in art. 1.1 is defined as: ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’.

In art. 2 of the ILO Forced Labour Convention, forced or compulsory labour is defined as: ‘all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’.

Whereas the concept of ‘forced labour’ in art. 1 of the ILO Convention is predominantly used for the relation between the State and the individual, art. 4.1 of the same Convention rules on State accountability regarding forced labour situations between individuals: ‘the competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations’.

2. Slavery Convention, 1926; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, 1956.
3. Art. 1a of the Supplementary Slavery Convention prohibits ‘Debt bondage, 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’.
4. Art. 1c of the Supplementary Slavery Convention prohibits ‘Any institution or practice whereby a woman without the right to refuse, is promised or given in marriage on payment of a consideration in money or kind to her parents, guardian, family or any other person or group’, or whereby ‘the husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise’.
5. ILO Convention no. 29 concerning Forced Labour, 1930.

The crucial element in both definitions is coercion, which can take various forms, including but not limited to:

- violence or threat of violence, including deprivation of freedom (of movement, of personal choice);
- deception, a.o. with regard to working conditions or the nature of the work to be done;
- abuse of authority c.q. dominant position: this can range from confiscation of personal documents to place another person in a dependent position, abusing one's dominant social position, abusing one's natural parental authority or abusing the vulnerable position of persons without legal status;
- debt bondage: pledging the personal services or labour of a person indefinitely as security for a debt, when the length and nature of the service is not clearly defined.

'Work or services' includes all domestic, sexual, reproductive or other services rendered under the abovementioned conditions of coercion, regardless of whether these services are recognized as work, whether they take place under a work contract or whether they take place under a marriage contract.

'The appropriation of the legal identity and/or physical person' refers to the concept of partial or total ownership as used in the Slavery Conventions, but the word 'appropriation' is used to denote the act of claiming ownership of a person, acting as if one owns the person.

'Appropriation of the legal identity' can range from confiscating one's identity papers or supplying a woman with a false identity to the loss of one's legal personality under the marriage contract.

### *Principles underlying the definitions*

The basic principle underlying both definitions is the (human) right of all women to have control over her own life and body. This includes the right of adult women working in prostitution to make personal choices regarding their lives and bodies.

The working definitions make a distinction between 'trafficking', which comprises all the processes involved in recruitment and transportation of women under coercive conditions, and the situations of 'forced labour & slavery-like practices' women are subjected to. Trafficking can be the means to bring women into such situations, but not all such situations are the result of trafficking. On the one hand, women can be recruited and transported under conditions of coercion but not end up in a forced labour/slavery-like situation. On the other hand, women can find themselves in forced labour/slavery-like situations without having been trafficked. For instance, State regulations with regard to

prostitution which entail withholding identity papers of prostitutes and closed State controlled brothels make leaving prostitution or maintaining any control of working and living conditions virtually impossible, resulting in forced labour & slavery-like situations, without the occurrence of trafficking.

Through this distinction it is possible to make visible a broader range of forced labour & slavery-like practices to which women are subjected, and which may or may not be the result of trafficking. With coercion as the critical element, all working and living situations in which the personal freedom of women is curtailed, as well as the trafficking practices which are used to bring women into these situations can be addressed.

The knowledge and experience of those presently engaged in addressing the issues related to trafficking in women indicate that slavery-like practices, including forced labour, invariably occur in the sectors in which women basically lack legal protection through labour regulations or other legal provisions. These sectors are prostitution, domestic work and marriage, hence this questionnaire pertains to these three areas.

## Instructions for answering the questionnaire

The questionnaire has 4 sections

- A Organizational Information
- B General questions on forced labour & slavery-like practices and trafficking in women with regard to prostitution, domestic labour and marriage
- C Forced labour & slavery-like practices in prostitution/trafficking in women for prostitution
- D Forced labour & slavery-like practices in domestic labour/trafficking in women for domestic labour.

All respondents have received sections A and B and are requested to complete these sections, which contain general questions. Sections C and D have been sent to selected respondents, because these sections contain questions requiring more specialized knowledge of the respective situations.

For each section that you have received

- 1 Please write as clearly as possible, preferably in block letters.
- 2 Many questions require you to fill in a number between 1 and 5, choosing one alternative from the following scale: 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not  
If you don't know the answer to the question: fill in o  
If the question is not applicable: fill in x  
Please make sure that you fill in all the boxes, because it is important to know whether a question is not answered because the respondent does not know the answer or because she/he forgot to fill in one of the boxes.
- 3 Please do not be discouraged if you cannot answer a question fully. Answer as much as you can and go on to the next question. Every bit of information helps!
- 4 If you CAN have access to relevant information for a particular question, but do NOT have time to look it up, in order to fill in the response, please let us know by writing this in the margin. You can also send the unprocessed information to us.
- 5 The survey does not address children, i.e. persons under 18 (the UN regular standard). If however, a different legal age is used in your country, you can use this standard in your answers, but please indicate that you are using a different age standard.
- 6 Section B: If you have knowledge of other areas where FL&SLP and/or TIW occur, please use the blank box 'other...' in the appropriate questions to describe these. This is important to identify other areas where further research is needed.
- 7 You will probably need an average of 1½ hours to answer each section.

Please send the completed questionnaire by 31 May 1996 to:  
STV – International Report Project  
Post Box 1455  
3500 BL UTRECHT  
The Netherlands

Thank you!

## Working definitions

### *Forced Labour & Slavery-like Practices (FL&SLP)*

The extraction of work or services from any woman or the appropriation of the legal identity and/or physical person of any woman by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion.

### *Trafficking in Women (TIW)*

All acts involved in the recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion.

### **Explanations of some terms**

- ‘your country’: the country in which you live and work and about which you will fill in the questionnaire;
- ‘third party’: all intermediaries – agents, procurers, pimps, brothel keepers;
- ‘GO’: governmental;
- ‘NGO’: non-governmental.

For section C: ‘categories’ of women working in prostitution:

- National prostitutes: women with the nationality of your country, who are working in prostitution in your country;
- Migrant prostitutes: migrant women from other countries, who are working in prostitution in your country. Migrant prostitutes can be either ‘legal’ (i.e. in possession of a valid staying permit) or ‘illegal’ (i.e. without a staying permit);
- Out-national prostitutes: women with the nationality of your country, who are working in prostitution in other countries.

For section D: ‘categories’ of women domestic workers (DWS):

- National DWS: women with the nationality of your country, who are working as domestic workers in your country;
- Migrant DWS: migrant women from other countries, who are working as domestic workers in your country. Migrant DWS can be either ‘documented’ (with a contract and/or working permit) or ‘undocumented’ (without a contract and/or working permit);
- Out-national DWS: women with the nationality of your country, who are working as domestic workers in other countries.

## **A Organizational information**

1. Name of the organization (in your own language and in English) completing the questionnaire:

2. Contact person

Name:

Function:

Office hours/best time to reach you:

Languages spoken within your organization:

3. Full address of the organization:

Tel:

Fax:

Email:

4. Organizational information: How long has the organization been in existence, is it linked with government or political institutions? Number of staff and volunteers?

5. What is the main focus of your organization? (in 3 or 4 sentences)

6. Geographical area covered (local/regional/national/international):

7. What kind of financial support does your organization have?

## **B General questions on forced labour & slavery-like practices and trafficking in women**

### *1. Manifestations, trends & developments*

1. Do forced labour & slavery-like practices (FL&SLP) (according to the working definition) take place in your country in the following situations?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable. If possible, please give an estimate of the number of women involved at the time of this survey.

	Occurrence (1-5)	Estimated number of women involved
FL&SLP take place in prostitution		
FL&SLP take place in domestic labour		
FL&SLP take place in marriage		
FL&SLP take place in other situations		

The above estimations are based on:  government reports  reports of NGOs  own working experience  other, namely ... (please cross all that apply).

2. Does Trafficking in Women (TIW) (according to the working definition) take place to, from, within or through your country for the following purposes?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable. If possible, please give an estimate of the number of women involved at the time of this questionnaire.

		Occurrence (1-5)	Estimated number of women involved
<i>TIW for prostitution takes place:</i>	to my country		
	from my country		
	within my country		
	through my country		
<i>TIW for domestic labour takes place:</i>	to my country		
	from my country		
	within my country		
	through my country		
<i>TIW for marriage takes place:</i>	to my country		
	from my country		
	within my country		
	through my country		
<i>TIW takes place for other purposes</i>			



The estimations are based on:  government reports  reports of NGOs  own working experience  other, namely ... (please cross all that apply).

3. With regard to TIW across borders: is your country
- a. a sending country (country from which women are trafficked):  yes  no  don't know
  - b. a receiving country (country to which women are trafficked):  yes  no  don't know
  - c. a transit country (country through which women are trafficked):  yes  no  don't know

4a. If your country is a sending country (country of origin): please write to which countries of destination women are trafficked from your country.

	<i>TIW from my country for</i>	<i>takes place frequently to the following countries</i>	<i>takes place occasionally to the following countries</i>	<i>don't know</i>
prostitution				
domestic labour				
marriage				
other				

4b. If your country is a receiving country (country of destination): please write from which countries of origin women are trafficked to your country.

	<i>TIW to my country for</i>	<i>takes place frequently from the following countries</i>	<i>takes place occasionally from the following countries</i>	<i>don't know</i>
prostitution				
domestic labour				
marriage				
other				

4c. If your country is a transit country: please write for which countries of origin and destination your country acts as a transit country.

	<i>TIW through my country for</i>	<i>from the following countries</i>	<i>to the following countries</i>	<i>don't know</i>
prostitution				
domestic labour				
marriage				
other				

5. Which of the following recruiting methods are used by traffickers?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Recruiting methods</i>	<i>TIW for prostitution</i>	<i>TIW for domestic labour</i>	<i>TIW for marriage</i>
promise of work as waitress/cleaner			
promise of work as domestic worker			
promise of work as dancer/entertainer			
promise of marriage/marriage			
false job-contracts			
false marriage contracts			
kidnapping			
buying a woman from parents/legal guardian			
buying a woman from husband			
other			

6. Who are the recruiting agents?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Recruiting agents</i>	<i>TIW for prostitution</i>	<i>TIW for domestic labour</i>	<i>TIW for marriage</i>
expected husband			
impresario/artist agencies			
marriage agencies			
individual marriage brokers			
job agencies			
family members			
friends			
acquaintances of family or friends			
strangers/accidental meetings			
government officials/law enforcers			
employers			
other			

7. How do you rate for your country:

- public awareness of FL&SLP and/or TIW?
- media coverage of FL&SLP and/or TIW?
- political awareness/debate on FL&SLP and/or TIW?

Please fill in 1 = high; 2 = medium; 3 = low; 4 = not at all; O = don't know; X = not applicable.

<i>FL&amp;SLP/TIW situations</i>	<i>public awareness</i>	<i>media coverage</i>	<i>political awareness/debate</i>
FL&SLP in prostitution			
TIW for prostitution			
FL&SLP in domestic labour			

<i>FL&amp;SLP/TIW situations</i>	<i>public awareness</i>	<i>media coverage</i>	<i>political awareness/debate</i>
TIW for domestic labour			
FL&SLP in marriage			
TIW for marriage			

8. Have you observed any changes in manifestations and/or trends with regard to FL&SLP and/or TIW in your country during the last 5 years?  yes  no  don't know

If yes, please describe the two most important changes you observed.

1. ...
2. ...

9. Has any research been done in your country during the last 10 years on FL&SLP and/or TIW with regard to:

- a. prostitution:  yes  no  don't know
- b. domestic labour:  yes  no  don't know
- c. marriage:  yes  no  don't know

If yes, please give references to this research. Send copies if possible. (If the research is not written in English, please give English translation of the title.)

## 2 *Legal context*

10. How would you qualify the legal system governing prostitution in your country?

Please cross one of the alternatives:

- prohibitionist system: all prostitution is legally prohibited, anybody involved in prostitution (prostitutes, procurers, pimps, clients) is criminalized;
- abolitionist system: prostitution per se is not an offence, but any involvement by third parties/all exploitation of the prostitution of others is prohibited;
- regulatory system: prostitution is officially recognized and regulated through different forms of registration and other forms of control in the interest of public order and public health;
- decriminalization/laborist system: prostitution is recognized as work and protected by the same laws as other types of work.

11. Does your country have any specific legislation with regard to:

- a. FL&SLP in prostitution:       yes  no  don't know
- b. TIW for prostitution:             yes  no  don't know
- c. FL&SLP in domestic labour:     yes  no  don't know
- d. TIW for domestic labour:         yes  no  don't know
- e. FL&SLP in marriage:             yes  no  don't know
- f. TIW for marriage:                 yes  no  don't know

12. Have there been any major changes in the legislation of your country over the last 10 years with regard to:

- a. FL&SLP in prostitution:       yes  no  don't know
- b. TIW for prostitution:             yes  no  don't know
- c. FL&SLP in domestic labour:     yes  no  don't know
- d. TIW for domestic labour:         yes  no  don't know
- e. FL&SLP in marriage:             yes  no  don't know
- f. TIW for marriage:                 yes  no  don't know

If yes, please describe the two most important changes.

- 1. ...
- 2. ...

### 3 Contributing factors

13. Which of the following factors in the countries of origin and/or of destination contribute to FL&SLP and/or TIW?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Contributing factors</i>	<i>In countries of origin</i>	<i>In countries of destination</i>
poverty/unemployment		
national/local conflict/military presence		
cultural/religious practices		
development strategies (e.g. tourism)		
emigration/immigration laws & policies		

<i>Contributing factors</i>	<i>In countries of origin</i>	<i>In countries of destination</i>
labour regulations		
laws & policies on migrant labour		
laws & policies on prostitution		
globalization of the economy		
corruption of the authorities		
other		

#### 4 *Current strategies to stop forced labour & slavery-like practices and trafficking in women*

14. Does your government have any specific policies on prevention, prosecution or victim support with regard to FL&SLP and/or TIW?

Please write in each box Y (yes), N (no), O (don't know) or X (not applicable)

<i>Policies on</i>	<i>prostitution</i>		<i>domestic labour</i>		<i>marriage</i>	
	<i>FL&amp;SLP</i>	<i>TIW</i>	<i>FL&amp;SLP</i>	<i>TIW</i>	<i>FL&amp;SLP</i>	<i>TIW</i>
prevention						
prosecution of the offenders						
victim support						
other						

15. Is there any co-operation between your government and governments of other countries with regard to TIW?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Co-operation on</i>	<i>TIW for prostitution</i>	<i>TIW for domestic labour</i>	<i>TIW for marriage</i>
prevention			
prosecution of traffickers			
victim support			
return programmes			
other			

16. Are there any NGOs in your country addressing FL&SLP and/or TIW with regard to:

- a. prostitution:             yes  no  don't know  
b. domestic labour:         yes  no  don't know  
c. marriage:                 yes  no  don't know

If yes, what strategies do they employ to combat FL&SLP and/or TIW?

Please write in each box Y (yes) or N (no) or O (don't know) or X (not applicable):

<i>Strategies employed by NGOs</i>	<i>FL&amp;SLP/TIW in prostitution</i>	<i>FL&amp;SLP/TIW in domestic labour</i>	<i>FL&amp;SLP/TIW in marriage</i>
informing women at risk			
advocacy			
victim support			
information/publications			
research			
raising public awareness			
lobbying for change in			
laws & policies			
other			

Please give names and addresses of organizations active in any of these fields.

17. What services are available to victims of FL&SLP and/or TIW in the various situations? Please indicate whether the service is provided by governmental (GO) and/or non-governmental organization (NGO) by writing Y (yes), N (no), O (don't know) or X (not applicable) in each box.

<i>Services</i>	<i>FL&amp;SLP/TIW in prostitution</i>		<i>FL&amp;SLP/TIW in domestic labour</i>		<i>FL&amp;SLP/TIW in marriage</i>	
	<i>provided by GO</i>	<i>provided by NGO</i>	<i>provided by GO</i>	<i>provided by NGO</i>	<i>provided by GO</i>	<i>provided by NGO</i>
	counselling					
legal assistance						
medical assistance						
financial assistance						
safe shelters						
return programmes						
witness protection						
other						

Please give names and addresses of organizations who provide victim support.

### 5 Recommendations

18. What are the two most important things that should change in your country to combat FL&SLP in the various situations?

1. ...
2. ...

19. What are the two most important things that should change in your country to combat TIW for the various purposes?

1. ...
2. ...



## 6 Statistics

20. If possible, please give an estimation of
- the total number of national and migrant women working in prostitution respectively domestic labour at the time of this questionnaire;
  - the percentage of a. (total number), working under conditions of forced labour & slavery-like practices as defined in the working definition;
  - the percentage of women working under FL&SLP-conditions who have been trafficked into this situation;
  - the percentage of the total number of cases of FL&SLP/TIW that is reported to the authorities.

	<i>a</i> <i>total</i> <i>number</i>	<i>b</i> <i>% of a. working</i> <i>under conditions</i> <i>of FL&amp;SLP</i>	<i>c</i> <i>% of b. traf-</i> <i>ficked into</i> <i>this situation</i>	<i>d</i> <i>% of cases</i> <i>reported to the</i> <i>authorities</i>
national women working in prostitution				
migrant (non-national)				
women working in prostitution				
national women working as domestics				
migrant (non-national)				
women working as domestics				

The above estimations are based on:  government reports  reports of NGOs  own working experience  other, namely ... (please cross all that apply).

If it is not possible to give the requested estimations, please indicate why.

21. What is your opinion on the working definitions? Do you think they are helpful to clarify concepts and focus the international debate?

End of Section B  
Thank you.

### C Forced labour & slavery-like practices in prostitution/trafficking in women for prostitution

In order to get a more precise understanding of the prevalence of forced labour & slavery-like practices and trafficking in prostitution we will use the following ‘categories’ of women working in prostitution:

- National prostitutes: women with the nationality of your country, who are working in prostitution in your country;
- Migrant prostitutes: migrant women from other countries, who are working in prostitution in your country. Migrant prostitutes can be either ‘legal’ (i.e. in possession of a valid staying permit) or ‘illegal’ (i.e. without a staying permit);
- Out-national prostitutes: women with the nationality of your country, who are working in prostitution in other countries.

Please do not be discouraged if you cannot answer for all the categories. Answer as much as you can and go on to the next question. Every bit of information helps!

#### 1 Manifestations, trends & developments

1. With regard to your country: do situations of forced labour & slavery-like practices as described in the working definition occur among the different categories of women working in prostitution?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don’t know; X = not applicable.

	<i>occurrence of FL&amp;SLP</i>
national prostitutes	
migrant prostitutes/legal	
migrant prostitutes/illegal	
out-national prostitutes	

2. With regard to your country: does trafficking in women for prostitution as described in the working definition occur among the different categories of women working in prostitution?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

	<i>occurrence of TIW</i>
national prostitutes	
migrant prostitutes/legal	
migrant prostitutes/illegal	
out-national prostitutes	

3. Which of the following forms of coercion are used by traffickers?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Forms of coercion</i>	<i>national prostitutes</i>	<i>migrant prostitutes/legal</i>	<i>migrant prostitutes/illegal</i>	<i>out-national prostitutes</i>
violence or threat with violence				
abuse of authority or dominant position				
deception regarding conditions of work, wages, etc.				
deception regarding the nature of work				
debt bondage				
using false papers				
other				

## 2 *Legal context*

4. Is it possible to work in prostitution on a legal basis

a. for nationals:  yes  no  don't know

b. for migrant women:  yes  no  don't know

If yes, under which conditions?

For nationals: ...

For non-nationals: ...

5. Do your laws on prostitution make a difference between:

a. prostitution by consent and prostitution under coercion:  yes  no  don't know

b. 'third party involvement' by consent and 'third party involvement' under coercion:  yes  no  don't know

c. legal and illegal prostitution:  yes  no  don't know

d. legal and illegal 'third party involvement':  yes  no  don't know

6. Are prostitutes subjected to special registration?  yes  no  don't know

If yes, can women de-register and leave prostitution when they want? (please cross one of the alternatives)

yes, without any problem

yes, but records will be kept and can be used against her

no, records will be kept which will make it very difficult to find another job

no, once you are registered as a prostitute, it is virtually impossible to leave prostitution

other, namely ...

7. Are prostitutes allowed to have their own associations/organizations?  yes  no

don't know

If not, please explain: ...

8. Do the laws of your country specifically exclude prostitutes from legal emigration/immigration?  yes  no  don't know

9. Do women working in prostitution in your country have any form of legal protection against coercion, abuse or violence under the following laws?

Please fill in Y (yes), N (no), O (don't know) or X (not applicable):

<i>Legal protection by</i>	<i>national prostitutes</i>	<i>migrant prostitutes/legal</i>	<i>migrant prostitutes/illegal</i>
criminal laws			
labour laws/regulations			
civil laws			
other			

If you answered one or more of these questions with Y (yes), please explain: ...

10a. Which of the following acts related to prostitution does the law of your country prohibit? Column 1: please fill in Y (yes), N (no), O (don't know) or X (not applicable).

10b. Are these laws enforced? Column 2: please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>The law prohibits</i>	<i>Y/N/O/X</i>	<i>Is the law enforced?</i>
prostitution per se		
prostitution without license/registration		
prostitution outside permitted areas		
soliciting/loitering		
procurement/pimping per se		
procurement/pimping of minors		
procurement/pimping with the use of coercion		
procurement across borders		
procurement across borders with the use of coercion		
brothel keeping per se		
brothel keeping without license		
brothel keeping when minors are involved		
brothel keeping with the use of coercion		
buying of sexual services (clients)		
other		

11. With regard to prostitution involving minors: what is the age of consent under your law?  16 years  18 years  21 years  other, nl ... years (please cross one of the alternatives)

12. Does the criminal law of your country contain specific provisions prohibiting trafficking in women for prostitution?  yes  no  don't know

If yes,

- a. what is prohibited (please give the definition of trafficking in your country's criminal law)? ...
- b. what is the maximum penalty? ... years/months/days (circle) and/or (circle)... US \$ fine
- c. what is the average penalty? ... years/months/days (circle) and/or (circle)... US \$ fine

13. Do these provisions also apply:

- a. when TIW takes place within national boundaries:  yes  no  don't know
- b. when the woman has worked in prostitution before:  yes  no  don't know
- c. when the woman knew she was expected to work in prostitution:  yes  no  don't know
- d. when the woman wants to continue to work in prostitution:  yes  no  don't know

14. Is coercion a necessary condition in your country's legal definition of TIW?

(Please cross one alternative)

- no, any procurement/recruitment for prostitution within and across borders is considered to be trafficking, regardless of the woman's will and regardless of any coercion is used;
- no, any procurement/recruitment for prostitution of women across borders is considered to be trafficking, regardless of the woman's will and regardless of any coercion is used;
- yes, only procurement/recruitment with the use of coercion is considered to be trafficking;
- other.

15. What constitutes 'coercion' under your law (please cross all that apply)?  violence

threat of violence  abuse of authority/dominant position  deception  other

16. Does the criminal law of your country contain specific provisions prohibiting forced

labour & slavery-like practices in prostitution as defined in the working definition?  yes  
 no  don't know

If yes,

- a. what is prohibited (please give the definition of forced labour & slavery-like practices in prostitution in your country's criminal law)? ...
- b. what is the maximum penalty? ... years/months/days (circle) and/or (circle) ... US \$ fine
- c. what is the average penalty? ... years/months/days (circle) and/or (circle) ... US \$ fine

17. Are there any provisions for victims of trafficking and/or forced labour & slavery-like practices in prostitution to obtain compensation for damages?  yes  no  don't know

If yes, please explain: ...

### 3 *Victims situation and needs*

18. Which of the following characteristics of forced labour & slavery-like practices apply to the living and working conditions of the different categories of women working in prostitution?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Living and working conditions</i>	<i>national prostitutes</i>	<i>migrant prostitutes/ legal</i>	<i>migrant prostitutes/ illegal</i>	<i>out-national prostitutes</i>
psychological abuse (threats, name calling, insults, humiliation, etc.)				
physical abuse (hitting, kicking, beating, threatening with violence, etc.)				
sexual assault or rape (incl. attempted or threatened)				

<i>Living and working conditions</i>	<i>national prostitutes</i>	<i>migrant prostitutes/ legal</i>	<i>migrant prostitutes/ illegal</i>	<i>out-national prostitutes</i>
illegal confinement (movements controlled/ restricted, no permission to leave working place, or allowed out only with chaperone)				
isolation (prohibited from normal social contacts, inter- ception of letters/phone calls)				
threat of reprisals against family/relatives				
debt bondage				
identity papers/passport confiscated (and not obtainable on departure)				
false identity papers				
personal belongings are taken away				
not paid regularly and/or paid less than agreed				
not paid at all				
no right to refuse specific customers/forced to have a certain number of customers per day				
no right to refuse specific sexual acts				
no right/opportunity to use condoms				
no access to medical and health care				



<i>Living and working conditions</i>	<i>national prostitutes</i>	<i>migrant prostitutes/ legal</i>	<i>migrant prostitutes/ illegal</i>	<i>out-national prostitutes</i>
dangerous abortion practices/forced abortion				
compulsory HIV/AIDS testing				
not having a bedroom (forced to sleep in working space)				
not having a bed or nothing to sleep on				
more than 12-hour workdays normally				
denial of time off/denial of holidays				
no regular food (given left-overs, regularly denied food, insufficient food)				
forced to recruit sisters/girlfriends into prostitution				
constant fear of police arrest				
other				

19. What factors inhibit women to escaping when they have become a victim of FL&SLP and/or TIW?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Barriers to escape</i>	<i>national prostitutes</i>	<i>migrant prostitutes/ legal</i>	<i>migrant prostitutes/ illegal</i>	<i>out-national prostitutes</i>
movements are controlled by the criminal network				
violence by the criminal network				
fear of reprisals by the criminal network against herself, children, family or friends				
debt bondage/fear of re-tribution against her parents/ relatives for defaulting her debt				
no money				
no or false identity papers				
fear of reprisals or arrest by the authorities				
fear of reprisals by the authorities against family/friends				
fear of deportation				
fear of rejection by her family				
fear of rejection or moral condemnation by society				
family is dependant on her income				
not wanting to return home empty-handed				
lack of alternative employment				
involvement of own government/embassy				
other				

In your opinion, what are the two most important measures that should be taken to help women escape/change their situation?

- 1. ...
- 2. ...

20. What problems do victims of FL&SLP and/or TIW face when they return home?  
 Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Problems women face on returning home</i>	<i>migrant prostitutes/legal</i>	<i>migrant prostitutes/illegal</i>	<i>out-national prostitutes</i>
rejection by her family			
stigmatization/rejection by society			
harassment by the authorities of her own country			
arrest/detention by the authorities of her own country			
reprisals by the criminal network against herself or family/relatives			
caught again by traffickers			
debts that cannot be paid off			
no earning/employment possibilities			
no housing			
psychological problems			
medical/health problems			
HIV/AIDS positive			
no medical care			
left to prostitution because of no other possibilities			
other			

What are the two most important measures that should be taken to support migrant women who became victim of FL&SLP and/or TIW when they return home?

1. ...
2. ...

*4 Current strategies to stop forced labour & slavery-like practices and trafficking in women*

21. Which of the following provisions does your government provide to encourage/facilitate victims of FL&SLP to report to the authorities?  
Please fill in Y (yes), N (no), O (don't know) or X (not applicable).

<i>Provisions to facilitate reporting</i>	<i>national prostitutes</i>	<i>migrant prostitutes/legal</i>	<i>migrant prostitutes/illegal</i>	<i>out-national prostitutes</i>
confidential counselling/victim support				
specially trained police officers				
safe shelters				
witness protection				
free legal aid				
provision against immediate deportation				
legal residence during investigations				
legalization of residence status if the victim cannot/does not want to return home				
assistance in returning home				
special support programmes for returnees				
other				

22. What support services are provided by NGOs?

Please fill in Y (yes), N (no), O (don't know) or X (not applicable).

<i>Support services provided by NGOs</i>	<i>national prostitutes</i>	<i>migrant prostitutes/legal</i>	<i>migrant prostitutes/illegal</i>	<i>out-national prostitutes</i>
counselling/social assistance				
medical/health services				
safe shelters				
legal assistance				
assistance to leave prostitution				
other				

23. Is there any special government policy to detect and prosecute those charged with FL&SLP and/or TIW?  yes  no  don't know

24. Which of the following factors act as a barrier for women to report FL&SLP and/or TIW to the authorities?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Barriers to report to the authorities</i>	<i>national prostitutes</i>	<i>migrant prostitutes/legal</i>	<i>migrant prostitutes/illegal</i>	<i>out-national prostitutes</i>
fear of deportation				
fear of reprisals by the traffickers				
fear that she herself will be punished/arrested				
fear that her situation will become known to her family/community				
outstanding debts				

<i>Barriers to report to the authorities</i>	<i>national prostitutes</i>	<i>migrant prostitutes/ legal</i>	<i>migrant prostitutes/ illegal</i>	<i>out-national prostitutes</i>
need to financially support her family				
lack of confidence in the legal system				
lack of knowledge of her rights/the legal system of the country				
officials themselves are involved in FL&SLP/TIW				
corruption of authorities				
language barrier				
attitudes of law-enforcers				
shame				
no access to legal assistance				
other				

25. If women file a complaint: how are complaints handled by officials in your country? Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Handling of complaints</i>	<i>occurrence</i>
women are believed	
complaints are taken seriously	
complaints are investigated	
complaints result in prosecution	
prosecution results in a conviction	
offenders are sentenced to imprisonment	
offenders are fined	
other	

26. Do victims of FL&SP and/or TIW suffer ill-treatment by the authorities?  yes  no  
 don't know

If yes, which kind of ill-treatment are they subjected to?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Nature of ill-treatment by the authorities</i>	<i>national prostitutes</i>	<i>migrant prostitutes/legal</i>	<i>migrant prostitutes/illegal</i>	<i>out-national prostitutes</i>
harassment by the police				
harassment by immigration officers				
arrest/detention as prostitute				
arrest/detention as illegal alien				
arrest/detention for illegal exit from the country				
arrest/detention for false/no identity papers				
arrest/detention for violation of laws on infectious diseases				
compulsory admission in a rehabilitation centre/penal reform centre				
expulsion				
woman is sent back to brothel-keeper/procurer				
refusal to give back identity papers/issue new identity papers				
compulsory blood testing on HIV/AIDS				
other				

## 5 Recommendations

27. Do you have any recommendations to prevent and combat FL&SLP and/or TIW in prostitution:
- a for the UN: ...
  - b for governments: ...
  - c for NGOs: ...

## 6 Statistics

28. Please give your estimation of the number of women that become victim of TIW (according to the working definition) in your country per year.: ...
29. What percentage of victims of TIW files a legal complaint? (circle the best estimate):  
less than 2%   2-10%   11-30%   31-50%   51-70%   71-90%   more than 90%
30. What percentage of the complaints results in prosecution? (circle the best estimate):  
less than 2%   2-10%   11-30%   31-50%   51-70%   71-90%   more than 90%
31. What percentage of cases prosecuted results in a conviction? (circle the best estimate):  
less than 2%   2-10%   11-30%   31-50%   51-70%   71-90%   more than 90%
32. Please give your estimation of the number of women that become victim of FL&SLP (according to the working definition) in your country per year.: ...
33. What percentage of victims of FL&SLP files a legal complaint? (circle the best estimate):  
less than 2%   2-10%   11-30%   31-50%   51-70%   71-90%   more than 90%
34. What percentage of the complaints results in prosecution? (circle the best estimate):  
less than 2%   2-10%   11-30%   31-50%   51-70%   71-90%   more than 90%
35. What percentage of cases prosecuted results in a conviction? (circle the best estimate):  
less than 2%   2-10%   11-30%   31-50%   51-70%   71-90%   more than 90%



36. If data are available, please fill in the following table with your estimations.

	1990	1991	1992	1993	1994	1995
number of complaints filed by victims of FL&SLP/TIW						
number of complaints that resulted in prosecution						
number of cases prosecuted that resulted in a conviction						

The above estimations are based on:  government reports  reports of NGOs  own working experience  other, namely ... (please cross all that apply).

If it is not possible to give the requested estimations, please indicate why.

*End of Section C*

*Thank you*

## **D Forced labour and slavery-like practices in domestic labour/trafficking in women for domestic work**

In order to get a more precise understanding of the prevalence of forced labour and slavery-like practices (FL&SLP) and trafficking in women (TIW), we will use the following categories of women domestic workers (DWS):

- National DWS = women with the nationality of your country, who are working as domestic workers in your country;
- Migrant DWS = migrant women from other countries, who are working as domestic workers in your country. Migrant DWS can be either documented (with a contract and/or working permit) or undocumented (without a contract and/or working permit);
- Out-national DWS = women with the nationality of your country, who are working as domestic workers in other countries.

Please do not be discouraged if you cannot answer for all the categories. Answer as much as you can and go on to the next question. Every bit of information helps!

1 Manifestations, trends & developments

1. Do situations of FL&SLP (Forced Labour & Slavery-Like Practices) as described in the working definition occur among the different categories of DWS working in your country?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

	<i>occurrence of FL&amp;SLP</i>
national DWS	
migrant DWS/documentated	
migrant DWS/undocumented	
out-national DWS	

2. Does TIW (Trafficking in Women) for domestic labour as described in the working definition occur among the different categories of DWS working in your country?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

	<i>occurrence of FL&amp;SLP</i>
national DWS	
migrant DWS/documentated	
migrant DWS/undocumented	
out-national DWS	

3. Which of the following forms of coercion are used by traffickers?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Forms of coercion</i>	<i>national DWS</i>	<i>migrant DWS/ documented</i>	<i>migrant DWS/ undocumented</i>	<i>out-national DWS</i>
violence/threat of violence				
abuse of authority/ dominant position				
deception regarding con- ditions of work or service				
deception regarding nature of work or service				
debt bondage				
using false papers				
other				

## 2 *Legal context*

4. Are domestic workers protected by labour legislation or regulations in your country?

- a. national DWS:  yes  no  don't know
- b. migrant DWS/documentated:  yes  no  don't know
- c. migrant DWS/undocumented:  yes  no  don't know
- d. out-national DWS:  yes  no  don't know

5a. Are there any special measures undertaken by your government to regulate recruitment and placement of migrant domestic workers? Column 1: please fill in Y (yes), N (no), O (don't know) or X (not applicable):

5b. Are they enforced? Column 2: Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Recruitment and placement</i>	<i>Y/N/O/X</i>	<i>Measure enforced? (1-5)</i>
emigration clearance to leave country		
ban/restriction on direct hiring		
minimum standards for work contracts		
licensing/regulation of private recruiters		

<i>Recruitment and placement</i>	<i>Y/N/O/X</i>	<i>Measure enforced? (1-5)</i>
operation of recr. agency by state		
security bond requirement		
ban/limit recruitment fee charged to worker		
contribution to Welfare Fund		
restriction on passport issue		
regulation of job advertising		
trade test requirement		
compulsory use national employment service		
restriction on selected occupations		
no objection certificate requirement		
compulsory service in country before departure		
ban on female domestic workers		
specification of transport carrier		
periodic inspection recruitment establishment		
pre-departure briefing		
restriction on country of employment		
renewal of contract clearance		

Source: M. Abella (1985) 'Overseas Employment Administration: A Review of Policies and Procedures' in R. Owen, Migration Workers in the Gulf, Report No. 68, London, The Minority Rights Group.

6. Are domestic workers allowed to have their own associations/organizations?  yes  
 no  don't know

If not, please explain: ...

7. Do domestic workers in your country have any form of legal protection against coercion, abuse or violence under the following laws (please fill in Y (yes), N (no), O (don't know) or X (not applicable):

<i>Legal protection by</i>	<i>national DWS</i>	<i>migrant DWS/ documented</i>	<i>migrant DWS/ undocumented</i>
criminal laws			
labour laws/regulations			
civil laws			
other			

If you answered one or more of these questions with Y (yes), please explain: ...

8a. Does the criminal law of your country contain specific provisions prohibiting trafficking in women for domestic labour?  yes  no  don't know

If yes,

- what is prohibited? ...
- what is the maximum penalty? ... years/months/days (circle) and/or ... US \$ fine
- what is the average penalty? ... years/months/days (circle) and/or ... US \$ fine

8b Does the criminal law of your country contain specific provisions prohibiting forced labour & slavery-like practices in domestic labour?  yes  no  don't know

If yes,

- what is prohibited? ...
- what is the maximum penalty? ... years/months/days (circle) and/or ... US \$ fine
- what is the average penalty? ... years/months/days (circle) and/or ... US \$ fine

9. Are there any provisions for victims of FL&SLP in and/or TIW for domestic labour to obtain compensation for damages?  yes  no  don't know

If yes, please explain: ...

### 3 *Victim situation and needs*

10. Which of the following characteristics of FL&SLP apply to the living and working conditions of the different categories of domestic workers in your country?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Living and working conditions</i>	<i>national DWS</i>	<i>migrant DWS/ documented</i>	<i>migrant DWS/ undocumented</i>	<i>out-national DWS</i>
psychological abuse (threats, namecalling, shouting insults, threats)				
physical abuse (hitting, shoving, spitting, kicking, beating, etc)				
sexual assault or rape (including attempted and threatened harassment)				
illegal confinement (movements controlled and restricted, no permission to leave household, or allowed out only with chaperone)				
isolation (prohibited from normal social contacts, interception of letters, phone calls)				
threat of reprisal against family/relatives				
debt bondage				
identity papers/passport confiscated by employer (and not obtainable on departure from employment)				
false identity papers				

<i>Living and working conditions</i>	<i>national DWS</i>	<i>migrant DWS/ documented</i>	<i>migrant DWS/ undocumented</i>	<i>out-national DWS</i>
personal belongings taken away and not returned				
not paid regularly and/or paid less than agreed in contract				
not paid at all				
no access to medical and health services				
not having a bed-room (forced to sleep in hallway, kitchen, bathroom, storeroom)				
not having a bed or nothing to sleep on				
more than 12-hour workdays normally				
denial of time off/denial of holidays				
no regular food (given left-overs, regularly denied food, insufficient food)				
lack of respect for cultural/religious customs & beliefs				
constant fear of police arrest compulsory HIV/ Aids testing				
other				

\*This list is adapted from a report of Kalayaan (Justice for Overseas Domestic Workers, London)

11. Which factors inhibit women from escaping when they become victims of FL&SLP and/or TIW?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Barriers to escape</i>	<i>national DWS</i>	<i>migrant DWS/ documented</i>	<i>migrant DWS/ undocumented</i>	<i>out-national DWS</i>
movements are controlled by traffickers/employers				
violence by traffickers/employers				
fear of reprisals by traffickers/employers against family/friends/herself				
debt bondage/fear of retribution against family for not paying debt				
having no money				
having no identity papers or false papers				
fear of arrest by authorities				
fear of deportation				
dependence of family on her income				
not wanting to return home empty-handed				
lack of alternative employment				
involvement of own government/embassy				
lack of knowledge of laws and her rights				
other				



In your opinion, what are the two most important things that would help women to escape/change their situation?

1. ...
2. ...

12. What problems do victims of FL&SLP and/or TIW face when they return home?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Problems women face when they return home</i>	<i>migrant DWS/ documented</i>	<i>migrant DWS/ undocumented</i>	<i>out-national DWS</i>
no alternative employment/ financial coercion			
psychological problems			
no housing			
medical problems			
lack of skills			
shame for coming home empty-handed			
break down of family relationships			
other			

In your opinion, what are the two most important measures that should be taken to support migrant domestic workers who became victims of FL&SLP and/or TIW on returning home?

1. ...
2. ...

#### *4 Current strategies to stop forced labour & slavery-like practices and trafficking in women*

13. Which of the following provisions does your government provide to encourage victims of FL&SLP and/or TIW to report to the authorities?

Please fill in Y (yes) or N (no) or D (don't know) or X (not applicable):

<i>Provisions to facilitate reporting</i>	<i>national Dws</i>	<i>migrant Dws/ documented</i>	<i>migrant Dws/ undocumented</i>	<i>out-national Dws</i>
confidential counselling/victim support				
specialised trained police officers				
safe shelters				
witness protection				
free legal aid				
provision against immediate deportation				
legal residence during investigations				
legal residence if the victim cannot return home				
assistance in returning home				
support programmes for returnees				
other				

14. What support services are provided by NGOs?

Please fill in Y (yes) or N (no) or O (don't know) or X (not applicable):

<i>Support services available</i>	<i>national Dws</i>	<i>migrant Dws/ documented</i>	<i>migrant Dws/ undocumented</i>	<i>out-national Dws</i>
counselling/social assistance				
health/medical services				
safe shelters				
legal assistance				

<i>Support services available</i>	<i>national DWS</i>	<i>migrant DWS/ documented</i>	<i>migrant DWS/ undocumented</i>	<i>out-national DWS</i>
unemployment assistance				
assistance to return home				
assistance on return				
up-grading/training				
other				

15. Is there any government policy to detect and prosecute those charged with FL&SLP in and/or TIW for domestic work?  yes  no  don't know

16. Which of the following factors act as a barrier for domestic workers to report FL&SLP and/or TIW to the authorities?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Barriers to report to the authorities</i>	<i>national DWS</i>	<i>migrant DWS/ documented</i>	<i>migrant DWS/ undocumented</i>	<i>out-national DWS</i>
fear of losing visa sponsorship				
fear of deportation				
fear of reprisals by the traffickers/agents				
fear that she herself will be punished/arrested				
outstanding debts				
financial dependence of family				
lack of confidence in the legal system				
lack of knowledge of her rights/the legal system of the country				

<i>Barriers to report to the authorities</i>	<i>national DWS</i>	<i>migrant DWS/ documented</i>	<i>migrant DWS/ undocumented</i>	<i>out-national DWS</i>
language barrier				
corruption of authorities				
attitudes of law-enforcers				
officials themselves are involved in FL&SLP/TIW?				
lack of knowledge of/ access to support mechanisms, e.g. legal assistance				
other				

17. If women file a complaint: how are complaints handled by officials in your country? Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Handling of complaints</i>	<i>occurrence</i>
women are believed	
complaints are taken seriously	
complaints are investigated	
complaints result in prosecution	
prosecution results in a conviction	
offenders are sentenced to imprisonment	
offenders are fined	
other	

18. Do victims of FL&SLP and/or TIW risk ill-treatment by the authorities and law-enforcers?  yes  no  don't know

If yes, indicate which kind of ill-treatment are they subjected to?

Please fill in 1 = very frequently; 2 = frequently; 3 = occasionally; 4 = rarely; 5 = not; O = don't know; X = not applicable.

<i>Nature of ill-treatment by the authorities</i>	<i>national DWS</i>	<i>migrant DWS/ documented</i>	<i>migrant DWS/ undocumented</i>	<i>out-national DWS</i>
harassment by the police				
arrest/detention as prostitute				
compulsory admission in a rehabilitation centre/ penal reform centre				
arrest/detention as illegal alien				
arrest/detention for illegal exit from the country				
expulsion				
woman is sent back to brothel keeper/procurer				
harassment by immigration officers				
arrest/detention for false/ no identity papers				
refusal to give back identity papers/issue new identity papers				
compulsory blood testing on HIV/AIDS				
arrest/detention for violation of laws on infectious diseases				
other				

## 5 Recommendations

19. Do you have any recommendations to prevent and combat FL&SLP in and/or TIW for domestic labour,
- for the UN: ...
  - for governments: ...
  - for NGOs: ...

## 6 Statistics

20. If data are available, please fill in the following table with your estimations:

	<i>national DWS</i>	<i>migrant DWS/ documented</i>	<i>migrant DWS/ undocumented</i>	<i>out-national DWS</i>
a. total numbers of DWS				
b. percentage of a. working under conditions of FL&SLP				
c. percentage of b. traf- ficked into this situation				
d. percentage of cases of FL&SLP and/or TIW reported to the autho- rities				
e. percentage of d. investigated				

The above estimations are based on:  government reports  reports of NGOs  own working experience  other, namely ... (please cross all that apply)

If statistics are not available, please explain why: ...

*End of section D*

*Thank You*

## Annex 2

### Questionnaire for International Organizations

#### Questions on trafficking in women and forced labour & slavery-like practices

Please use extra sheets if you need more space to answer the questions.

1a. Has your organization carried out any studies or research concerning TIW/FL&SLP with regard to:

- prostitution:  yes  no
- domestic labour:  yes  no
- marriage:  yes  no

1b. What were the most significant findings of these studies/research? ...

1c. Are there reports of these studies/researches available?  yes  no

1d. If yes, could you please give the references to these reports/researches? ...  
If possible, could you please send them to us? (If necessary we will reimburse costs.)

2a. Has your organization initiated programme(s) in any of these fields?  yes  no

2b. If yes, please fill in the attached 'Programme Information Form' – one for each of the programmes; please make as many copies as you need.

If no, please go on to question 3.

3a. Has your organization formulated any policies with regard to TIW and FL/SLP in the fields of:

- prostitution:  yes  no
- domestic work:  yes  no
- marriage:  yes  no

3b. If yes, please describe briefly the main points of these policies. If available, please send us a copy of such policy statements.

4a. Is your organization involved in any networks on these issues:

– National:  yes  no

Name, address, tel/fax/email of network(s): ...

– Regional:  yes  no

Name, address, tel/fax/email of network(s): ...

– International:  yes  no

Name, address, tel/fax/email of network(s): ...

5a. Does your organization have any plans for future initiatives in this area?  yes  no

5b. If yes, please describe these briefly. If available, please send us a copy of these proposals.

6. Does your organization have any recommendations for action against Trafficking in Women and/or Forced Labour & Slavery-like Practices in prostitution, domestic labour and marriage?

## **Programme information form – part of Question 2**

### *Questions on Trafficking in Women and Forced Labour & Slavery-like Practices*

1. Name of programme: ...

2. Time-span of implementation: ...

3. Names of cooperating organizations: ...

4. Objectives: ...

5. What are the principles underlying the specific approach of the programme; has there been any change in this approach over time? ...

6. How did this initiative come about? ...

7. How is the programme funded? ...

8a. Has the programme ended?  yes  no



8b. If yes, what were the most concrete results of the programme? ...

9a. If the programme has ended, has there been an evaluation?  yes  no

9b. If yes, what, briefly, are the conclusions of the evaluation? ...

10. If available, please send us any printed materials concerning the programme.

*End of questionnaire*

*Thank you*

## Annex 3

### Questionnaire for Embassies

#### Questions on trafficking in women and forced labour & slavery-like practices in prostitution, domestic labour and marriage

1a. Have there been any official reports or surveys concerning trafficking in women and/or forced labour & slavery-like practices with regard to prostitution, domestic labour or marriage?  yes  no  don't know

1b. If yes, could you please give the references to these reports/surveys?  
If possible, could you please send us a copy.

2a. Does your country have any specific legislation or official government policies concerning trafficking in women and/or forced labour & slavery-like practices with regard to prostitution, domestic labour and/or marriage?  yes  no  don't know

2b. If yes, could you please describe such legislation/policies prescribed?  
(Please send us a copy of the texts of any laws or regulations related to trafficking and/or forced labour & slavery-like practices.)

3a. Is it possible to work as a prostitute legally:

a. for nationals:  yes  no  don't know

b. for migrant women:  yes  no  don't know

3b. If yes, under which conditions?

For nationals: ...

For migrant women: ...

4a. For migrant women, is it possible to work as a domestic worker legally?  yes  no  
 don't know

4b. If yes, under which conditions? ...

5a. Which of the following acts related to prostitution does the law of your country prohibit? – Column 1: please fill in Y (yes), N (no) or O (don't know)

5b. What is the maximum penalty? Column 2: please fill in the number of years/months/days and/or the fine in US \$)

5c. What is the number of convictions during the last 5 years (1991-1995)? – Column 3: please fill in the number of convictions, if available.

<i>The law prohibits</i>	<i>Y/N/O</i>	<i>Maximum penalty*</i>	<i>Number of convictions**</i>
prostitution per se			
prostitution without license/registration			
prostitution outside permitted areas			
soliciting/loitering			
procurement/pimping per se			
procurement/pimping of minors			
procurement/pimping with the use of coercion			
procurement across borders			
procurement across borders with the use of coercion			
brothel keeping per se			
brothel keeping without license			
brothel keeping when minors are involved			
brothel keeping with the use of coercion			
buying of sexual services (clients)			
other			

\* Years/months/days and/or US \$ fine (1991-1995).

\*\* During the last 5 years.

6a. Does your country have any specific (migration, labour, criminal) legislation or policies concerning migrant women working in prostitution or domestic labour and/or migrant women married to nationals of your country?  yes  no  don't know

6b. If yes, could you please describe these laws/policies? ...

7a. Have there been any major changes in your country’s legislation or government policies concerning trafficking and/or forced labour & slavery-like practices during the last 5 years (1991-1995)?  yes  no  don’t know

7b. If yes, could you please describe these changes: ...

8a. Is there any police cooperation on the national or international level to prevent and combat trafficking and/or forced labour & slavery-like practices?  yes  no  don’t know

8b. If yes, could you please describe this cooperation: ...

9. Does your country have any specific government policies concerning (please tick where appropriate):

	<i>yes</i>	<i>no</i>	<i>don't know</i>
the prevention of trafficking in women and/or forced labour & slavery-like practices?			
the tracing and prosecution of offenders?			
encouraging of victims to press charges?			
the provision of medical, legal, social, financial, psychological or other assistance to victims?			
legal possibilities for victims to claim compensation for economic, physical and psychological damages?			
granting a temporary residence permit to victims in order to enable them to take legal action against the offenders and to regain control over their life?			
assistance to victims in returning home?			
granting a permanent residence permit to victims if they cannot return home?			

10a. Do (migrant) women who are working in prostitution or in domestic labour or married to nationals of your country have any form of legal protection against violence, abuse or coercion?  yes  no  don’t know

10b. If yes, please describe the relevant laws and whether they are enforced: ...

11. If statistics are available, could you please fill in the following table?

	<i>In 1995</i>
national women working in prostitution	
migrant women working in prostitution	
national women working as domestics	
migrant women working as domestics	
migrant women married to nationals of your country	

12a. If statistics are available, could you please fill in the following table?

	<i>Total of the last 5 years (1991–1995)</i>
number of migrant women working in prostitution who were expelled	
number of migrant women working as domestics who were expelled	
number of migrant women married to a national of your country who were expelled	

12b. On which grounds were they expelled?

- migrant women working in prostitution: ...
- migrant women working as domestics: ...
- migrant women married to a national of your country: ...

13. If statistics are available, could you please fill in the following table?

	<i>Total of the last 5 years (1991–1995)</i>
number of women who filed a complaint under the laws you mentioned in question 2	
number of court cases that took place	
number of persons convicted	

We would appreciate very much to receive any relevant information and/or documents.

*End of questionnaire*

*Thank you*

## Annex 4

### List of respondents to the questionnaire

#### *NGOs which returned a completed questionnaire*

##### *Australia*

Australia, End Child Prostitution in Asian Tourism (ECPAT)

Australia, Prostitutes Collective of Victoria

##### *Asia*

Bangladesh, Association for Community Development (ACD)

Bangladesh, Center for Women and Children Studies

Bangladesh, Ain o Salish Kendra (ASK)

China, Yunnan/Australian Red Cross

Hong Kong, Action for Reach Out

Hong Kong, Helpers for Domestic Helpers

India, SANLAAP

India, Rural Resource Women's Organization (SANGRAM)

Japan, HELP, Asian Women's Shelter

Japan, Kanagawa Women's Space

Nepal, Maiti

Nepal, Women acting together for change (Watch)

Philippines, National Commission on the Role of Filipino Women

Taiwan, Grassroots Women Workers' Centre (GWWC)

Thailand, Office of the National Commission on Women's Affairs (ONCWA)

Thailand, Office of the Attorney General

Thailand, Centre for the Protection of Children's Rights (CPCR)

Thailand, Images-Asia

Thailand, Good Shepherd Sisters-Fountain of Life Center

Vietnam, IOM mission

##### *Europe*

Belgium, Pag-asa

Bulgaria, Association Animus

Czech Republic, Bliss without Risk

Czech Republic, La Strada  
Czech Republic, ProFem  
Denmark, KULU-Aarhus  
Denmark, Reden The Nest  
England, Kalayaan  
Finland, Stakes  
Germany, Amnesty for Women  
Germany, Ban Ying  
Ireland, Filipino-Irish Group  
Italy, Associazione Donne Senza Confini  
Italy, Casa delle Donne per non subire violenza  
Italy, Khantara Group  
Netherlands, Foundation against Trafficking in Women (STV)  
Poland, La Strada  
Romania, National Association of University Women  
Slovenia, Slovenian Ecology Movement  
Spain, IEPALA/AMDE  
Switzerland, Caritas  
Switzerland, FIZ  
Turkey, Women for Women's Human Rights  
Ukraine, Ukrainian Center for Women's Studies

### *Africa*

Cameroon, Association de lutte contre les violences faites aux femmes (ALVF)  
Cameroon, Fesade  
Mali, AJM  
Mali, APDF  
Namibia, Legal Assistance Centre  
Nigeria, Ms. Grace Osakue  
Tanzania, Ms. Helen Kijo-Bisimba  
Zambia, Young Women's Christian Association (YWCA)

### *North America*

Canada, Prostitutes Empowerment Education Recovery Society (PEERS)  
Canada, Philippine Women Centre of B.C.  
Canada, Status of Women Canada  
USA, Farmworker Legal Services of New York  
USA, Women's Justice Center



*South-, Central America, Carribean*

Curaçao, Kamala Kempadoo

Dominican Republic, Centro Orientacion e Investigacion Integral (COIN)

Dominican Republic, Coordinadora Organizaciones no Gubernamentales del Aera de la Mujer

Ecuador, Pan American Health Organization-World Health Organization (OPS/OMS)

Mexico, Comunicacion e Informacion de la Mujer Asociacion Civil (CIMAC)

Mexico, Mujeres por la salud en acción contra el Sida AC.

Peru, Movimiento El Pozo

*International organizations which returned a completed questionnaire*

African Centre for Democracy and Human Rights Studies (ACDHRS)

Anti-Slavery International

Bilance

CAFOD/Medical Missionaries of Mary

CARITAS Switzerland

CLADEM-Peru

European Human Rights Foundation (EHRF)

European Women's Lobby

Euro Step

HIVOS (Humanist Insitute for Cooperation with Developing Countries)

International Organization for Migration

Quaker Council for European Affairs

Women's International Network

*Embassies which returned a completed questionnaire*

Austria, Ministry of Women Affairs

Czech Republic, Ministry for Foreign Affairs

Germany, Ministry for Family Affairs, Senior Citizens, Women and Youth

Hungary, Ministry of Labour, Office of the Status of Women

Luxembourg, Ministère de la Promotion Féminine

Slowak Republic, Presidium Slowak Police

South-African Embassy, The Netherlands

Spain, Ministerio de Trabajo y Asuntos Sociales, Instituto de la Mujer

## Annex 5

### Members of the Advisory Committee and regional consultants

#### Members of the Advisory Committee

**Siriporn Skrobanek** Coordinator Global Alliance Against Trafficking in Women (GAATW), Bangkok

*NGO/community activities and networking*

**Lesley Roberts** Ex-director Anti-Slavery International, London

*UN/International Human Rights instruments and agencies and their processes*

**Gail Pheterson** Psychologist, publicist, lecturer, Paris/Amsterdam

*Migration (labour) processes and consequences, including migratory prostitution processes*

**Roelof Haveman** Criminal Law Lecturer, University of Leiden

*Legislation and juridical processes*

**Welmoed Koekebakker** Head of Asia Department, Humanist Institute for Cooperation with Developing Countries (HIVOS), member of the Board of STV

*International development co-operation*

#### Regional Consultants

**Yamila Azize-Vargas** Latin America and Caribbean

**Florence Butegwa** Africa

**Lisa Kois/Joanna Bond/Jyoti Sanghera** North America and Canada

**Siriporn Skrobanek/Sarah Johnston** Asia and Pacific

## Annex 6

# Human Rights Standards for the Treatment of Trafficked Persons

*Global Alliance Against Traffic in Women (GAATW)*

*Foundation Against Trafficking in Women (STV)*

*International Human Rights Law Group (IHLRG)*

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 rehabilitation.

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.

*State Cooperation:* States must work cooperatively in order to ensure full implementation of these Standards.

## 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 rehabilitation.

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 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

1. 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 Labour Organization Conventions No. 29 Concerning Forced Labour (ILO No. 29) and No. 105 Concerning Abolition of Forced Labour (ILO No. 105).

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

2. See Declaration on the Elimination of Violence Against Women, General Assembly, A/RES/48/104 (2/23/94)

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 in persons:* All acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person

(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.

3. See ICPRMW 68.1.

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, 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...'

4. The International Labour Organization 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 sexwork on the international agenda*, Jo Bindman, Anti-Slavery International with the participation of Jo Doezema (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.



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.

5. 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.

*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 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,
6. 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).

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.

### *Safety and Fair Treatment*

3. Ensure access to:
  - a. the embassy or consulate of the country in which the trafficked 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

7. 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.

8. UDHR 13.1; ICCPR 12.1

9. UDHR 13.2; ICCPR 12.2-4; CEDAW 15.4; ICPRMW 8.

10. Standard Minimum Rules for the Treatment of Prisoners 38; ICPRMW 23.

11. Model Strategies 10; Declaration of Basic Principles 14-15.

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 rehabilitation as a result of being trafficked.<sup>14</sup>
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>

12. 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).

13. See Model Strategies 7(i), 8(c), 9(b).

14. ICPRMW 16.5-7; Model Strategies 10(a).

15. ICPRMW 16.4.

16. Model Strategies 7(c).

17. ICC 42.9; Model Strategies 11(f).

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*

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>

18. Model Strategies 16(b).

19. UDHR 8; ICCPR 2.3; ICPRMW 16.2; Declaration of Basic Principles 4-5.

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>
  - b. The prosecutor either calls at least one expert witness on the causes and

20. ICCPR 14.3; ICPRMW 18.3.

21. Model Strategies 8a, 9(a)(i).

22. UDHR 3; ICCPR 6; CEDAW 2(f), 6 and Recommendation 19 on Violence Against Women).

23. UDHR 5, ICCPR 7; CAT, all, CRC 37(a); ICPRMW 10.

24. UDHR 4; ICCPR 8; SC, all; SCAS, all; ILO Nos. 29 and 105, all; CRC 32; ICPRMW 11.

25. SCAS 1(a).

26. UDHR 16.1-2; ICESCR 10.1; ICCPR 23; CEDAW 16; SCAS 1(c).

27. Model Strategies 10(d).

28. 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).

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 defence 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-defence 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>

29. ICC 42.9.

30. ICC 21.3, 54.1(b); Model Strategies 7(d) and 8(b).

31. ICC 21.3, 68.1; Model Strategies 7(d).

32. ICC 68.2; Model Strategies 7(c).

33. Declaration of Basic Principles 6(a).

34. Declaration of Basic Principles 6(b).

35. See ICCPR 14.3(d).

36. See ICCPR 14.3(d).

c. Trials involving migrant trafficked persons are conducted in accordance with these 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 rehabilitation for economic, physical and psychologi-



cal damages.<sup>37</sup> Non-wage compensation, restitution and rehabilitation 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 rehabilitation 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 rehabilitation.

COMMENTARY: Trafficking in persons has major economic, emotional, psychological 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>

37. 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.

38. 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)

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 able to pay off

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).

39. CAT 3.

40. Convention Relating to the Status of Refugees, I.2.

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

41. Model Strategies 11, 12.

42. Declaration of Basic Principles 16.

43. ICPRMW 28; Declaration of Basic Principles 14-15, 16.

Human Rights (UN Centre for Human Rights and World Health Organization, 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 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 psycho-somatic 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

44. Model Strategies II(a).

45. ICPRMW 67.1.

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 organizations 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.

46. ICPRMW 67.2.

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## List of abbreviations

CEEC	Central and Eastern European Countries
CDEG	Steering Committee for Equality between Women and Men
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CSW	Commission on the Status of Women
EEC	European Economic Community
FLS	Forward Looking Strategies
FL&SLP	Forced Labour and Slavery-like Practices
GAATW	Global Alliance Against Traffic in Women
GO	Governmental Organization
IMF	International Monetary Fund
IOM	International Organization for Migration
ILO	International Labour Organization
IRP	International Report Project
MOB	Mail Order Bride
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
STV	Foundation Against Trafficking in Women (Stichting Tegen Vrouwenhandel)
TIW	Trafficking in Women
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
WHO	World Health Organization