

International Symposium on Gender at the Heart of Globalization

Trafficking, demand and the sex market

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Trafficking in persons has emerged high on international, regional and national agendas as a forced labour issue involving particular supply-demand factors in imperfect labour markets at origin and destination. The ILO defines forced labour as all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered herself or himself voluntarily. Forced labour involves violation of human rights and restriction on human freedom, slavery and slavery-like practices, debt bondage and servitude. Women and men, girls and boys are trafficked, but gender, socio-cultural and market biases determine the type and severity of forced labour in different sectors. The ILO estimated in 2004 that 2.45 million people in forced labour had been trafficked across international boundaries. Of these about 43 per cent had been destined for sexual exploitation, and a third for economic exploitation. Of those trafficked for prostitution, 98 per cent were women and girls.¹

Until recently, efforts to tackle trafficking tended to focus on the supply side with measures aimed at addressing the conditions, in particular poverty and unemployment, that drive people to leave their home in the first place. Attention has now shifted to the demand side of trafficking, in particular the demand for trafficked persons' services in the sex market.

The presentation emphasizes that trafficking should not be conflated with prostitution and that a "prohibitionist" or "abolitionist" approach to end demand in the sex market is not an effective solution to tackle trafficking. It examines demand and the demand side of trafficking and the particular characteristics of the market for commercial sexual services, including the economic and social bases of the market. The challenge we face is to address the real root causes of trafficking – the reasons why people migrate and are trafficked and the reasons why other people are able to traffic them. It is not enough merely to regulate the sex market; we need to address the areas of vulnerability. At the same time, the related – and perhaps more difficult - challenge is to place the respect for and protection of human rights at the centre of all measures to combat trafficking and to disentangle human rights concerns from morality biases concerning prostitution.

Trafficking is not just for sexual exploitation

When the focus is only on trafficking into the sex market, the danger is that trafficking is conflated with prostitution and anti-trafficking measures become invariably anti-prostitution measures. Prostitution per se as the exclusive purpose of trafficking is an untenable definition as not all victims are prostitutes and nor have all the prostitutes been trafficked.

¹ ILO, *A global alliance against forced labour*, Global Report under the follow-up to the ILO Declaration, Report I (B), International Labour Conference, 93rd Session, Geneva 2004, para.60

The conflation of trafficking with prostitution ignores the fact that at least one-third of those trafficked are for economic purposes other than sexual exploitation. There is ample evidence of trafficking into construction work, agriculture and food processing, fishing, domestic and care work, sweatshops in the manufacturing industry, hotels and hospitality and for the purposes of organized begging, the exploitation of petty crime and benefit fraud. In activities or sectors prone to exploitation, the demand is for employees who are invisible, unprotected, excluded, vulnerable and disempowered. Demand for such labour may often be met, although not exclusively so, through trafficking.

In a statement on demand on the Special Day on Trafficking, 3rd. October 2006, the Alliance Expert Coordination Team² emphasized that “to do justice to both the definition and the different kinds of trafficking situations that we the Alliance partners address in our day to day work, discussions of demand and measures taken to ‘discourage the demand’ (Art.9.5, Palermo Protocol) must reflect the breadth and seriousness of all purposes for which people are trafficked”.³

The Palermo Protocol (also known as the Trafficking Protocol)⁴ defines trafficking as the recruitment, transport, transfer, harbouring or receipt of a person by such means as threat or use of force or other forms of coercion, of abduction, of fraud or deception “for the purpose of exploitation”. Exploitation includes, as a minimum, “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (Article 3(a) of the Protocol). The entry into force of the Protocol in December 2003 introduced into international law the concept of exploitation – which covers both sexual and labour exploitation – regarding which there had been limited juridical precedent. The Protocol requires States Parties, several of which had hitherto adopted anti-trafficking laws which cover only sexual exploitation of women and children, to adopt or amend their laws in order to have a broader concept of trafficking and exploitation.

In fact, the Report of the Special Rapporteur on Trafficking in Persons especially women and children, Sigma Huda⁵ came under heavy criticism from several international anti-trafficking organizations for conflating prostitution with trafficking and choosing “to adopt the abolitionist view that all prostitution involves trafficking and to reject, without evidence, the other view that prostitution can and does exist without trafficking”.⁶ These organizations pointed out that trafficking is defined more broadly under the Palermo Protocol and that even on the question of prostitution, delegates to the Protocol negotiations were unable to develop a consensus view on whether or not trafficking of

² Comprising OSCE/ODIHR, UNHCR, UNDP, UNICEF, UNIFEM, ILO, IOM, International Federation of Red Cross and Red Crescent Societies, ICMPD, Europol, Interpol, Dutch National Rapporteur, Nexus Institute, ACTA, Anti-Slavery International, ECPAT, La Strada International, International Federation of Terre des Hommes, Save the Children, Amnesty International.

³ Human Dimension Implementation Meeting Special Day on Trafficking 3 October 2006 Alliance Statement on Demand, Presented by La Strada International on behalf of the Alliance Expert Coordination Team, HDIM.NGO/41/06, 3rd. October 2006.

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol), supplementing the United Nations Convention Against Transnational Organized Crime, 2000.

⁵ Sigma Huda, “Integration of the human rights of women and the gender perspective”, E/CN.4/2006/62, 20 February 2006, 62nd Session of the Commission on Human Rights.

⁶ La Strada International, *Response of La Strada International to the Report of the Special Rapporteur on Trafficking in persons, especially women and children, Sigma Huda.*

adults includes all sex work (whether legal or illegal) or only unfree or forced sex work and therefore left it to States parties to make this determination in their own national implementing legislation.

Understanding demand and the demand side of trafficking

The “prohibitionist” or “abolitionist” view is that prostitution represents a form of male sexual violence against women and that a market in commercial sexual services reduces women and girls to mere commodities; it makes no distinction between “forced” and “voluntary” prostitution. Those that adopt such a view therefore insist that to employ a woman as a prostitute is by definition to exploit her, and to pay for commercial sexual services is automatically an act of “sexual exploitation” and that trafficking is driven by consumers’ demand for commercial sexual services as well as employers’ demand for cheap, controllable labour in the sex market.

The issue of demand is, however, complex and complicated. “Demand” in the context of trafficking is an ideologically loaded term for which there is no precise agreed upon definition and understanding. A recent study by the ILO⁷ pointed out that while demand usually refers to the desire and preference for a particular commodity, labour or service, in the case of human trafficking, demand is for labour that is usually exploitative or constitutes one of the worst forms of child labour or a demand for services in the delivery of which someone makes profits while violating human rights. The study identified:⁸

- *Demand* at three levels:
 - Consumer demand (clients in the sex industry, corporate buyers in manufacturing, household members in domestic work);
 - Employer demand (employers, owners, managers or subcontractors);
 - Third parties involved in the process (recruiters, agents, transporters and others who participate knowingly in the movement of persons for purposes of exploitation); and also
- The *demand side* which refers to the nature and extent of exploitation and abuse of the trafficked victims after reaching the destination point as well as the social, cultural, political, economic, legal and development factors that shape the demand and influence or enable the trafficking process.

From a simple market perspective, it could be argued that if there were no consumers and no demand, there would be no income potential and, therefore, no supply. In short, there would be no market. From this perspective, it is evident that demand is a crucial part of all markets, including in markets where exploitation and trafficking occur. However, in the context of trafficking, the reality is not so simple – demand and supply factors are closely intertwined. What is still unclear and what we need research on is the relative importance of these factors. Is it an abundant supply of vulnerable women and girls whose services and labour can be exploited that fuel a level of demand that would not otherwise be there?

What is clear is that the supply side cannot be ignored because the process of trafficking starts at home with the root causes of vulnerability. And the push factors relate not just to poverty and chronic unemployment but, importantly, to deep-rooted discrimination and

⁷ ILO, *Demand Side of Human Trafficking in Asia: Empirical Findings*, Bangkok, 2006.

⁸ The study examined demand in five sectors - commercial sex, domestic labour, organized begging, fireworks production and child soldiers, and in five countries - Bangladesh, Indonesia, Nepal, Pakistan and Sri Lanka.

inequalities. In country after country from where large numbers of women and girls are being trafficked, one finds the same vignettes of female powerlessness. In many societies, girls are still seen as expendable and are expected to sacrifice education and security to take on responsibilities towards parents and siblings. Females are still perceived as a liability to the natal family so that if an opportunity presents itself, families are willing to trade less valued wives, daughters, sisters with little thought for their rights or future well being. In cultures and communities where women and girls have low status and are considered chattel and dispensable and traditions or attitudes tolerate violence against women, they are much more likely to be vulnerable to being coerced and becoming victims of trafficking. Gender-based discrimination is compounded by discrimination based on other forms of “otherness”. Women and girls from ethnic minorities, scheduled castes, unemployed or floating populations, indigenous populations and other marginalized groups are particularly vulnerable to being trafficked. And because such discrimination and endemic and persistent poverty in so many countries around the world is pushing thousands of women and girls to migrate and seek employment and better earning opportunities elsewhere, the abundant labour supply available at low cost fuels a level of demand that would otherwise not be there.

Demand for a person’s service or labour is not necessarily the same as demand for a trafficked person to perform this service or labour. The ILO study in five countries found that the majority of clients and consumers did not specifically demand services from trafficked women or children and many would be unable to distinguish trafficked from non-trafficked persons. But the research by Anderson and O’Connell Davidson pointed out that clients of prostitutes often have an interest in the person of the worker, rather than simply the product of her/his labour. When buying, for example, garments or agricultural products, the client normally has no interest in the identity of the workers whose labour produced them. But when buying sex, the client may have very specific preferences regarding the workers’ age, gender, race, nationality, caste and/or ethnicity as well as her/his appearance, demeanour and linguistic capabilities. They therefore conclude that it is conceivable that consumer demand in the sex market is more closely related to the phenomenon of trafficked/forced labour than other product sectors.⁹ The ILO study also found that there was a significant group of clients who had preferences for virgins and children thereby directly fuelling the demand for trafficked young women and girls.¹⁰

However, a much more direct role is played by employers and third parties such as agents. The study indicated that “the trafficking phenomenon is to a very high extent a result of employers’ unchallenged ability to create their own – often exploitative – working conditions for women and children in informal ‘hidden’ sectors where they easily can take advantage of the legislative weaknesses and is further enabled by a socio-cultural context that tolerates certain kinds of discrimination and exploitation. Overall the research suggests that trafficking from a demand-side perspective should be seen as a combination of employers’ and third parties’ more direct interest in controlling and exploiting women and children in informal sectors and the unregulated characteristics of those sectors that then makes exploitation common and often a no- or low-risk deed for the exploiters”.¹¹

⁹ B. Anderson and J. O’Connell Davidson, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study*, International Organization for Migration, December 2003, pp.11-12.

¹⁰ ILO, *Demand Side of Human Trafficking in Asia: Empirical Findings*, op.cit., p.36.

¹¹ *Ibid*, p.3.

A demand-side perspective should also look the environment that enables and influences demand. For example, the increasing informalization and casualization of production and employment relationships is an important factor. The conditions in the informal economy – which is not covered by labour law and social protection and outside the scope of labour inspection and where there is a lack or absence of organization and representation of workers – facilitate the incorporation of trafficked and undocumented migrant workers. Employment in the informal economy – which includes sex work, domestic work, manufacturing subcontracting – is largely invisible and practically unreachable by current labour standards inspection and enforcement; it is therefore possible and profitable to use forced labour.

The State could also contribute, albeit indirectly or passively, to sustaining the demand for trafficked persons. The lack of specific, appropriate and effective legislation on trafficking has been identified as one of the major impediments in the fight against trafficking. Existing legislation and law enforcement in most countries have been inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offences involved. For example, “even when trafficking is defined as a crime in law, it is sometimes confined to trafficking for the purpose of sexual exploitation and does not cover other forms of forced labour, slavery or servitude. Such an approach of conflating trafficking with prostitution not only means that traffickers often escape deserved punishment; it can also lead to further discrimination against female victims of trafficking because of prejudicial attitudes of law enforcers and society at large towards prostitutes. On the other hand, the victims of trafficking are often punished more harshly than the traffickers themselves; they are prosecuted and deported, rather than protected. The authorities tend to treat trafficked persons as criminals rather than as victims, because of their irregular residence and employment status in the destination country, or because they work in prostitution. These action lead victims to mistrust authorities and to refuse to cooperate with investigations, thereby, decreasing the chance that traffickers will be successfully prosecuted”.¹²

Understanding the sex market

To explain why curbing demand in the sex sector will not effectively end trafficking for sexual exploitation, it is critical to examine the particular features of the “sex market”, including its economic and social bases.

In the first place, it is not one homogenous market but many and increasingly varied segments of a market. An earlier ILO study describes the heterogeneity and complexity: “Although both adult and child prostitution are part of the commercial sex sector and have strong economic and social foundations, the position on child prostitution is unequivocal, whereas there could be different considerations for adult prostitution. Children are victims of prostitution, whereas adults could choose sex work as an occupation. International conventions all treat child prostitution as an unacceptable form of forced labour; the goal is its total elimination. In the case of adults, the position is less obvious because it is possible to make a distinction between enforced and voluntary prostitution.Those who enter the sex sector as adults do so for a range of reasons. Some freely choose sex work as an expression of sexual liberation, or as an economically rational decision based on income potentials, costs involved and available alternatives. Others are pressured by poverty and dire economic circumstances. Still

¹² ILO, *An Information Guide Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers Booklet 6 Trafficking of women and girls*, Geneva, Gender Promotion Programme, 2002.

others are subject to overt coercion from third parties, in the form of deception and/physical violence or threats. At the same time, a range of circumstances exists among those working in the sex sector. In part depending on the methods of entry, the terms and conditions of work can differ greatly among the prostitutes. The national surveys (in Indonesia, Malaysia, Philippines and Thailand) confirm that earnings could be much higher than from available alternatives and, at the upper end of the market, terms and conditions of work could be relatively very good. On the other hand, there are prostitutes working under conditions akin to bondage or slavery and who are subject to severe exploitation and abuse”.¹³

The sex industry has become highly organized, diversified and global in recent years. Technological developments such as the Internet, as well as the proliferation of tourism, escort agencies, and media outlets that advertise sexual services have all contributed to the growing demand for commercial sex. The arrangements have become increasingly diversified to cater to specific market niches and respond to the changing tastes and sophistication of customers, to overcome the constraints imposed by legislation and its enforcement and to involve a growing number of national and international interests. Sex business operators provide for the demand through massage parlours, nightclubs (which range in ambiance from grungy to posh), bars, discos, karaoke venues, private apartments/homes, even golf courses and restaurants. There are also the street prostitutes who work on their own to find and contact their clients, although they often rely on someone to protect them from harassment.

We talk about a sex industry or sector because it is not just about individual buyers and sellers or employers looking for cheap labour. The stark reality is that commercial sex has become “big business” involving increasingly organized structures and many vested interests - not just the families of the prostitutes who rely on their earnings or the owners, managers, pimps and other employees of sex establishments but also those in the entertainment industry, tourism, travel, etc. The economic bases also comprise many powerful interests that control and maintain the structures within the sex market. It flourishes because it is protected and supported by corrupt politicians, police, armed forces and civil servants, who receive bribes, demand sexual favours and are themselves customers of the sex establishments or may even be partners or owners of the establishments.

There are not only strong economic but also social bases in the sex industry. The roots of prostitution are to be found in the socio-cultural institutions and traditions that dictate gender relations, the relations between parents and children and attitudes towards socially marginalized groups. For example, there is often a double standard of morality for men and women, and there are several instances where the traditionally defined attributes of femininity – passivity, submissiveness, sentimentality and sexual desirability that are often associated with Asian women - are exploited commercially by the sex sector. Social norms change only slowly - girls may still be brought up to feel a sense of duty or moral obligation to earn money to repay the care and protection given them by their parents in raising them, even if this means allowing themselves to be sold into prostitution.¹⁴ Racism, xenophobia and prejudice against migrants, ethnic minorities or other marginalized groups remain strong – customers may feel that women and girls

¹³ L.L. Lim (ed.), *The Sex Sector The Economic and Social Bases of Prostitution in Southeast Asia*, Geneva, ILO, 1998, p.212.

¹⁴ *Ibid*, pp.12-13.

from such groups are not equal human beings and, therefore, can be used and abused in ways that would be unacceptable in respect of their own group.

Controlling trafficking by controlling demand in the sex market: some implications

In light of the above discussion, it is possible to draw some conclusions and highlight some implications for efforts to control trafficking and forced labour by controlling demand in the sex market:

- Firstly, as both supply and demand factors influence the nature and end results of trafficking, we need to understand and address the underlying dynamics of both these subsets of factors. Addressing only the supply or only the demand factors will not be an effective strategy in combating trafficking in human beings.
- To effectively tackle trafficking, both sexual and labour exploitation need to be addressed. “The idea that the entire commercial sex market should be eradicated in order to tackle the problem of trafficking for prostitution is as draconian and wrong-headed as the idea that it is necessary to eliminate demand for carpets in order to address the problem of forced and child labour in the carpet industry”.¹⁵ “Forced labour and slavery-like practices are possible in many trades. But where trades are legal and the labour of its workers recognized, it is more possible to denounce and put an end to the violation of rights and prevent abuse”.¹⁶ Making the sex market illegal may only serve to drive it underground, so that those most in need of protection from exploitation and abuse would be totally marginalized.
- The notion is misguided that criminalization controls demand in the sex market and protects the human rights of all prostitutes. In fact, policies in many countries currently treat not the clients but the individual prostitutes as criminals and punish them for making a living. Criminalization does not necessarily stop prostitutes from such work especially if there are no viable alternatives, but it does prevent them from openly seeking safer sex education and health services or even protection from abuse.
- Of course, for those who have been trafficked into prostitution, the concern is with the human rights violation in terms of forced labour. But for others, anti-prostitution measures would be a violation of their human right and civil liberty to go into an occupation of their own free choice. It is important to recall that all persons are entitled to all the human rights generally applicable to all human beings. They are entitled to rights of freedom of speech, assembly, non-discrimination, health and free movement, inter alia. This does not depend on the occupation they choose to follow or to which they may be constrained as the case may be. For those adult individuals who freely choose sex work, the policy concerns should focus on improving their working conditions and social protection, and on ensuring that they are entitled to the same labour rights and benefits as other workers. For those who have been trafficked, subject to force, deception or violence, the priority should be their rescue, rehabilitation and reintegration into society.
- One important reason why merely curbing demand of clients or employers will not be effective is because of the strong economic bases of prostitution. The “third parties”

¹⁵ Anderson and O’Connell Davidson, op.cit., pp.10-11.

¹⁶ *Sex workers in Europe Manifesto*, European Conference on Sex Work, Human Rights, Labour and Migration, 15-17 October 2005, Brussels, Belgium.

are not just individuals operating on their own. The highly organized institutional structures, the networks of dependencies, the widespread linkages with many other types of legitimate economic activities, the many vested interests, however, are not easy to dismantle. The powerful commercial and sometimes political as well as criminal elements will not willingly give up this lucrative line of business. Clamping down on some segments of the sex market may only lead to less visible and harder-to-regulate activities. Research has shown that the market can adapt and adjust and that it is increasingly varied and sophisticated.¹⁷

- The social bases of prostitution also need to be addressed. Regulating the sex market does nothing in itself to counteract racism, xenophobia or prejudice against migrants, ethnic minorities or other marginalized groups. “Unless governments do something to address the social devaluation of migrants and their social, political and economic marginalization, regulation may merely serve to reinforce existing racial, ethnic and national hierarchies in the sex industry”.¹⁸ Regulation of markets must be framed within and in accordance with a broader public awareness programme. The Alliance Expert Coordination Team called for “public awareness campaigns focusing on acceptance of migrants and their families to reduce discrimination and stigmatization of migrant workers”; and also for “public awareness campaigns on products and services that are produced by exploitative and forced labour and development guidance to assist consumers in identifying goods or services that have not been produced through exploitation”.¹⁹
- “Trafficking ... does not become an offence because of the purpose for which a person is moved or moves. The common elements in the trafficking are not the movement or the site of work per se but the brokering, lack of consent and exploitative conditions of work. Unfortunately, most initiatives on trafficking have failed to make these distinctions, and are focused on stopping movement, especially of women, regardless of the consent of the subject, on the assumption that they will be trafficked”.²⁰
- Measures to protect vulnerable women and girls from being trafficked by banning or restricting their mobility is also not the answer. Some States impose restrictive and discriminatory policies that have little or no consideration of labour supply and demand factors and that restrict women’s access to travel documentation including passports and visas, or stipulate that only women above 35 years of age may migrate, must have the permission of or be accompanied by a spouse or male relative, etc. Such conflation of trafficking with migration results in reinforcing the gender bias that women and girls need constant male or State protection from harm, and therefore must not be allowed to exercise their right to movement or right to earn a living in the manner they choose. These supposed protective policies not only violate women’s human rights to freedom from discrimination and freedom to leave any country. When migration is made difficult or impossible by restrictive laws and

¹⁷ For example, research has shown that operators in the sex market make increasing use of sophisticated communications technology – use of mobile phones and the internet, etc., and shift from visible to less easily detected forms of prostitution in private member clubs, golf courses, etc.

¹⁸ Anderson and O’Connell Davidson, op.cit., p.44.

¹⁹ Alliance Statement on Demand, op.cit.

²⁰ R. Kapur, “The global war on trafficking, terror and human rights”, in Global Alliance Against Traffic in Women (GAATW), *Alliance News*, Issue 18, July 2002, pp.21-22.

policies, trafficking tends to increase and/or go further underground. The consequence is that the trafficked person's status as an irregular migrant often becomes a very effective tool in the hands of traffickers, leaving the migrant vulnerable to further exploitation. Restrictive migration regimes often have the unintended opposite effect of encouraging trafficking and aiding and abetting traffickers. What is needed is to promote regulated, orderly and humane labour migration systems.²¹

- Emphasizing that trafficking should not be conflated with prostitution and that anti-trafficking measures should not be equated with anti-prostitution measures or that controlling demand in the sex market will not effectively tackle trafficking does not mean that we advocate that nothing per se be done to address the problems in the sex market. Even for those prostitutes who have not been trafficked, the priority concerns should still be for the protection of their human and labour rights, including safe and healthy working conditions, freedom of association and the right to organize, access to health care and social protection, etc.
- As an official of the ILO, it is critical that I emphasize that it is outside the purview of the ILO to take a position on whether prostitution should be legalized. It is also important to emphasize that legalization is not the same as legitimization; it is not about morally condoning or sanctioning. Countries that have legalized parts of the sex market have done so in terms of particular controls/regulation/registration.
- In the final analysis, measures to address trafficking, and in many respects also prostitution, have to address the root causes which are related to the lack of decent work opportunities. "Migration today is about work. Addressing migration means promoting opportunities for women and men, national and migrant, to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Migration in abusive conditions and the exploitation and trafficking of migrant workers occur in contexts of serious decent work deficits – in terms of the absence of rights at work, lack of productive and remunerative jobs, inadequate social protection and lack of representation and voice – in source, transit and destination countries...Trafficking cannot be effectively tackled without addressing the reasons behind labour market failures (rising unemployment and underemployment and poor working conditions), persistent occupational segregation and the disadvantaged position of women relative to men in the labour market; and why and how informalization, flexibilization and casualization of production and employment relationships is increasing the demand for unregulated migrant workers".²²

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²¹ See, for example, ILO, *Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*, Geneva, 2006. The objective of the non-binding Framework is to give effect to the Resolution and conclusions on a fair deal for migrant workers in a global economy, adopted by the 92nd Session of the International Labour Conference in 2004.

²² ILO, *An Information Guide Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers Booklet 6 Trafficking of women and girls*, op.cit., p.43.