





Photo courtesy of MigrantCARE

Indonesians protest against trafficking. Various activists express their concern that anti-trafficking efforts are not effective.

## TRAFFICKING

### 2004: A Year for Critical Self-Reflection in the Anti-Trafficking Movement

By Elaine Pearson

In 2004, the global trend of an unprecedented level of interest in the issue of human trafficking continued, which has emerged largely in the wake of the new United Nations Trafficking Protocol. The year saw the establishment of a new post of a United Nations Special Rapporteur on Trafficking in Persons, Especially Women and Children, filled by a

Bangladeshi lawyer, Sigma Huda. The United States released its fourth annual Trafficking In Persons Report, with a new global estimate that 600,000-800,000 people are trafficked across borders each year (compared to 800,000-900,000 in the 2003 report - this decline in number reflects an improved methodology for estimating trafficking flows rather than an actual decline in trafficking numbers). 2004 was also the first full year after the entry into force of the UN Trafficking Protocol in December 2003.

In Asia, two new anti-trafficking agreements were forged, an ASEAN (Association of South East Asian Nations) Declaration amongst the ten ASEAN States, and the Co-ordinated Mekong Ministerial Initiative against Trafficking (COMMIT) Memorandum of Understanding between China, Cambodia, Thailand, Lao PDR, Vietnam and Myanmar. Both agreements focus on

## Trafficking Defined

### What is trafficking in persons?

The international legal definition of trafficking is set out in Article 3 of the UN Trafficking Protocol as: “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” Exploitation is defined as “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”

In simplified terms, trafficking in persons is the facilitated movement of a person from one place to another via deceptive or coercive means, into a situation of exploitation (such as forced labor or slavery). Trafficking in children differs in that there is no need for any deceptive or coercive means, simply the movement plus exploitation is sufficient.

### What is the difference between trafficking and smuggling in persons?

Smuggling is when someone is taken across a country border illegally for profit. A smuggled person may or may not end up being exploited. With trafficking, the movement may be legal or illegal, within or across borders, but the trafficked person is always exploited. Some people start out being smuggled and end up being trafficked.

### What is the UN Trafficking Protocol?

This is the short name for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which is attached to the United Nations Convention Against Transnational Organised Crime (Crime Convention).

The UN Crime Convention actually has 3 Protocols, one on trafficking in persons, one on smuggling in migrants and one on smuggling in firearms. These documents were opened to be signed by States in 2000. The Trafficking Protocol entered into force (after receiving its 40th ratification) in December 2003.

The UN Trafficking Protocol sets out the internationally accepted definition of trafficking (above) and sets out a framework for international co-operation to prevent and combat trafficking and protect and assist victims of trafficking.

increased intra-regional cooperation to combat trafficking, with the COMMIT MOU setting a framework for a regional plan of action. With regard to non-State actors, 2004 brought the 10th anniversary congress of one of the largest international anti-trafficking networks, GAATW in Bangkok, Thailand.

Yet rather than being a cause for celebration of these various accomplishments, 2004 seemed more a cause for concern. Various NGOs and activists in the field of anti-trafficking have increasingly expressed concerns that anti-trafficking interventions are not working. More international attention has meant more declarations and more conferences yet it has not been matched with a visible reduction in the numbers of those suffering the abuses and exploitation inherent in trafficking. In fact, some of the very actions carried out to counter trafficking may in fact be having harmful impacts upon those they seek to protect, rather than reducing harm and protecting rights of migrants and victims. So are we doing something wrong? Are we too impatient by looking for concrete impacts of our work? Are the root causes of trafficking not effectively being addressed? Is the trafficking paradigm itself flawed? Or is it because the anti-trafficking business is just as lucrative as the trafficking one? 2004 was certainly a year where many of those working on anti-trafficking and migration issues grappled with these questions. This paper will take stock of recent trends examining how the anti-trafficking movement is re-aligning itself to address these concerns and ensure the protection of rights of migrants as well as trafficked persons.

### Neglecting exploitation

As any experienced anti-trafficking advocate will tell you, the lack of effectiveness of anti-trafficking measures still stems from issues with the very definition of trafficking. The definition of trafficking under international law (see boxed text, left) clearly distinguishes trafficking as facilitated movement from one place to another plus some kind of exploitation (via deceptive or coercive means for adults). Despite this, many interventions especially in Asia seem pre-occupied with

addressing the movement aspect of trafficking alone. Perhaps under the rubric “prevention is better than cure”, many organizations and institutions have focused on awareness-raising campaigns and activities designed to stop the movement of people altogether as a means of preventing trafficking. These well-meaning interventions are not having the desired impacts of reducing trafficking, and in some senses are even further violating the rights of those who the laws seek to protect (See Box Story: Border Monitors in Nepal, p.40).



Police raid a brothel in Svay Pak, Cambodia. May 2004.

Photo courtesy of CWRP

This short-sightedness as to the full definition of trafficking extends beyond prevention measures and into those programs designed to protect trafficked people who have already been exploited in countries or places far from their homes. Governments in particular are primarily concerned with returning victims as the primary means of assisting their recovery – which means repatriation and reintegration of victims to their home country and communities. Many reintegration programs are not effective due to pervading obstacles in the country of origin such as discrimination against and stigmatization of women (particularly for those trafficked into prostitution), lack of protection from reprisals by traffickers and a lack of viable economic livelihood alternatives. There have been some successful reintegration programs – usually those which are small scale projects based on the needs and skills of individual women and children being assisted. However, most will agree that reintegration is extremely difficult because the vast majority of trafficked people simply do not want to return home, back to the same conditions from which they left in the first place. Thus, focusing on the movement aspect of the issue alone is not useful in eliminating trafficking.

The part of the trafficking definition that has suffered a lack of due attention is exploitation. In recent years, our understanding of trafficking has been broadened to include exploitation in sectors such as domestic work, factories and farming.

However, there has been a general lack of detailed interventions in such sectors. Sexual exploitation is still the predominant form of trafficking dealt with in any detail, and this has been largely in terms of changing policies and male practices in regard to prostitution.

In 2004, we saw a shift in this regard somewhat, as organizations such as the International Labour Organization (ILO) paid more attention to the forced labor outcomes of trafficking. Various ILO projects in Asia now focus on aspects of labor exploitation and factors which make people vulnerable to trafficking in various workplaces, including the need for better labor protection and organization of migrant and informal sector workers. Other agencies and organizations have called for an increased examination of the “demand” side of trafficking. “Demand” in this context is beyond consumer demand for sexual services or other goods and services that might be produced by trafficked labor. “Demand” means looking at the various legal, political, economic, social and cultural factors at destination that sanction exploitation of people vis a vis trafficking or forced labor. Essentially it means moving beyond looking at trafficking as a problem of the countries of origin, and recognizing it is indeed a problem in the destination countries of unregulated and unprotected areas of work where migrants especially are vulnerable to exploitation and abuse.

So why the preoccupation with movement

## Border monitors in Nepal: An example of misguided prevention

*A dusty outpost marks an official border crossing between the Kingdom of Nepal and Nepal's large and powerful neighbor, the Republic of India. This is one of any number of crossings, teeming with people crossing back and forth on foot, by car, truck, bus and rickshaws. Out of the chaos, a young Nepalese couple start to walk across the border to India.*

*They are stopped on the Nepalese side by staff of an anti-trafficking NGO, which has a small booth established on the border to prevent Nepalese women and girls from being trafficked to India. The border monitors who staff the booth are women who have been previously trafficked themselves and have received minimal training as to how to intercept potential victims. The staff question the couple as to their relationship, where they are going and why. The couple reply they are married and going to live at the husband's place of work in India, but they are unable to produce a marriage certificate.*

*The couple are then interrogated separately. Some of their information they tell does not quite match up. It appears there could be good reason for this, the man is on his second marriage, and the woman has not yet met his relatives. Both are over 18 years of age. The NGO is suspicious, though rather than delving into logical reasons behind the lack of information, concentrate on the missing marriage certificate. The man produces his identification documents and explains they had crossed the border earlier that day without problem, they had simply returned to Nepal to get some more money. He shows the train tickets to India and his identification stating his place of work in India. They come from a small village and were unaware of any regulation that requires a marriage certificate to be produced in order to cross the border.*

*The border monitors remain unconvinced. They are worried that the young woman could be trafficked. After a long discussion, they send the couple back. The man asks if he can go on to India alone, since he has purchased the train tickets already and has to be at work. The staff say no, he must accompany his wife back to the village to get the marriage certificate. And so the young couple start the long trip back to their village.<sup>1</sup>*

This case, witnessed in March 2004, illustrates the

problem with some anti-trafficking interventions which blur the line between migration and trafficking. To protect potential victims of trafficking, other migrants suffer additional setbacks, travel costs, sometimes harassment and a violation of their right to freedom of movement. Perhaps it is a small price to pay for protection from trafficking, but poor migrants like this couple hardly have even a small amount of money. It is extremely unlikely that this woman was in danger of being trafficked, even the border monitors know this, otherwise why would they insist on leaving her in the hands of the potential trafficker, rather than letting him continue on his journey alone?

Some have praised the efforts of border control monitors, claiming they have prevented thousands of cases of trafficking. What they have indeed prevented is thousands of young women from migrating to India, though whether or not they were all destined to be trafficked is another point entirely.

At that stage of the trafficking journey - the crossing of a border - those who are the potential victims do not know exactly what awaits them, and thus like any other migrant are not receptive to measures taken to forcibly end their journey before it begins. Even warning them they may be trafficked is not always an effective technique, because people frequently do not believe this is something that will happen to them. They are just as likely to find alternative, even more dangerous and expensive means to travel again, making them again vulnerable to traffickers and exploiters. Traffickers are known to easily avoid border monitor controls, for example, by asking parents to accompany children and daughters across the border first, by obtaining fraudulent travel documents or by simply using alternative border areas to exit the country.

In other areas of Nepal, some anti-trafficking and migrant support organizations have realized the ineffectiveness of this type of prevention strategy and are trying instead to present impartial information to potential migrants en-route. Such organizations do not try to actively prevent people from travelling, but act as a migration information service giving practical information about the destination country such as laws, their rights, support organizations that can help them and employment advice.

rather than exploitation? This is a deliberate clouding and manipulation of issues by certain governments that use human trafficking as a vehicle for repressing undocumented migration. It is also a convenient way of pushing the problem back onto countries of origin, without addressing the pull factors at destination. Various destination governments have been instrumental in guiding and funding anti-trafficking interventions in this way. This is the main reason why so many anti-trafficking interventions have been doomed to fail. Their goal is preventing movement of people rather than preventing abuse and exploitation. Thus we can see how the true nature of trafficking is being undermined by the anti-migration agenda.

### **Forced labor framework?**

Recognizing these and other limitations in the trafficking framework, some organizations have been calling for an end to the use of the trafficking “paradigm” or framework altogether. Indeed, this was a hot topic of discussion at GAATW’s 10th anniversary congress last December. By focusing on forced labor rather than trafficking, there is an opportunity to ensure that the exploitation inherent in trafficking is more clearly targeted, by removing movement from the equation altogether. This also ensures that those who are trafficked internally would be equally recognized as victims of forced labor; currently some States do not recognize internal trafficking, and the UN Protocol is silent on this issue. A forced labor framework also shifts the focus away from morality (stemming from trafficking’s historical links with prostitution) to working conditions.<sup>2</sup>

A forced labor framework is not without its flaws. Forced labor as a concept is not new, there are treaties dealing with abolition of forced labor dating back to 1930, yet it has hardly been a high priority of governments. The international definition of forced labor is somewhat vague, and thus could potentially be interpreted by States in ways that actually have the impact of countering the protection of migrant and local workers from severe exploitation, much in the same way trafficking has been hijacked by the anti-migration agenda. Though clearly there are many advantages to conceptualizing trafficking in terms of its forced

labor outcomes, a simple change in focus to “forced labor” may be insufficient.

The element of movement has been inherent in the notion of trafficking from the beginning to ensure that migrants exploited in forced labor are afforded the same protection as citizens. We need to ensure the “movement” aspect of the definition is not about stopping movement but is about ensuring destination countries are accountable for the violations migrants suffer in their borders. We also need to ensure that safe migration alternatives are made available to migrants (and potential trafficking victims) as the best means of preventing them from being trafficked. Various organizations have been making progress and working to this effect for some time now.

Whilst 2004 certainly has been a year for self-reflection for some disillusioned activists, the achievements that have been made over the past decade in ensuring protection of migrants’ rights, especially those who have been trafficked, should also be acknowledged. For example, those identified as victims of trafficking in some Asian countries (such as Thailand) are now able to access shelters and certain services, where previously they would be deported or held in detention. The problems with border monitoring in Nepal has led other organizations to develop safe migration booths where potential migrants can receive information about their destination (See Box Story: Border Monitors in Nepal). In Thailand, the registration of undocumented migrants in 2004 can be seen as an acceptance of the country’s reliance on migrant labor, and indicates a small step to recognizing and protecting migrant workers.

This shows that interventions do not need to specifically target trafficked people as a special group, but many anti-trafficking interventions actually can benefit all migrant workers. It is important for stronger alliances to be forged between migrant, labor and anti-trafficking groups so that the rights of all migrants and workers can be protected. Careful monitoring of the impact of various anti-trafficking interventions is an integral part of this process. This will produce the most effective and sustainable interventions to protect all those suffering exploitation. Trafficking is merely an extreme form of that exploitation.

### Endnotes

<sup>1</sup>This case information was observed as part of a research project the author conducted for Oxfam GB in Nepal in 2004.

<sup>2</sup>Wijers, M., “Forced Labour, Slavery and Slavery-Like Practices: A New Anti-Trafficking Paradigm?” presented at GAATW International Congress: Human Trafficking and Human Rights, Bangkok, 7 December 2004.