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**Session 4– Invited paper**

**CHURNING OUT NUMBERS – TRAFFICKING AND STATISTICS**

Submitted by the Office of the High Commissioner for Human Rights \*

**Naming and Defining the Problem**

1. Until the finalisation of the UN Trafficking Protocol Supplementing the UN Convention against Transnational Crime at the end of the year 2000, there was no comprehensive international definition of trafficking whose basic elements were acceptable to State parties and key stakeholders. Therefore until recently, the term ‘trafficking’ was employed to describe varied and disparate phenomena, processes and outcomes.
2. Historically and most commonly, trafficking has been conceptually conflated with prostitution and irregular migration, and more recently with the commercial sexual exploitation of children (CSEC), as well. In fact, the reason for equating child trafficking and CSEC can be logically traced to the practice of equating trafficking in women and children with prostitution over the past several decades. It is not a coincidence that a majority of the anti-trafficking laws in most countries are also prostitution laws which seek to variously, criminalize or regulate the sex trade.
3. A commonly agreed upon definition of trafficking is now contained in the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime* which came into force at the end of 2003.

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4. In the recent past, the need to expand the definition of trafficking to include purposes other than prostitution, such as, forced labour, forced marriage and slavery-like practices<sup>1</sup> has also been recognized. This is reflected in the new UN Protocol on trafficking, and tied to the acknowledgement that trafficking is complicated problem with serious human rights implications.

### **Trafficking, Migration and Prostitution**

5. However new understandings take time to embed themselves in practice. And so, the dominant trafficking paradigm continues to rest upon an absence of the critical distinction between trafficking and migration on the one hand and trafficking and prostitution on the other.

6. Let us look at what are the implications of conflating the categories of migration and prostitution with trafficking?

7. And, what are the implications when these concepts are often value-loaded, with an inherent bias that marginalized people who migrate are vagrants, and women who migrate into the sex industry are delinquents?

8. But before I do that reflect a little bit on this mystery of statistics.

9. Numbers on the scale of trafficking are often derived from small-scale surveys based upon disparate methodologies, or sources such as police records, local information, or media reports which are often not statistically representative, nor empirically sound. These calculations are based on many untested assumptions, which I will elaborate on. Most data on the number of trafficked persons are based on speculation and projection. To date, there is no sound methodology to calculate the numbers of those who have been trafficked

10. The United Nations estimates that, in the last 30 years, trafficking in women and children for sexual exploitation in Asia alone has victimized more than 30 million people<sup>2</sup>. There are few statistics which distinguish the number trafficked according to the age of the victim. In many cases, and as a case let me use South Asia - it has been noticed that several of the statistics on trafficked victims have remained unchanged over the years. For example in Nepal, the figure of 5000-7000 Nepali girls trafficked into India each year, and 150,000-200,000 of them in Indian brothels has remained unaltered over the past 15 years.<sup>3</sup>

11. The US State Dept brings out each year a TIP ( Trafficking in Persons) report. Last year the report declared that 800,000 persons, especially women, were trafficked, worldwide. This year the TIP report has brought down that figure to 600,000. Noweher does it disclose how these numbers are arrived at.

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<sup>1</sup> See the Beijing Platform for Action, 1995, Strategic Objective D3 130 (b), which states, “..trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages and forced labour”.

<sup>2</sup> <http://www.unicef.org/programme/cprotection/trafficking.html>

<sup>3</sup> The article which first published these statistics was written by Dr. I.S. Gilada of the Indian Health Association in Mumbai, and was presented at a workshop in 1986. Subsequently, a version of this piece was published in the Times of India, January 2, 1989. These figures have since then been recycled by innumerable reports and articles on trafficking in Nepal.

12. When trafficking is equated with migration on the one hand and prostitution on other then it logically follows that the number of victims of trafficking is equal to the number of those who have either migrated or those who are engaged in prostitution. This logic operates particularly in the case of adolescent girls and women migrants, and not in the case of men.

13. This practice has resulted in an extremely flawed methodology for conducting baseline surveys on trafficking in ‘risk-prone’ and ‘affected districts’. Household surveys have been conducted in Asia on the number of women and girls who are absent from their villages. These persons may have migrated voluntarily or under deception – however, there are no methodologically sound data to ascertain this information. Absence of women or girls is routinely considered equal to “missing persons”, and missing women are equal to trafficked women. However missing men is equal to migrant women. Considering the fact that due to several structural and socio-economic causes the phenomena of migration is on the increase worldwide<sup>4</sup>, the inherent logic of equating migration with trafficking automatically leads to the conclusion that trafficking too is on the increase. This may certainly be the case but we do not know that via statistics.

14. What do these simple equations lead us into?

15. ***Curbing migration to prevent trafficking***: Equating trafficking with migration has certainly led to simplistic and unrealistic solutions. In order to prevent trafficking there is move to stop the migration of those who are considered vulnerable to trafficking. Even when curbing migration is not a stated programmatic focus, an inadvertent impetus is to dissuade women and girls from moving in order to protect them from harm. This has often resulted in reinforcing the gender bias that women and girls need constant male or state protection, and therefore, must not be allowed to exercise their right to movement. (case of Bangladesh, Nepal:::)

16. Curbing migration has not and will not stop trafficking – we have seen that over and over again. A demand for greater border control and surveillance merely serves to drive the activity further underground. Borders cannot be impermeable, and stricter immigration measures have merely resulted in pushing the trafficked women further into situations of violence and abuse; they have also been rendered more invisible and inaccessible.

17. ***Banning Prostitution to Prevent Trafficking***: There has been a continued persistence among anti-trafficking players within the dominant discourse to conflate trafficking with prostitution. By collapsing the process with the purpose, the abuse and violence inherent in trafficking is mistaken for the actual site of work and form of labour. Furthermore, trafficking for all other purposes is largely ignored, and targeting trafficking for prostitution becomes the principal agenda of anti-trafficking interventions, policies and laws.

18. To provide protection and redress to women and girls who are trafficked, a clear distinction needs to be made between the abuse and human rights violations committed during the entire process of recruitment, transport, and confinement via coercion to exploitative labour

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<sup>4</sup> There is no serious or rigorous study of the sex industry in most countries. Therefore, the assumption by some activists of the expansion of the sex industry is not supported by any evidence-based analysis. However, activists and advocates in some areas may report a growth in a particular red light area whereas those working in other areas have also reported reduction.

conditions on the one hand and the form of employment or purpose of trafficking on the other. In the case of trafficking for the purpose of domestic work, forced marriage or work in carpet factories, the objective of anti-trafficking interventions has been to target the abuse, forced labour and violation of rights that is endured by those affected by trafficking and not to eradicate marriage as an institution or domestic work and the carpet industry as sectors of employment. But eradication of the sex industry in a bid to prevent the harm of trafficking is often an agenda of many interventions.

### **Equating Children with Women**

19. The UN Protocol on Trafficking, The US Act 2000, as well as a majority of the major documents and laws addressing the issue of trafficking do not make a clear distinction between the trafficking of women and children. In commenting upon the SAARC (South Asian Association for Regional Cooperation) Draft Convention on Trafficking which clubs children and women together, the previous UN Special Rapporteur on Violence against Women stated, “The legal regime surrounding women should be based on a framework of rights and the concept of coercion when it comes to trafficking. The legal regime with children must be completely different”.<sup>5</sup> Treating women like children or in accordance with similar norms infantilizes women and denies them both their right to autonomy and to make decisions. “Some women may have been trafficked while they were under age. In such a case a woman should be “entitled to a legal remedy for any harm she may have endured as a child, whether it is in the form of child sexual abuse, slave labour, or coerced work while still a minor. Providing such remedies is different from setting up a legal regime that treats all women like children”.<sup>6</sup> On the other hand, treating children like adult women denies them the special consideration that is their due on account of the special interests of the child as stipulated under the CRC

### **Post-Facto nature of the Crime of Trafficking**

20. One of the key problems in understanding and dealing with the problem of trafficking is that it is deemed a crime only after it has happened. Herein lies its operational and complexity. There are three inter-linked core elements involved in the operation of trafficking based upon its definition<sup>7</sup>: (i) Movement of a person; (ii) under deception or coercion; (iii) into a situation of forced labour, servitude or slavery-like practices.

21. The first of these elements, namely movement, involves both recruitment and transportation of the person. In present times, many trafficked women migrate voluntarily or willingly in their desire to better their life-situation. Therefore, agents or traffickers do not encounter much difficulty in recruiting or transporting their victims within or across borders. In fact, it may be said that most victims actively collude in their own trafficking through cooperation

<sup>5</sup> Radhika Coomaraswamy; **Addendum, Mission to Bangladesh, Nepal and India on the issue of trafficking of women and girls** (28 October-15 November 2000), Integration of Human Rights of women and the Gender Perspective: Violence against Women, Report of the Special Rapporteur on Violence against women, its causes and consequences, in accordance with the Commission on Human Rights resolution 2000/45: GE. 01-10865 (E)

<sup>6</sup> See Jyoti Sanghera and Ratna Kapur, **Trafficking in Nepal: Policy Analysis – An Assessment of Laws and Policies for the Prevention and Control of Trafficking in Nepal**, at p. 24 (Sponsored by the population Council, New Delhi and the Asia Foundation, Nepal)

<sup>7</sup> For a detailed and comprehensive discussion see also, GAATW (Global Alliance against Trafficking in Women), **Human Rights and Trafficking in Persons: A Handbook**, Bangkok, 2001.

with traffickers during the process of transportation. The traffickers pose as well-wishers offering to deliver the innocent victims into lucrative situations of work or marriage. Hence, the first phase of trafficking is achieved often times with little coercion or force; various forms of deception and false promises are employed in this phase.

22. Coercion, sometimes of an extreme nature, is evident at the point of destination in the trafficking process. *At the point of destination the person who, during the process of recruitment and transport is a willing collaborator and migrant, becomes a victim of trafficking.* This chain process is characterized by the involvement of one or more agents/traffickers – recruiter, transporter, broker, employer - who derive profit through this activity.

23. Given the nature of the process of trafficking, namely, recruitment, transportation and confinement, it is difficult to determine the crime during its earlier phases. At its commencement, trafficking is indistinguishable from agent-facilitated voluntary migration or smuggling. It can only be established as a crime once it has happened and the victim has been trapped and confined to exploitative conditions.

24. The complexity of the process of trafficking, where the crime can be ascertained only post-facto complicates any endeavour to gather data, especially statistical data.

25. **What then is being counted???**

1. Border crossers are victims: Women and children who cross international borders are viewed as victims of trafficking while those who are moved within the country and whose conditions fit the definition of the protocol are not seen through the trafficking lens. This of course reflects the obsessions of state with immigration control and now, migration management.

From the perspective of women and children who leave home and are subjected to abuse and exploitation, it is immaterial whether an international border has been crossed or not; what is critical is that they have been forced to cross 'social borders' into unprotected and unprotective zones wherefrom escape is difficult.

- A) Smuggled persons as trafficked
- B) Irregular migrants as trafficked

2. Unaccompanied minors and often women as victims: Many states interventions are based on the fact that it is 'correct' to assume that unaccompanied minors are victims of trafficking. This response again is pegged to the preoccupation of govts with concerns with immigration. Minors who are brought into Europe for instance, and made to engage in burglary, begging, sex trade are certainly to be seen as trafficked but to view all unaccompanied teenagers, who are also irregular migrants and are making money through illicit means as trafficked is a erroneous.

3. Missing women and minors as victims: All women, young persons and adolescents missing from their communities reported as victims of trafficking. Or women and minors who have not returned home ...

4. All minors engaged in ‘worst forms of child labour
5. All minors in the sex industry, including beer bars, entertainment places and ancilliary sectors of the entertainment and sex tourism industry.
6. Women and Minors in domestic work
7. All women and minors subjected to exploitation in the workplace
8. Adolescent girls given away in marriage, especially when the marriage is abusive
9. Minors, boys and girls handed out by their parents to those who promise them employment, in which case the young people are victims of their parents who are often deemed as traffickers.
10. Women and Minors who are abducted.
11. Children who are adopted out
12. All women and minors crossing borders.
26. Women and Minors who are vulnerable, especially young women – Philippines law. Protocol – exploitation of the position of vulnerability.

What are we counting and defining as trafficked persons? What do the numbers refer to?

What are we measuring – degrees of control, exploitation, abuse???

Defining that which is ‘worst’

### **Conclusion**

27. For all of the above reasons statistical data is highly questionable and contestable, and consequently the weakest link as far as the issue of trafficking in persons is concerned. And yet, statistics of trafficked women and children constitutes one of the legs upon which the dominant trafficking paradigm stands. Victims of trafficking are presented as the fastest growing population under globalization, and the “trafficking problem” is portrayed as a formidable and heinous serpent, constantly tightening its coils around vulnerable women and girls of poor and marginalized communities.

#### UNESCO’s Trafficking Statistics Project

*“When it comes to statistics, trafficking of girls and women is one of several highly emotive issues which seems to overwhelm critical faculties. Numbers take on a life of their own, gaining acceptance through repetition, often with little inquiry into their derivations. Journalists bowing to pressures of editors, demand numbers, any number. Organizations feel compelled to supply them, lending false precisions and spurious authority to many reports.*

[www.unwescobkk.org/culture/trafficking](http://www.unwescobkk.org/culture/trafficking)

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